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**ON SIGNIFICANT DISTORTIONS IN THE ECONOMY OF THE PEOPLE'S
REPUBLIC OF CHINA FOR THE PURPOSES OF TRADE DEFENCE
INVESTIGATIONS**

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1. INTRODUCTION

This Report has been prepared by the Commission Services for the purposes of point (c) of Article 2 (6a) of Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('Basic Regulation' or 'Regulation')¹.

Point (c) stipulates:

Where the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector. Such reports and the evidence on which they are based shall be placed on the file of any investigation relating to that country or sector. Interested parties shall have ample opportunity to rebut, supplement, comment or rely on the report and the evidence on which it is based in each investigation in which such report or evidence is used. In assessing the existence of significant distortions, the Commission shall take into account all the relevant evidence that is on the investigation file.

The Basic Regulation defines in point (b) of Article 2(6a) 'significant distortions' as follows:

Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

- *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;*
- *State presence in firms allowing the State to interfere with respect to prices or costs;*
- *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;*
- *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;*
- *wage costs being distorted;*
- *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State.*

¹ OJ L 176, 30.06.2016, p.21.

This report examines the existence of significant distortions in the People's Republic of China ('PRC' or 'China') that are relevant under the Basic Regulation. It comprehensively approaches this topic from three different angles.

First, it examines the core features that give the Chinese economy its current shape and structure (Chapters 2 to 8). These include the very concept of a 'socialist market economy' as embodied in the Constitution of the PRC ('*Constitution*')² and other laws, the role of the Chinese Communist Party ('CCP' or 'Party') in relation to the economy, the extensive system of plans issued and followed up by various levels of government under the leadership of the CCP, the State-owned sector with its numerous state-owned enterprises ('SOEs') including the various supervision and control mechanisms, the financial market, the procurement market and the system of investment screening. All these topics are closely interlinked.

The evidence relates to the framework in which economic activity takes place in China, where the State continues to exert a decisive influence on the allocation of resources and on their prices.

The second part (Chapters 9 to 13) covers various factors of production. It looks in detail into the provision of land, energy, capital, material inputs (e.g. raw materials) and labour in China. The approach here is horizontal, focusing on the overall situation in China with regard to these factors of production.

The evidence relates to the allocation and the pricing of the factors of production influenced by the State in a very significant manner.

The third part (Chapters 14 to 22) examines a number of sectors. These include steel, aluminium, chemicals, ceramics, telecommunications, semiconductors, railway equipment, environmental goods and new energy vehicles. The sectors have been selected on the basis of a number of criteria, such as their frequent occurrence in the Commission's trade defence investigation practice or for their particular economic or strategic importance. Taking the perspective of individual sectors allows a closer look at the specific rules and dynamics in that sector. The evidence relates to the distortions resulting from the specific features of the Chinese economy and those in relation to the factors of production.

² See Section 2.2.1

PART I

CROSS-CUTTING DISTORTIONS

2. SOCIALIST MARKET ECONOMY

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2.1. INTRODUCTION

China's economic system is unique³, with a particular role of the State and of the CCP (see Chapter 3). The doctrine of social market economy is one of those elements that embodies China's specific socio-economic setup. The basic features of the socialist market economy are dominant State-ownership (see Chapter 5), an extensive and sophisticated economic planning system (see Chapter 4), as well as interventionist industrial policies and a broad array of other tools to pursue political and economic objectives set by the Party.

³ See Kennedy, S.; Blanchette, J. (ed.) – *Chinese State Capitalism, Diagnosis and Prognosis* (2021); The Center for Strategic and International Studies ('CSIS'), pp. 6-7, 83-84.

Routinely referred to by political leaders and in legislative and policy documents, President Xi captured some of the doctrine's core elements in a 2019 article⁴, in particular the central role of CCP:

[China] must never copy the models or practices of other countries. [...] We must never follow the path of Western 'constitutionalism', 'separation of powers', or 'judicial independence'.

A more elaborate view of the basic characteristic of the political and economic foundations of nowadays China was presented by the President in 2021⁵:

Soon after the founding of New China, our Party put forward the goal of building a modernized socialist country. After 13 five-year plans, we have laid a solid foundation for achieving this goal. [...]

The most essential feature of socialism with Chinese characteristics is the leadership of the Communist Party of China. [...]

I have said many times that high-ranking cadres must become Marxist politicians, and leading cadres at all levels must become politically aware. [...] Economic work has never been abstract and isolated, but concrete and connected. Leading cadres at all levels, especially senior cadres, must base themselves on the overall strategy for the great rejuvenation of the Chinese nation [...] and constantly improve [...] the implementation of the Party Central Committee's decisions and arrangements.

2.2. LEGAL FRAMEWORK

The framework for the socialist market economy is laid down in various provisions of the Constitution, as well as in the General Program of the CCP Constitution⁶. These are then further echoed in essential laws, plans and regulations that define the status and guide the conduct of the economic actors in China's market.

2.2.1. THE CONSTITUTION

Four constitutions have been enacted since the PRC was founded, each reflecting the changing political objectives of the CCP⁷. The current Constitution was promulgated in 1982 and has since then been amended on a number of occasions, most recently in 2018⁸. The concept of socialist market economy was first introduced in the 1993 revision. The current version of the Constitution refers several times to various characteristics of the socialist market economy. The

⁴ See Xi, J. - *Strengthen the party's leadership over the comprehensive rule of law* (2019), available at: http://www.qstheory.cn/dukan/qs/2019-02/15/c_1124114454.htm (accessed on 9 March 2023). See also Gao, Ch. - Xi: China Must Never Adopt Constitutionalism, Separation of Powers, or Judicial independence (2019), available at: <https://thediplomat.com/2019/02/xi-china-must-never-adopt-constitutionalism-separation-of-powers-or-judicial-independence/> (accessed on 9 March 2023).

⁵ Speech at the Party School, 11 January 2021, available at: http://www.qstheory.cn/dukan/qs/2021-04/30/c_1127390013.htm (accessed on 31 January 2022).

⁶ Full text of the CCCP Constitution, with amendments adopted during the 19th Party Congress, available at: http://www.xinhuanet.com/politics/19cpcnc/2017-10/28/c_1121870794.htm (accessed on 9 March 2023).

⁷ Heilmann, S., Rudolf, M. (2017). *The constitution of the party-state*, in Heilmann, S. (Ed.) (2017). *China's Political System*. Lanham, Maryland: Rowman & Littlefield, p. 57.

⁸ Constitution of the PRC, adopted on 4 December 1982, as amended; available at: http://en.moj.gov.cn/2021-06/22/c_634901.htm (accessed on 9 March 2023).

main political principles and the key elements in relation to the economy are outlined already in the seventh paragraph of the Preamble:

China will be in the primary stage of socialism for a long time to come. The basic task of the nation is to concentrate its effort on socialist modernization along the road of Chinese-style socialism. Under the leadership of the CCP and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve socialist institutions, develop the socialist market economy [...] to turn China into a socialist country that is prosperous, powerful, democratic and culturally advanced.

Moreover, according to Article 6 of the Constitution:

The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. [...]

In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist.

Article 6 of the Constitution thus describes the core substantial elements of the socialist market economy doctrine. It does so by, first, confirming that “*socialist public ownership*” remains the basis of China's socialist economic system and, second, by affirming that the State is to uphold the basic economic system in which “*public ownership is dominant and diverse forms of ownership develop side by side*” for as long as China remains in the primary stage of socialism.

The latest revision of Article 15 of the Constitution is particularly telling in this context. Currently, this provision reads as follows:

The State practises socialist market economy.

The State strengthens economic legislation, improves macro-regulation and control.

The State prohibits in accordance with law any organization or individual from disturbing the socio-economic order.

Prior to that change, the first sentence (“*The State practises socialist market economy*”) read: “*The state practices planned economy on the basis of socialist public ownership*”. In other words, the legislative history of the Constitution suggests that the socialist market economy is something different from a fully planned economy⁹. At the same time, other provisions of the Constitution such as Article 7 refute this apparent change of dogma:

⁹ However, concerning the planning system, see Chapter 4.

The State-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy.

Given the leading role of the State-owned economy, Article 11 explains the role of the non-public sectors as follows:

The non-public sectors of the economy such as the individual and private sectors of the economy, operating within the limits prescribed by law, constitute an important component of the socialist market economy.

The State protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors of the economy. The State encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy.

Article 7 therefore reaffirms the state-owned economy as the leading force in China's economy (see Section 5.1), while Article 11, on the other hand, recognises the non-public sectors of the economy as an important component (as opposed to the leading force of the state-owned economy), and declares that the State shall protect the lawful rights and interests of the non-public sectors of the economy, as well as encourage and support them¹⁰.

Moreover, the Constitution assigns to the State an interventionist role that goes beyond protecting the rights and interests of the non-public sectors, in that the State shall “*encourage, support and guide*” their development. However, the legal value of the rights assigned to the non-public sectors is limited. Even if Article 131 of the Constitution nominally provides for independent judiciary system, China not only explicitly rejects the Western approach to separation of powers and judicial independence but the CCP retains the express power to interfere¹¹.

In short, the Constitution makes it clear that China practices a socialist market economy, that the state-owned economy is the leading force of the economy, and that when it comes to the private economy, the State does not limit itself to encouraging and supporting it, but also guides it, much like in a planned economy. As described in the remainder of this Chapter, the State indeed makes extensive use of a variety of instruments – both incentivising and restricting - to guide the economy towards socialist modernisation under the leadership of the CCP.

2.2.2. CONSTITUTION OF THE COMMUNIST PARTY OF CHINA

The General Program of the CCP Constitution, revised most recently at the 19th Party Congress in October 2017¹², reaffirms the socialist market economy as China's economic system and the CCP's leading role:

¹⁰ The 1999 constitutional revision which amended Article 11 recognised for the first time the role of the non-public sectors of the economy. The provision was then further amended in 2004.

¹¹ See Section 3.3.4.

¹² CCP Constitution, available at: http://news.xinhuanet.com/english/download/Constitution_of_the_Communist_Party_of_China.pdf (accessed on 9 March 2023).

The Party must carry out fundamental reform of the economic structure that hampers the development of the productive forces, and keep to and improve the socialist market economy; [...]

The CCP shall lead the people in developing the socialist market economy. It shall be firm in consolidating and developing the public sector of the economy and shall remain steadfast in encouraging, supporting, and guiding the development of the non-public sector. It shall give play to the decisive role of market forces in resource allocation and ensure the government plays its role better, and establish a sound system for macroeconomic regulation. The Party shall work to balance urban and rural development, development among regions, economic and social development, relations between humankind and nature, and domestic development and openness to the world. It shall adjust the economic structure, transform the growth model, and advance supply-side structural reform. The Party shall promote the synchronized development of new industrialization, information technology application, urbanization, and agricultural modernization, and shall build a new socialist countryside, take a new path of industrialization with Chinese characteristics, and build China into a country of innovation and a global leader in science and technology.

As such, the CCP is to lead the people in developing the socialist market economy, both with regard to the public sector – which the CCP is to unwaveringly consolidate and develop – and the non-public sector – whose development the CCP is to unswervingly encourage, support and guide. The General Program of the CCP Constitution closely mirrors the relevant provisions of the Constitution, making the roles of the State and Party practically indistinguishable.

While the role of the CCP will be covered in greater detail in Chapter 3, it should be noted that all key policy initiatives stem from the CCP, as well exemplified for instance in the 14th Five Year Plan¹³ (‘14th FYP’) (see more in Section 4.2.5), which explicitly lists the leading role of the CCP as the first guiding principle which must be observed against the background of the turbulent development environment in which China finds itself¹⁴:

The 13th Five Years Plan period [2016-2020] was the phase of establishing a well-off society in an all-round way. Facing a tangled and complex international situation, and the arduous tasks of reform, development, and stability, and especially the severe shock of the COVID-19 epidemic, the [CCP] Central Committee with Comrade Xi Jinping as the core, never forgetting its original intention and remembering its mission, shall unite and lead the entire Party and people of all ethnicities to forge ahead, blaze new trails of innovation, and work with enthusiasm and promise to advance the various undertakings of the Party and the State. Major breakthroughs have been made in comprehensively deepening reforms, major progress has been attained in comprehensively implementing the

¹³ Outline of the PRC 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, available at: https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf (accessed on 9 March 2023).

¹⁴ Part One, Article I, Section 1 and Part One, Article II, Section 2 of the 14th FYP.

rule of law, [...] the modernization of the country's governance system and governance capacity has accelerated, and the leadership of the CCP and the advantages of the Chinese socialist system have been further demonstrated.

[...] Persist in the Party's total leadership. We will adhere to and refine institutional mechanisms for the Party's leadership of economic and social development, adhere to and refine the system of socialism with Chinese characteristics, continue to raise capabilities and standards for implementing the new development concept and constructing the new development pattern, and provide fundamental assurance for achieving high-quality development.

2.2.3. LAWS, PLANS AND REGULATIONS

Key legislation reflects the language of the Constitution on socialist market economy, sometimes referring directly to it.

2.2.3.1. THE CIVIL CODE

The central piece of legislation regulating essential aspects of relationships between natural and legal persons, the 2020 Civil Code¹⁵, leaves no scope for doubt that the notion of socialist market economy continues to occupy a central place in the legal order of China. Article 1, setting out the purpose of the Code, reads:

This Law is formulated [...] for the purposes of protecting the lawful rights and interests of the persons of the civil law, regulating civil-law relations, maintaining social and economic order, meet the needs for developing socialism with Chinese characteristics, and carrying forward the core socialist values.

According to Article 206, which forms part of the section of the Civil Code¹⁶ stipulating the general rules of property rights:

[t]he State upholds and improves the fundamental socialist economic systems, such as the ownership system under which diverse forms of ownership co-develop with public ownership as the mainstay, the distribution system under which multiple forms of distribution co-exist with distribution according to work as the mainstay, as well as the system of socialist market economy. The State consolidates and develops the public sector of the economy, and encourages, supports, and guides the development of the non-public sector of the economy. The State implements a socialist market economy and protects the equal legal status and development rights of all market participants.

2.2.3.2. COMPANY LAW

The Company Law¹⁷ provides in Article 1:

¹⁵ Civil Code of the PRC, adopted on 28 May 2020, available at: http://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.html (accessed on 9 March 2023).

¹⁶ Book Two, Part One, Chapter I of the Civil Code.

¹⁷ Company Law of the PRC of 29 December 1993, as amended, available at: <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml> (accessed on 9 March 2023).

The Company Law of the People's Republic of China [...] has been enacted in order to standardize the organization and activities of companies, protect the lawful rights and interests of companies, shareholders and creditors, safeguard the social and economic order and promote the development of the socialist market economy.

Existing criminal record for past charges on “*disruption of the order of the socialist market economy*” also features among reasons disqualifying a person from being eligible to hold a function of a company director, supervisor or senior officer¹⁸.

2.2.3.3. LAW ON THE STATE-OWNED ASSETS OF ENTERPRISES

According to Article 1 of the Law on State-Owned Assets of Enterprises (‘SOE Law’)¹⁹:

This Law is enacted for the purpose of safeguarding the basic economic system of China, consolidating and expanding the State-owned economic sector, strengthening protection of State-owned assets, giving play to the leading role of the State-owned economic sector in the national economy, and promoting the development of the socialist market economy.

The leading role in the economy assigned to the state-owned sector is further elaborated in the remainder of that law, as well as in a series of other legal instruments, for instance the State Assets Supervision and Administration Commission (‘SASAC’) regulation and various guiding opinions (see Chapter 5). Moreover, this legal framework also sets out the tight grip of the State and the CCP over SOEs (see in detail in Chapter 5).

2.2.4. THE 18TH, 19TH AND 20TH PARTY CONGRESS

In November 2013, at the Third Plenum of the 18th Party Congress, the Chinese leadership announced that it would undertake a comprehensive reform programme.

In the Decision of the Central Committee of the CCP on Some Major Issues Concerning Comprehensively Deepening the Reform (‘3rd Plenum Decision’), leaders stated that “*economic system reform is the focus of deepening the reform comprehensively*” and that “*the underlying issue is how to strike a balance between the role of the government and that of the market, and let the market play the decisive role in allocating resources and let the government play its functions better*”²⁰.

The 3rd Plenum Decision contained 60 reform proposals, affecting almost all parts of the Chinese economy. It included proposals for the deepening of the reform of the administrative examination and approval system, calling for the elimination of examination and approval in areas where the market can effectively regulate itself.

¹⁸ Article 146(II) of the Company Law.

¹⁹ Law of the PRC on State-Owned Assets in Enterprises, adopted on 28 October 2008, available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/15/content_1620615.htm (accessed on 9 March 2023).

²⁰ See Decision of the Central Committee of the CCP on Some Major Issues Concerning Comprehensively Deepening the Reform, adopted on 12 November 2013, available at: http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm (accessed on 9 March 2023).

On the other hand, the 3rd Plenum Decision reaffirmed that “*the basic economic system with public ownership playing a dominant role and different economic sectors developing side by side is an important pillar of the socialist system with Chinese characteristics and is the foundation of the socialist market economy*”, as well as that “[t]o comprehensively deepen the reform, we must strengthen and improve the party's leadership, give full play to the party's core leadership role in overseeing the overall situation and coordinating all parties, [...], improve the party's leadership and governance capabilities, and ensure that the reform was a success”. While this apparent contradiction could be interpreted in a number of ways, subsequent developments (see Section 2.2.2) demonstrated that despite the promise of market-oriented reforms, the basis – a dominant role of state ownership and strong role of the Party leadership in shaping the overall economic development– would remain the default principle.

Indeed, the strengthening of the role of the Party's leadership was one of the main outcomes of the 19th Party Congress in October 2017. President Xi's work report, as well as his speech during the 19th Party Congress, reiterated the leadership of the Party over ‘*all work*’.²¹

The work report further reaffirmed the role of the State in shaping both the public and non-public sector²²:

We must uphold and improve China's basic socialist economic system and socialist distribution system. There must be no irresolution about working to consolidate and develop the public sector; and there must be no irresolution about working to encourage, support, and guide the development of the non-public sector.

Moreover, the speech proclaimed the goal to “*turn Chinese enterprises into world-class, globally competitive firms*”, which should be achieved by the means of State support and consolidation: “[w]e will work to see that state assets maintain and increase their value; we will support state capital in becoming stronger, doing better, and growing bigger [...]”²³. The role of the plans was also confirmed: “[w]e will develop new methods to improve macro-regulation, give full play to the strategic guidance of national development plans”²⁴.

Furthermore, the CCP Constitution was amended to include President Xi's Thought on Socialism with Chinese Characteristics for a New Era, further reaffirming the role of the CCP: “*Leadership of the Communist Party of China is the most essential attribute of socialism with Chinese characteristics, and the greatest strength of this system*”²⁵. President Xi's work report statement that “[t]he Party exercises overall leadership over all areas of endeavour in every part of the country”²⁶ was also introduced into the General Program of the CCP Constitution.

²¹ See President Xi's speech *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*, delivered at the 19th National Congress of the CCP on 18 October 2017, p. 17.

²² Ibid, p. 18.

²³ Ibid, p. 29.

²⁴ Ibid.

²⁵ The General Program of the CCP Constitution.

²⁶ See President Xi's speech *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*, p. 17.

The Thought on Socialism with Chinese Characteristics for a New Era eventually found its way also into the Constitution, the preamble of which was amended accordingly in 2018 (see Section 2.2.2 above).

The 20th Party Congress in October 2022 was marked by consolidation of President Xi's power, entering his third term as Chinese president and emphasizing in his review to the Congress that “*over the past five years, we have continued to strengthen the overall leadership of the Party and the centralized, unified leadership of the Central Committee*”²⁷, thereby strengthening the overall CCP dominance over the state and the economy further. The appointment of key positions in the Politburo Standing Committee with allies of President Xi further strengthened his position²⁸.

During the Congress, President Xi emphasized that China will be transformed “*into a modern socialist country in all respects and advance toward the Second Centenary Goal*”²⁹, coining the term of ‘*socialist modernization*’ as the main goal for the upcoming five years. The broader economic policy of the previous years was not fundamentally put in question, with – on the one hand - selected parts of the economy subject to an opening up and liberalization, and – on the other hand - with clear prioritisation of strong SOEs (see Chapter 5) and the pursuit of economic and technological self-reliance³⁰.

In any event, signs of further entrenchment of CCP ideology-driven politics into economic policy have become more apparent. Indeed, President Xi added a section on science-technology-innovation in his report to the Congress, pointing towards an intensification of technological self-reliance in order to counter “*foreign efforts*” to contain China and making the Chinese economy more secure in the face of foreign and domestic risks³¹. Moreover, he mentioned that China has been “*confronted with drastic changes in the international landscape, especially external attempts to blackmail, contain, blockade, and exert maximum pressure on China, we have put our national interests first, focused on internal political concerns, and maintained firm strategic resolve*”³². This national security and technological self-sufficiency focus, in combination with the social stability accents (see also Section 2.3.1) not only shows a growing concern in China about its external relations, it also indicates that the CCP is likely to prioritize these issues in situations of possible conflict with the objective of economic efficiency or growth³³.

In sum, the 19th and the 20th Party Congress consolidated and formalized developments towards an ever stronger role played by the Party in all areas of the State. The continued focus of China's leadership on strengthening the role of the Party has since become the defining feature of

²⁷ De Wei, L. (2022). *Full Text of Xi Jinping's Speech at China's Party Congress*. Bloomberg.com; available at: <https://www.bloomberg.com/news/articles/2022-10-18/full-text-of-xi-jinping-s-speech-at-china-20th-party-congress-2022?leadSource=uverify%20wall> (accessed on 7 March 2023).

²⁸ Wessling, C., Thalman, E., Wiesmann, G., Seidl, H., Hinrichs, A. (22 October 2022). *MERICS China Essentials*.

²⁹ De Wei, L. (2022). *Full Text of Xi Jinping's Speech at China's Party Congress*.

³⁰ Wessling, C., Thalman, E., Wiesmann, G., Seidl, H., & Hinrichs, A.

³¹ *Ibid.*

³² De Wei, L. (2022). *Full Text of Xi Jinping's Speech at China's Party Congress*.

³³ *Ibid.*

China's recent development. The Party's role has been promoted in all sectors of the economy – whether state-owned or private. Moreover, the Chinese economic model characterised by the undisputed dominance of the Party over the State structures has been systematically projected as the fundamental element of the alleged superiority of the Chinese governance model compared to the western-style political and economic setup³⁴.

2.2.5. 14TH FYP

The 13th Five Year Plan ('13th FYP')³⁵, in declaring that "[w]e will follow the principles of socialist political economy with Chinese characteristics, release and develop productive forces, continue in the direction of reform to develop the socialist market economy [...]"³⁶ professed the country's allegiance to the concept of socialist market economy.

The 14th FYP further confirms the continued adherence to this basic socio-economic axiom. After concluding that "[t]he objectives and tasks of the 13th Five Years Plan have successfully been completed" and that 'socialist China stands in the East with a more majestic posture'³⁷, the 14th FYP lists the "guiding ideologies, principles and strategic orientations", with the guiding ideology being described as follows³⁸:

We will hold aloft the great banner of socialism with Chinese characteristics, and deeply implement the spirit of the 19th Party Congress and the Second, Third, Fourth, and Fifth Plenums of the 19th CCP Central Committee; persist in taking Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important thinking of the "Three Represents," the Scientific Development Concept, and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era as the guide; fully implement the Party's basic theory, basic line, and basic strategy; use comprehensive planning to advance the overall layout of economic construction [...].

The section on "main objectives for economic and social development" contains the goal to "further refine the socialist market economy and basically complete construction of a high-standard market system"³⁹.

This type of statement can also be found in other legislative and policy documents: the State keeps invoking the role of markets in resource allocation and is committing to improving the legal framework in which private enterprises operate. At the same time, the wording is unequivocal with respect to the active role of the Government, the leadership of the CCP and the power of state authorities to decisively shape the development of the private sector⁴⁰.

³⁴ See for example Grünberg, N. - *Party-state capitalism under Xi: integrating political control and economic efficiency* (2021), available at: <https://merics.org/en/party-state-capitalism-under-xi-integrating-political-control-and-economic-efficiency> (accessed on 14 March 2023).

³⁵ For more details concerning the planning system see Chapter 4.

³⁶ Part I, Chapter 1 of the 13th FYP.

³⁷ Part One, Article I, Section 1 of the 14th FYP.

³⁸ Part One, Article II, Section 1 of the 14th FYP.

³⁹ Part One, Article III, Section 2 of the 14th FYP.

⁴⁰ Examples of this type of legal provisions can be found in various Guiding Opinions on reforms of the state-owned sector (see Section 5.3) but also for example in the Guidelines on stepping up the United Front work

The 14th FYP therefore once again confirms that the supremacy of the public sector under the CCP leadership over the private sector is there to stay. Moreover, the development of the private sector should continue to be guided by the authorities. In other words, the socialist market economy concept remains at the core of China's economic setup, with the role of the CCP growing in importance.

2.3. BASIC FEATURES OF THE SOCIALIST MARKET ECONOMY

2.3.1. GENERAL FEATURES OF ECONOMIC POLICY UNDER THE SOCIALIST MARKET ECONOMY DOCTRINE

Prior to the launching of the 'Open-door' policy in China in 1978, which opened China up for market-oriented economic reforms, the Chinese economy was essentially a closed, state-planned economy, mainly consisting of state-owned and collectively owned enterprises. The move to a socialist market economy meant a shift from a pure planned economy to a hybrid system.

It is fair to say that while the Chinese economy has developed remarkably in the last forty-five years and is much more deeply integrated in the global economy, it has also developed into a unique economic system unlike any other in the world.

The system has been described in the following way⁴¹:

Compared with the Japanese developmental pattern, in which central government agencies simply planned the development process and calibrated industrial policies, China's state capitalism encourages both central and local governments to play a straightforward role in supporting local industries with various forms of financial aid and services. China's developmental miracle owes much to the socialist heritage of the Maoist era, which instituted a strong Leninist party-state and a concentration of power in the Communist Party of China. This model tends to promote [SOEs] at the expense of private actors in pillar industries (zhizhu chanye), but for emerging industries (xinxing chanye) where no national champions can be identified, the local authorities are often ready to offer generous help for these indigenous firms, regardless of their ownership structures.

China has consistently perceived industrial policies as a tool to achieve economic goals defined by the Government. Those goals have been subject to ongoing adjustments and redefining according to China's immediate priorities against the backdrop of global economic and political developments. For example, from the early-2000s onwards, the Government began to focus its

in the private sector for the new era, issued by the General Office of the CCP's Central Committee in September 2020 (see Section 3.3.2). According to these guidelines: *Strengthening the United Front work in the private sector is an important element of the development and improvement of the socialist system with Chinese characteristics. In order to uphold and improve the socialist system with Chinese characteristics and to foster the modernisation of the country's governance system and capabilities, it is imperative to always adhere to and improve our fundamental economic system, unswervingly consolidate and develop our public-sector economy, and unswervingly encourage, support and guide the development of our non-public-sector economy.* See Article I(2) of the Guidelines, available at: http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 14 March 2023).

⁴¹ Chen, G., (2015). *China's Solar PV Manufacturing and Subsidies from the Perspective of State Capitalism*, The Copenhagen Journal of Asian Studies 33(1), p. 92.

efforts on upgrading the economy away from traditional industries reliant on low-skilled labour, setting the targets of science and technology to contribute 60% to the economy in 2020, and the degree of reliance on foreign technology to drop to 30%.⁴² By 2015, acquiring key technological competences in strategic sectors defined in the Made in China 2025 initiative (see Section 4.2.3) became the Government's central priority, shaping the industrial policies accordingly (see Chapter 5 for details).

More recently, in view of the growing political and trade tensions between China and the US, as well as the economic and social impacts of the COVID-19 pandemic, the concept of '*dual circulation*' (see also Section 8.2) and its central idea of technological self-reliance (see Section 2.3.2 below) has been ranking high on the Government's industrial policy agenda⁴³. Following its introduction by President Xi in the first half of 2020, the dual circulation concept was quickly followed up by lower ranking politicians⁴⁴ as well as by government authorities⁴⁵ and it also features in the 14th FYP. According to the plan⁴⁶:

We will accelerate the construction of the new development pattern in which domestic great circulation is the mainstay and domestic and international circulation are mutually reinforcing.

This succinct statement characterizes the dual circulation concept very well. The domestic circulation as the mainstay refers to the emphasis on the domestic economic cycle (production, distribution, consumption) which will result in a lower degree of reliance on imports, in particular technological ones⁴⁷. The mutual reinforcement of the domestic and international circulation, on the other hand, signals the continued intention of ever increasing penetration of global markets by Chinese industrial operators. This is also reflected in the following statement in the 14th FYP concerning the domestic circulation: "*We will optimize and improve the supply structure and promote the coordinated development of agriculture, manufacturing, the service industry, energy resources, and other industries. We will improve industrial support systems, accelerate the marketization of competitive links in natural monopoly industries, and realize the effective linkage of upstream and downstream, production, supply, and marketing*". And for the international circulation, the plan envisages China to: "[...] *optimize the layout of the*

⁴² See The National Medium- and Long-Term Program for Science and Technology Development (2006-2020), Section II.2.; available at: www.itu.int/en/ITU-D/Cybersecurity/Documents/National_Strategies_Repository/China_2006.pdf (accessed on 14 March 2023). See further President Xi's speech at the Central Financial and Economic Affairs Commission, available at: http://www.qstheory.cn/dukan/qs/2020-10/31/c_1126680390.htm (accessed on 14 March 2023).

⁴³ See Herrera, A.G. - *What is Behind China's Dual Circulation Strategy*, 2021; available at: <https://www.bruegel.org/2021/09/what-is-behind-chinas-dual-circulation-strategy/> (accessed on 14 March 2023).

⁴⁴ See Grieger, G. – *China's economic recovery and dual circulation model*, European Parliamentary Research Service, December 2020, p. 6; available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659407/EPRS_BRI\(2020\)659407_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659407/EPRS_BRI(2020)659407_EN.pdf) (accessed on 14 March 2023).

⁴⁵ Ibid, p. 2.

⁴⁶ See Part IV of the 14th FYP.

⁴⁷ Blanchette, J.; Polk, A. – *Dual Circulation and China's New Hedged Integration Strategy*, 2020; available at: <https://www.csis.org/analysis/dual-circulation-and-chinas-new-hedged-integration-strategy> (accessed on 14 March 2023).

international market, guide enterprises to cultivate traditional export markets and expand emerging markets, expand the scale of trade with neighbouring countries, and stabilize our share of the international market”.

The domestic and the international economic cycle are therefore meant to boost each other in the dual circulation strategy. Thus, the concept represents a continuity with previous economic policy objectives⁴⁸ and industrial strategies – such as the Made in China 2025’s drive for indigenous innovation in high end technologies or the Belt and Road Initiative (see Section 4.2.4) and the related overseas investments – to which the dual circulation strategy sets new accents rather than departing from them⁴⁹. This is also apparent from additional implementing legislation related to the dual circulation concept, such as the State Council’s Opinions on Promoting the Integrated Development of Domestic and Foreign Trade⁵⁰ which define the guiding ideology and basic principles as follows:

Under the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, fully implement the spirit of the 19th National Congress of the Communist Party of China and the 19th Plenary Session, based on the new development stage, completely, accurately and comprehensively implement the new development concept, [...] promote the high-level convergence of domestic and foreign trade laws and regulations, regulatory systems [...].

Give full play to the decisive role of the market in the allocation of resources, better play the role of government policy guidance and public services, fully mobilize the enthusiasm of enterprises, enhance the ability of market entities to integrate domestic and foreign trade operations, and stimulate endogenous development momentum [...].

Strengthen the top-level design and overall planning for the integrated development of domestic and foreign trade, [...] improve the institutional system, work system and evaluation system for the integrated development of domestic and foreign trade, and comprehensively coordinate and continue to promote the integrated development of domestic and foreign trade.

The dual circulation concept is complemented by a further policy related to the socialist market economy doctrine, such as, for example, the ‘*common prosperity*’ policy which has been characterized by President Xi as follows:

⁴⁸ For a wider context of the dual circulation strategy, including China’s quest for self-reliance in food production, see Che, C. – *Can China secure its food and own the future of farming?*, 18 March 2022; available at: <https://supchina.com/2022/03/18/can-china-secure-its-food-and-own-the-future-of-farming/> (accessed on 14 March 2023).

⁴⁹ Concerning the extent of possible “decoupling” of China from Western markets, standards etc., see e.g. *Decoupling - Severed Ties and Patchwork Globalisation*; European Chamber of Commerce in China (EUCCC) in partnership with MERICS, January 2021, p. 10-13; available at: <https://merics.org/en/report/decoupling-severed-ties-and-patchwork-globalisation> (accessed on 14 March 2023).

⁵⁰ Opinions of the General Office of the State Council on Promoting the Integrated Development of Domestic and Foreign Trade, available at: http://www.gov.cn/zhengce/content/2022-01/19/content_5669289.htm?mc_cid=1a4df450e3&mc_eid=523ec61747 (accessed on 14 March 2023).

We are now marching toward the Second Centenary Goal of building China into a great modern socialist country. In response to the evolution of the principal challenge facing Chinese society and people's growing needs for a better life, we must make achieving common prosperity the focus of the Party's efforts to seek happiness for all Chinese people, which will in turn solidify the foundations of the Party's long-term governance. [...]

We should undertake thorough research on targets in different stages, and advance common prosperity in phases. By the end of the 14th Five Years Plan period (2021-2025), we will have made solid progress toward bringing prosperity to all, while gaps between individual incomes and actual consumption levels will gradually narrow. By 2035, we will have made more notable and substantive progress toward common prosperity, and equitable access to basic public services will be ensured. By the middle of this century, common prosperity will be basically achieved [...].

We must base our work on the reality that China remains in the primary stage of socialism, and reaffirm our commitment to the development of both the public and non-public sectors of the economy. We must uphold the predominance of public ownership while also allowing various forms of ownership to develop side by side, so as to leverage the important role of the public sector in advancing common prosperity. Meanwhile, we should also promote healthy growth of the non-public sector of the economy and of people working in this sector. [...]

Bringing prosperity to all is highly integrated with our efforts to promote well-rounded human development. We must reinforce the guiding role of core socialist values, and strengthen education on patriotism, collectivism, and socialism.⁵¹

In practice, the timing in which the ‘common prosperity’ concept started gaining prominence, as well as the substance of the related measures taken by the Government, confirms that China’s economic development remains strongly politically led, firmly guided by the socialist market economy doctrine. On the one hand, the common prosperity concept – by arguably also trying to address some of the most pressing issues of the country’s economy - may feed into the wider framework of policies aimed at further increasing the purchasing power of the Chinese population in order to be able to divert China’s growth model away from investment towards domestic consumption, thereby decreasing any potential for political instability. On the other hand, analysts have suggested that some of the measures adopted by the Government in the name of common prosperity, such as the crackdown on technology platforms or the private tutoring sector, are mere populist moves aimed only at trimming the wealth and economic power of selected individuals at the top end of the income spectrum. Instead, the declared goal of reducing inequality and closing the income gap in the Chinese society could be achieved by

⁵¹ Speech at the 10th meeting of the Central Financial and Economic Commission on 17 August 2021, available at: http://en.qstheory.cn/2022-01/18/c_699025.htm (accessed on 14 March 2023).

other, more sustainable and productive measures, in particular taxation reforms and strengthening of the social security system⁵².

In sum, the general features of the socialist market economy doctrine, as well as the recent policies described above, demonstrate that the State/Party continues to shape the overall economy of the country. The doctrine provides an ideological anchoring which justifies the State's top-down interventionist industrial policy to achieve industrial modernisation and the use of the versatile toolbox developed for that purpose. The elaborate system of plans covering practically all aspects of the economy and levels of government will be discussed in detail in Chapter 4, the significant state ownership stakes in important enterprises in strategic sectors and related instruments, such as the Government Guidance Funds, in Chapter 5. Resource allocation is further controlled through the Government intervention with respect to specific factors of production, such as land (see Chapter 9), labour (see Chapter 13) or energy (see Chapter 10). Further typical instruments used are price setting⁵³, various forms of financial support including funding and subsidisation, market access controls including restrictive practices, loan approvals, project examination and approvals, as well as licensing and government procurement (see Chapter 7). Regulatory policy interventions defining which industrial sectors should be the focus of attention for support by authorities also represent a typical instrument (see Section 2.3.2). Another tool used by the Chinese authorities to steer the economy in the direction of the Government's objectives, in particular when it comes to promoting certain sectors or increasing the regulatory pressure on others, are industry associations (see Section 2.3.3 below). Last but not least, various information technology ('IT') control mechanisms, such as the corporate social credit system (see Section 2.3.4 below), are being deployed by the Chinese authorities to ensure a smooth transmission of the Government's policy agenda into actual conduct of business operators.

However, going well beyond a set of mechanisms through which the State intervenes into markets to pursue industrial policy goals, the socialist market economy doctrine allows the State to instrumentalize the economy for political purposes. As shown in the remainder of this section, the State authorities have been doing so frequently and in various contexts.

2.3.2. INDUSTRIAL POLICY INTERVENTIONS AFFECTING RESOURCE ALLOCATION

Chinese industrial policies are demonstrably interventionist and there is no sign that this should change in the foreseeable future⁵⁴. While the industrial policies related specifically to SOEs are described in Chapter 5, the 14th FYP also specifies a number of policy objectives concerning

⁵² See, for example, Roberts, D.T. – *What is „Common Prosperity“ and how will it change China and its relation with the world?* 2021, Atlantic Council.

⁵³ See Report to Congress on China's WTO compliance, US Trade Representative ('USTR'), 2021, p. 56; available at: <https://ustr.gov/sites/default/files/enforcement/WTO/2021%20USTR%20Report%20to%20Congress%20on%20China's%20WTO%20Compliance.pdf> (accessed on 14 March 2023).

⁵⁴ For a wider evaluation of industrial policies and recommendations with respect to China's situation, see also: Innovative China – New Drivers of Growth; World Bank Group, *Development Research Center of the State Council*, p. 30-36; available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/32351/9781464813351.pdf?sequence=7&isAllowed=y> (accessed on 14 March 2023).

the private sector. Under the heading “*We will promote the high-quality development of private enterprises*”, the plan contains the following passage⁵⁵:

We will improve the mechanisms by which private enterprises can participate in the implementation of major national strategies. We will push private enterprises to operate in compliance with laws and regulations and encourage private enterprises to actively fulfil their social responsibilities and participate in social welfare and charitable activities.

Such language could be read as being linked to the idea of ‘*common prosperity*’ described in the previous Section. However, and more importantly, it also remains a testimony to the ongoing practice of strong governmental interventions into the private economy, a system in which private companies are expected to complement the state-owned sector in pursuing the Government’s industrial policies and, when necessary, to accept the State’s interference in their business conduct.

For policy reasons, e.g. to achieve technological advancements and other ‘*major national strategies*’, such as those mentioned in the previous Section, Chinese authorities often select specific industry sectors as a priority. Those industries are then to be promoted through regulatory and/or financial incentives. Innovation is frequently emphasised as a key driver of growth in this context and the Government seeks to accelerate Chinese manufacturing moving up the value chain, as well as to establish China as a global centre of innovation and technology. Major examples of industrial policies promoting selected sectors include the 2010 State Council Decision on Accelerating the Development of Strategic Emerging Industries (‘*SEI Decision*’), in which the Government identified seven strategic emerging industries (‘*SEIs*’)⁵⁶ to be the priority of industrial upgrading.

Currently, the wide range of industrial sectors which the Government considers a technological priority encompasses, among others, new generation information technology, biotechnology, new energy, new materials, high-end equipment, new energy vehicles, green and environmentally friendly products, and aerospace and marine equipment⁵⁷. The National Development and Reform Commission’s (‘*NDRC*’) 2020 Guiding Opinions on Expanding Investment in Strategic Emerging Industries and Cultivating Strengthened New Growth Points and Growth Poles⁵⁸ provide more details on China’s approach to SEIs. In particular, they subdivide wider sectors into more specific industrial areas, thereby providing an extremely detailed list of the Government’s industrial priorities. For example, in the sector of new materials, the authorities are required to focus on breakthroughs in photoresist, high-purity target materials, high-temperature alloys, high-performance fibre materials, high-strength and high-conductivity heat-resistant materials, corrosion-resistant materials, large-size silicon wafers, electronics packaging materials, on improving the technical levels of rare earth,

⁵⁵ See Article XIX, Section 5 of the 14th FYP.

⁵⁶ Industries included: (i) energy efficient and environmental technologies, (ii) new generation information technology, (iii) biotechnology, (iv) high-end equipment manufacturing, (v) new energy, (vi) new materials, and (vii) new-energy vehicles.

⁵⁷ See Article IX, Section 1 of the 14th FYP.

⁵⁸ Available at: <https://cset.georgetown.edu/publication/new-chinese-ambitions-for-strategic-emerging-industries-translated/> (accessed on 14 March 2023).

vanadium-titanium, tungsten-molybdenum, lithium, rubidium-caesium, graphite, and other special resources in the areas of mining, smelting, and deep processing, as well as on accelerating the expansion of graphene, nanomaterials, etc. in optoelectronics, aviation equipment, new energy, biomedicine, and other domains⁵⁹.

In the sector of new energy, the priorities are core technology components such as main bearings, insulated-gate bipolar transistors, control systems, and high-voltage direct current submarine cables, wind, solar, and water storage, advanced fuel cells, efficient energy storage, marine energy generation, construction of infrastructure networks such as smart power grids, microgrids, distributed energy resources, new types of energy storage, hydrogen production and hydrogenation facilities and fuel cell systems, raising the level of digitization and intelligentization of infrastructure networks such as for advanced coal-fired power plants, nuclear power plants, and unconventional oil and gas exploration and development⁶⁰.

The guiding opinions further indicate which authority assumes responsibility for a given industrial sector.

Third, they specify how the selected sectors should be supported. The overall requirement is defined as “*guide the rational allocation and effective concentration of key factors of production such as talent, land use, and energy use*” and “*funds follow the project, key factors of production follow the project*”⁶¹, whereas the modalities of how support shall be provided are specified as follows⁶²:

Make good use of all levels and types of government funds, venture capital, and government-funded industry investment funds. Innovate modes of government funding support, and strengthen the role of investment in attracting [attention to] major projects in strategic emerging industries. Encourage local governments to set up special funding plans for strategic emerging industries, and guide social capital to set up industry investment funds in a market-oriented way. [...]

*Encourage financial institutions to innovate and develop financial products and services adapted to the characteristics of strategic emerging industries, increase support for core enterprises in the production chain, optimize financial services for upstream and downstream enterprises in the production chain, and improve internal assessment and risk control mechanisms. Encourage banks to explore the establishment of financial service centers or business units for emerging industries. Promote cooperation between governments, banks, and enterprises.*⁶³

In terms of funding, China created in January 2013 in this respect a central government-level support fund for SEI development while encouraging local governments to establish their own local SEI support funds. Similarly, Made in China 2025, which stresses concepts such as

⁵⁹ Ibid, Section II (4).

⁶⁰ Ibid, Section II (5).

⁶¹ Ibid, Section I.

⁶² Ibid, Section IV (14).

⁶³ Ibid, Section IV (15).

indigenous innovation and self-sufficiency, is centred around significant government support through funding⁶⁴ of as many as ten strategic technological sectors.

In addition to the direct designation of certain industries as priority in order to spur the sectors' development, the State also shapes the industrial landscape by controlling sectoral investment. China maintains three distinctive negative lists for investment (see Chapter 8 for more details⁶⁵), among which the Market Access Negative List ('*MA Negative List*')⁶⁶, applicable to both domestic and foreign investors, restricts investment and requires administrative approval with respect to 117 sectors, while the Special Administrative Measures for Foreign Investment Access ('*FI Negative List*')⁶⁷, applicable only to foreign investors, prohibits or restricts investment in an additional 31 sectors. Similar lists and approval mechanisms are also commonly used in government procurement (see Chapter 7).

Moreover, complementing the sectoral approach, Chinese authorities also channel support to enterprises based on their size and their contribution to the long-term policy goals of indigenous innovation and decreasing dependence on foreign technologies. A good example for this complementarity of industrial policies and the range of methods by which the policies are pursued provides the '*little giants*' initiative⁶⁸, mentioned also in the 14th FYP⁶⁹ and the 14th FYP to Promote the Development of SMEs⁷⁰. Little giants are mainly small and medium-sized companies selected on the basis of a three-tier assessment system for government support. These SMEs typically manufacture products or possess know-how in niche areas, mainly where the Chinese authorities have identified technological bottlenecks or a need for upgrade and modernisation.

Given that the criteria to be selected entail also financial performance, intellectual property and strategic relevance rather than just size, some companies selected by the Chinese authorities are publicly listed with significant market capitalizations or companies belonging to larger SOE groups.⁷¹ By mid-2021, almost five thousand enterprises were designated as little giants⁷², with

⁶⁴ See Report to Congress on China's WTO compliance, USTR, 2021, p. 18.

⁶⁵ See further Report to Congress on China's WTO compliance, USTR, 2021, which also emphasizes that the 2020 Foreign Investment Law puts foreign investors at a disadvantage in various respects compared to domestic investors (p. 32).

⁶⁶ Available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202203/P020220325357066649367.pdf> (accessed on 14 March 2023).

⁶⁷ Available at: http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm (accessed on 14 March 2023).

⁶⁸ See the 2018 MIIT Notice on the cultivation of specialized and special new "little giant" enterprises, available at: <https://zjtx.miit.gov.cn/zxqySy/tzggView?id=4582181d4e22415b89dd731bd714408f> (accessed on 14 March 2023). For a comprehensive analysis of the initiative, see Brown, A., Chimits, F., Gregor, S. –*Accelerator state: How China fosters "Little Giant" companies*, (2023) MERICS; available at: <https://merics.org/en/report/accelerator-state-how-china-fosters-little-giant-companies> (accessed on 6 October 2023).

⁶⁹ See Article VIII, Section 2 of the 14th FYP.

⁷⁰ Available at: <https://www.gov.cn/zhengce/zhengceku/2021-12/17/5661655/files/b3a2c31e3ed44c7f8a120d1e9a8d4d53.pdf> (accessed on 14 March 2023).

⁷¹ See Chen, E. – *Little Giants, Big Expectations*, 2022; available at: www.thewirechina.com/2022/05/01/little-giants-big-expectations/ (accessed on 14 March 2023).

⁷² Yangcheng Evening News, 433 Enterprises in Guangdong Recognized as National Little Giants (May 25, 2022), available at: <https://new.qq.com/omn/20220525/20220525A02GWH00.html> (accessed on 14 March 2023).

the Government target to cultivate 10 000 little giants by 2025 achieved ahead of time already in 2023⁷³ with some 12 000 little giants established⁷⁴.

The following excerpt of the relevant guiding opinions⁷⁵ describes in some detail various components of support mechanism that the Government has in mind⁷⁶:

Speeding up the fostering and development of high-quality manufacturing enterprises is an imperative requirement in order to stimulate market players and promote the high-quality development of the manufacturing industry; it is also an urgent necessity in order to prevent and resolve underlying risks as well as to enhance the indigenous control capacity over industrial supply chains. [...]

Focus on key industries and sectors to guide all types of enterprises such as "little giants" to grow into leading champion enterprises on international markets, and guide large enterprise groups to develop into leading enterprises with ecological leadership and international competitiveness. [...]

Raise the level of modernization of the industry supply chain. [...] Support the participation in the building of national supply chain innovation and application demonstration projects and foster a number of modern manufacturing supply chain demonstration enterprises. Promote the concentration of state-owned capital of high-quality enterprises in important industries and fields related to national security and to the national economy's lifeline and accelerate the layout rearrangement in key segments and high-end sectors of industry chains [...] Guide willing champion enterprises and pilot enterprises to ensure the orderly transfer of related industries to the central and western regions and northeast China. [...]

Involve various types of government guidance funds and encourage social capital to contribute to the establishment of high-quality enterprise incubator funds. Duly use existing funding channels to support the high-quality development of "specialized and specific" small and medium-sized enterprises.

The above excerpt also illustrates how the little giants initiative is embedded into the wider government industrial upgrading policies, in particular the goal to upgrade China's manufacturing capabilities, in the context of which cultivating high-tech SMEs is but one the methods how to achieve such goals. The little giants initiative also exemplifies the gradual

⁷³ See Brown, A. - *China relies on "little giants" and foreign partners to plug stubborn technology gaps*; available at: <https://merics.org/en/short-analysis/china-relies-little-giants-and-foreign-partners-plug-stubborn-technology-gaps> (accessed on 14 March 2023); see also the MIIT notice concerning the fourth batch of specialized and special new "little giant" enterprise, available at: <https://zjtx.miit.gov.cn/zxqySy/tzggView?id=31038fbce79145a28ba694df8e3f011f> (accessed on 14 March 2023); see also People's Daily, *China to Develop Ten Thousand Little Giant Companies During the 14th Five-year Period* (Aug. 3, 2021), available at: www.gov.cn/xinwen/2021-08/03/content_5629102.htm (accessed on 14 March 2023); see also Brown, A., Chimits, F., Gregor, S., p. 11.

⁷⁴ See Brown, A., Chimits, F., Gregor, S. - *Accelerator state: How China fosters "Little Giant" companies*.
⁷⁵ Guiding Opinions on Accelerating the Cultivation and Development of High-quality Manufacturing Enterprises, issued by MOF, MoC, CSRC, Ministry of Science and Technology, MIIT, SASAC in 2021; available at: http://www.gov.cn/zhengce/zhengceku/2021-07/03/content_5622135.htm (accessed on 14 March 2023).

⁷⁶ *Ibid.*, Introduction and points 2, 4 and 9.

evolution of such methods, where accents of the government support may shift over time⁷⁷ - across sectors, across type of recipients primarily benefitting (e.g. large SOEs and/or private SMEs), across type of support (e.g. regulatory and/or financial support) etc. – without, however, changing the overall pattern of government interventions shaping the countries economy in line with political priorities adhering to the socialist market economy doctrine.

It is further worthwhile mentioning in the context of industrial policy interventions that the more high-level and systematic industrial policies of the Chinese authorities can be in some instances also complemented by regulatory measures which do not qualify as industrial policies in the narrow sense and do not directly emanate from the socialist market economy doctrine. They nevertheless result in affecting markets and upsetting trade flows, and they demonstrate that the Chinese authorities may subordinate economic rationality to political priorities in certain situations. The 2021 events related to China's spat with Lithuania⁷⁸ over the status of Taiwan's representative office in Vilnius provide a good example⁷⁹.

2.3.3. INDUSTRY ASSOCIATIONS

Many Chinese industry associations are remnants of abolished ministries⁸⁰, and their role within China's overall economic setup deserves special consideration, as industry associations have traditionally served as a bridge between government and enterprises. However, as shown below, the trajectory on which industry associations find themselves in China does not point towards becoming entities merely attempting to influence policymaking in favour of their respective industries, as is common in western countries.

Certain regulatory developments in the past suggested a possible decoupling of industry associations from the influence of the State authorities. In particular, in July 2015, the Central Committee of the CCP and the General Office of the State Council issued the Overall Proposal for the Separation of Industry Associations and Chambers of Commerce from Administrative Organs with the stated purpose of making industry associations more independent from the

⁷⁷ See Brown, A., Chimits, F., Gregor, S., p. 13-14.

⁷⁸ For a related issue concerning Slovenia, see for example here: <https://www.gov.si/en/news/2022-01-17-interview-of-prime-minister-janez-jansa-for-the-indian-national-television-doordarshan/> (accessed on 14 March 2023), as well as here: <https://www.total-slovenia-news.com/politics/9521-slovenia-taipei-to-open-economic-cultural-representative-offices> (accessed on 14 March 2023).

⁷⁹ The economic pressure on Lithuania exercised by Chinese authorities eventually triggered the EU's reaction at the WTO level (see DS610 - China - Measures Concerning Trade in Goods and Services, Request for consultations by the European Union, available at: [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20@Symbol=%20\(wt/ds610/1%20\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20@Symbol=%20(wt/ds610/1%20))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#) (accessed on 14 March 2023). As of writing of this Report, the work of the Panel has been suspended, following the European Union's request of 25 January 2024. In the past, China has used tactics of similar nature against Norway or Australia. Another recent example is Slovenia, see for example: Lau, S. - Slovenia to bolster trade ties with Taiwan, wading into row with China, 2022, available at: <https://www.politico.eu/article/jansa-slovenia-to-follow-lithuania-for-new-office-in-taiwan/> (accessed on 14 March 2023). For wider context, see also: Ghiretti, F.; Stec, G., des Garets Geddes, T. - An expert look at EU-China 2022 + China-Lithuania + EU-China WTO dispute (2022); MERICS, available at: <https://merics.org/en/merics-briefs/expert-look-eu-china-2022-china-lithuania-eu-china-wto-dispute> (accessed on 14 March 2023).

⁸⁰ Such as the Ministry of Light Industry, Ministry of Textile Industry, etc.

government⁸¹. However, in December 2016, the NDRC, the Ministry of Civil Affairs (‘MCA’), and other eight central departments issued the Measures for Comprehensive Supervision on Industry Associations and Chambers of Commerce⁸², which called for “*strengthening the Party’s leadership, establishing and improving the party organisations in industry associations and chambers of commerce, and giving full play to the political core role of such Party organisations*”⁸³. The measures also required that “*Party building requirements shall be written in the articles of association*”⁸⁴.

Similarly, in 2019, the NDRC launched an exercise with the declared task of institutional separation of industry associations and chambers of commerce from government. Even though the opinions⁸⁵ issued in this connection formally foresaw a separation of institutions, functions, financial assets etc.⁸⁶, they ensured not only a continued financial dependency of industrial associations on the government authorities⁸⁷ but also the continued full CCP control over them:

*Party building work bodies of social organizations at all levels shall [...] strengthen concrete guidance, deeply promote Party building in decoupled industry associations and chambers of commerce, [...] comprehensively strengthen the Party’s leadership over industry associations and chambers of commerce, and ensure that the Party’s work is uninterrupted and the role of Party organizations is not weakened in the decoupling process. [...] Party building work bodies of social organizations at all levels shall urge industry associations and chambers of commerce to introduce the requirement of Party building work into their articles of association, so as to complete the working mechanisms ensuring the Party organizations’ participation in decision-making on major issues and to standardize management.*⁸⁸

Indeed, in 2021, the MCA issued model text of statutes for industry associations and chambers of commerce⁸⁹ according to which any such organisation “*abides by the constitution, laws, regulations and national policies, practices the core socialist values, carries forward the spirit of patriotism, abides by social ethics, and consciously strengthens the construction of integrity and self-discipline*” and “*adheres to the overall leadership of the Communist Party of China*”

⁸¹ Overall Proposal for the Separation of Industry Associations and Chambers of Commerce from Administrative Organs, Central Committee of CCP, General Office of the State Council, 8 July 2015 (original text in Chinese), available at: http://www.gov.cn/gongbao/content/2015/content_2901370.htm (accessed on 14 March 2023).

⁸² Measures for Comprehensive Supervision on Industry Associations and Chambers of Commerce, NDRC, Ministry of Civil Affairs et. al., 19 December 2016 (original text in Chinese), available at: http://www.gov.cn/xinwen/2016-12/29/content_5154008.htm (accessed on 14 March 2023).

⁸³ *Ibid.*, Part 1.

⁸⁴ *Ibid.*, Article 29.

⁸⁵ Opinions on the Implementation of the Reform of Comprehensively Decoupling Industry Associations and Chambers of Commerce from Administrative Organs, NDRC, Ministry of Civil Affairs et. al., 14 June 2019 (original text in Chinese); available at: http://www.gov.cn/xinwen/2019-06/17/content_5400947.htm (accessed on 14 March 2023).

⁸⁶ Point 3 of the Opinions.

⁸⁷ Point 3(2) of the Opinions, according to which administrative organs are encouraged to purchase services from qualified industry associations.

⁸⁸ Section 4 of the Opinions.

⁸⁹ Available at: <http://hn.flgw.com.cn/art/list2.asp?id=3449> (accessed on 14 March 2023).

and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes the organization of the Communist Party of China, develops the activities of the Party, and provides the necessary conditions for the activities of the Party organization”⁹⁰. The model text further consolidates the Party influence over the statutory bodies of industrial associations, insofar as the functions of both the General Assembly and the Council of an association entail reporting back to and seeking approval by the Party on managerial, as well as procedural matters⁹¹.

To provide an example, the Articles of Association (‘AoA’) of the China National Light Industry Council, adopted in July 2021, reproduce the above model text word by word⁹². They also – strictly speaking beyond the template of the model text – require the directors of the association to “support the Party’s line, principle and policies”⁹³. The president, as well as the vice-presidents and the secretary general of the association, are further required to “adhere to the leadership of the communist party of China, support socialism with Chinese characteristics, resolutely implement the party’s line, principles and policies, and have good political qualities”⁹⁴. The latest version of the AoA of the China Iron and Steel Association⁹⁵ dates back to 2020, yet it features virtually identical wording to the model text with respect to the purpose of the association⁹⁶, the adherence by the association to the overall leadership by the Party⁹⁷ and the necessary requirements for the president, vice-presidents and secretary general⁹⁸.

It should be further noted that the model text did not really change the situation on the ground. The AoA of a number of major industry associations which were in place before the release of the model text already fully reflected the requirement for the formalized leading role of the Party. The model text therefore mainly consolidated existing practice.

The growing emphasis on Party leadership within industry associations is also apparent from recent regulatory developments, such as from the State Administration’s for Market Regulation (‘SAMR’) Opinion on Involving Private Workers and Private Enterprise Associations to

⁹⁰ See Articles 2 and 3 of the model text.

⁹¹ See Articles 17(3) and 18 of the model text.

⁹² See Articles 2 and 3 of the AoA, available at: <http://www.cnlic.org.cn/footer/footer-zc.html> (accessed on 14 March 2023). Other examples of a very similar structure and wording are the AoA of the China Bicycle Association, available at: <http://www.china-bicycle.com/information/?cid=33> (accessed on 14 March 2023), as well as the AoA of the China Association of Automobile Manufacturers, available at: http://www.caam.org.cn/bmsite_v3/chn/2/cate_8/con_5223238.html (accessed on 14 March 2023).

⁹³ See Article 21(1) of the AoA.

⁹⁴ See Article 36(1) of the AoA.

⁹⁵ Available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=cf5ea600ab07fee32430a4b1bab6209fc835c0f83fea5e09d33a2b1edfa356ab&columnId=0227750914a0f2a722c5b71b220e0aa19ceb0ee2cd7a7e325a35f6591cdbc66a> (accessed on 14 March 2023).

⁹⁶ According to Article 2, the Association “abides by the constitution, laws, regulations and national policies, practices the core socialist values, abides by social ethics, and consciously strengthens the construction of creditworthiness and self-discipline”.

⁹⁷ According to Article 3, “the Association establishes the organization of the Communist Party of China, carries out party activities, and provides necessary conditions for the activities of the party organization”.

⁹⁸ According to Article 36(1), such persons shall „adhere to the leadership of the communist party of China, support socialism with Chinese characteristics, resolutely implement the party’s line, principles and policies, and have good political qualities”.

Promote the High Quality of the Private Economy under a New Situation⁹⁹. This opinion, issued in March 2022, provides that it is necessary to strengthen political guidance, promote the building of the Party, give full play to the advantages of keeping all private associations in close contact with all private enterprises, and to continuously strengthen political guidance and ideological education towards all private economic stakeholders. It also requires market supervision departments at all levels to intensify their efforts to guide private associations to foster Party building work in small enterprises, individually owned businesses, and the professional market.

The recent regulatory developments therefore confirm the formal role of the CCP within industry associations. Consequently, as of the writing of this report, industry associations, far from being in the process of effectively decoupling from the State authorities, continue to constitute another vehicle of Party control over the Chinese industry.

2.3.4. CONTROL AND USE OF INFORMATION AND COMMUNICATION TECHNOLOGY

The Corporate Social Credit System ('CSCS'), a unique way by China to achieve some of the proclaimed goals of the socialist market economy doctrine, such as strengthening economic control or preventing individuals and organizations from disturbing the socio-economic order, which was officially launched in 2014,¹⁰⁰ represents probably the most visible project of leveraging the potential of modern information and communication technologies ('ICT') to collect and process digital data for the purpose of monitoring and guiding companies' behaviour. The system is designed to monitor virtually all aspects of a company's business in China.

Central government authorities define the areas where the CSCS monitors compliance by companies, for example, tax, customs, product quality, environmental protection, with local authorities having a considerable leeway for putting in place regulations supplementing or expanding the national-level legislation. In 2019, for example, the CSCS measured around 30 different ratings that in turn were established on the basis of circa 300 requirements. Compliance is monitored against relevant information that is collected for this purpose in meta-databases (such as the National Enterprise Credit Information Publicity System); however, collection and sharing of information between various components of the CSCS remains a major issue as of the writing of this Report.

In case of non-compliance, various sanctions will be imposed. These range from sanctions directly linked to the area where non-compliance happened, e.g. a penalty in case of a late tax filing but can also consist of consequences in areas that have no link with the company's non-compliance (joint sanctions).¹⁰¹ Serious offenders can be blacklisted. In case of blacklisting, a

⁹⁹ Available at: https://www.samr.gov.cn/xw/zj/202204/t20220402_341067.html (accessed on 14 March 2023). See also: <https://amr.wuhu.gov.cn/openness/public/6596721/34251341.html> (accessed on 14 March 2023).

¹⁰⁰ But had been considered by Chinese authorities since the 1990s, see Drinhausen, K. and Brussee, V. - China's Social Credit System in 2021 – From Fragmentation towards Integration (MERICS, 2022), available at: <https://merics.org/sites/default/files/2022-05/MERICS-China-Monitor67-Social-Credit-System-final-4.pdf> (accessed on 14 March 2023).

¹⁰¹ *Ibid.*, p. 10.

comprehensive set of sanctions applies. These sanctions are set out in memoranda of understanding between different government authorities (in 2019, some 50 such memoranda had been concluded). For instance, non-compliance can result in blacklisting such as the refusal to deliver government approvals (investment permits, granting of LUR etc.), to provide access to preferential policies (e.g. subsidies and tax rebates) or limiting access to public procurement markets, although the company's failure to comply has nothing to do with the area to which the sanction pertains.

Moreover, compliance is no longer a binary question ('Has the tax return been filed in time? – yes or no' etc.) that is linked to a targeted sanction (e.g. administrative penalty in case of late or incomplete filing). Rather, the CSCS establishes individual scores in the various areas and on top an overall score that combines the ranking in tax matters, environmental matters, social security etc.

The legal provisions that define how the CSCS shall operate are dispersed across a wide range of regulatory documents, both on the national and subnational levels. Moreover, essential concepts – such as definitions of various types of social credit itself – remain unclear or absent. This may complicate the business conduct of economic operators, in particular in combination with the fragmented implementation of the system by competent authorities¹⁰².

Some analysts consider the CSCS a manifestation of “*the long-term and fundamental objectives of the CCP to detach the organization and operation of politics, economics, and society from their roots in the ideologies and practices of liberal democracy and its economic expression through markets-based regulation underpinned by rule-of-law [...]*”¹⁰³.

Others take a more cautious view and distinguish between perceptions of the CSCS within China and outside of China¹⁰⁴:

International commentators tend to focus on the long-term potential of the system to be used as a weapon of trade war against foreign companies and to strengthen the socioeconomic control of the state. It has been pointed out that, while the CSCS was ostensibly created to enforce adherence to laws and regulations, those laws and regulations exist at the sole discretion of the Party. By contrast, domestic reception is largely positive. By and large, observers tend to view the CSCS in light

¹⁰² See Drinhausen, K. and Brussee, V., p. 6-7, 12-13. See further The Digital Hand, How China's Corporate Social Credit System Conditions Market Actors (EUCCC, 2019); available at: www.europeanchamber.com.cn/en/publications-corporate-social-credit-system (accessed on 21 March 2023).

¹⁰³ Catá Backer, L. – China's Social Credit System: Data-Driven Governance for a “New Era”; *Current History* (2019) 118 (809): 209–214; available at: <https://online.ucpress.edu/currenthistory/article/118/809/209/107508/China-s-Social-Credit-System-Data-Driven> (accessed on 21 March 2023).

¹⁰⁴ Schaefer, K. (lead author) – China's Corporate Social Credit System – Context, Competition, Technology and Geopolitics; Trivium China, November 2020; available at: https://www.uscc.gov/sites/default/files/2020-12/Chinas_Corporate_Social_Credit_System.pdf (accessed on 21 March 2023). See also Chipman Koty, A. - China's Corporate Social Credit System: What Businesses Need to Know (China Briefing, 2019), available at: www.china-briefing.com/news/chinas-corporate-social-credit-system-how-it-works/ (accessed on 21 March 2023).

of its immediate potential to clean up a business environment perennially dogged by malfeasance and fraud.

In any event, while it might be too early to draw definitive conclusions about the CSCS, a 2021 the US – China Economic and Security Review Commission’s (‘USCC’) report¹⁰⁵ encapsulates the nature of the CSCS. According to this report, the CSCS “*aims to provide China’s government a nationwide system to monitor all aspects of corporate behavior and administer automated regulatory responses to keep companies in line with the CCP’s governance objectives*”, and it makes it possible for “*the CCP to compel compliance with Chinese law and alignment with CCP policy priorities, including among foreign firms. In place of hard controls currently governing market access, such as investment restrictions, the CSCS provides a framework of incentives to manipulate domestic and foreign firms’ behavior within and beyond China’s borders*”. Similarly, a 2022 MERICS analysis considers the CSCS a tool within the wider ambition to “*expand, integrate and analyse existing data sources to improve and consolidate CCP rule*”, even if the social credit system as such „*is not tasked with conducting political surveillance of individual behaviour*” and „*the central authorities recognise the dangers of automation for legal and administrative processes*”¹⁰⁶.

Beside the CSCS, western stakeholders have expressed their concerns with respect to numerous other aspects of Chinese ICT-related policies¹⁰⁷, typically highlighting the discriminatory nature of those policies vis-à-vis foreign operators¹⁰⁸. While such ICT policies go beyond the scope of this Report, a direct relevance in the area of trade defence exists at least with respect to the Chinese authorities’ control and censorship of online content. In particular, the Government’s objective to build ‘*civilised*’ internet which should primarily serve the purpose to promote education about the CCP and its achievements¹⁰⁹ makes access to certain online information – ranging from policy documents to academic research to financial information on individual market operators and industry sector – an increasingly difficult task.

2.4. CHAPTER SUMMARY

The preamble of the Constitution, further provisions in the Constitution, the CCP Constitution, as well as various other legal acts and documents refer to the term ‘socialist market economy’, invoking it as the basic framework of China’s socio-economic set-up. As apparent from the relevant legislative and policy documents, this unique economic system grants the State, as well as the CCP, a decisive role in the economy. While the Constitution recognises that diverse forms of ownership develop side by side, and while the Chinese economy consists to a large extent of

¹⁰⁵ 2021 Report to Congress of the US-China Economic and Security Review Commission, p. 227-8; available at: <https://www.uscc.gov/annual-report/2021-annual-report-congress> (accessed on 21 March 2023).

¹⁰⁶ See Drinhausen, K. and Brussee, V., p. 4, 13.

¹⁰⁷ In particular in areas such as cybersecurity, data localisation requirements or protection of intellectual property rights.

¹⁰⁸ See for example European Business in China Position Paper 2021/2022 – European Chamber of Commerce in China, p. 327ff; available at: <https://www.europeanchamber.com.cn/en/publications-archive/964/European-Business-in-China-Position-Paper-2021-2022> (accessed on 4 April 2022) or See Report to Congress on China’s WTO compliance, USTR, 2021, p. 7.

¹⁰⁹ See for example Reuters - China targets online platforms in quest to 'clean up' internet, 23 December 2021; available at: <https://www.reuters.com/world/china/china-targets-online-platforms-quest-clean-up-internet-2021-12-23/> (accessed on 21 March 2023).

non-state actors, the Party and the State retain a leading role in the economy of the country, going well beyond macroeconomic control. The leadership role of the CCP and its all-encompassing controls are in fact inherent in China's official designation as a socialist market economy¹¹⁰.

In practice, the socialist market economy system has meant that while market forces have been mobilised to some degree, the decisive role of the State remains intact, with tight interconnections between government and enterprises. The basic features of the socialist market economy are dominant state-ownership, an extensive and sophisticated economic planning system, as well as interventionist industrial policies and a broad array of other tools to pursue political and economic objectives set by the Party and/or the Government. This system does not prioritise and often does not result in market-based resource allocations. Indeed, the concept of socialist market economy prioritises other objectives - such as '*socialist modernization*'. "*Giving play to decisive role of market forces*", a phrase often found in Chinese policy documents, remains only an incidental means for achieving those objectives, with the market forces tolerated where suitable rather than being considered the main organising principle of the national economy.

¹¹⁰ Houtari, M., Heep, S., Heilmann, S. (2017). *The dynamics of a developmental state*, in Heilmann, S. (Ed.) (2017), *China's Political System*. Lanham, Maryland: Rowman & Littlefield, p. 239.

3. CHINESE COMMUNIST PARTY

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3.1. INTRODUCTION

Among all the distinctive features of China today, the undisputed dominant position of the CCP is arguably the most significant one. The Party rules over all essential aspects of the country's life, whether those directly relevant for this Report – such as economy or China's institutional set-up – or those outside the scope of the present analysis even if nevertheless crucial for CCP's grip on China – such as military affairs or education.

As of the writing of this Report, the Party and the State have effectively grown together and form an amalgam in which differences between structures of the Party and those of the State has become blurred and largely indistinguishable. The fundamental principle of separation of powers to which most western countries adhere does not play a role in China and is even explicitly rejected¹¹¹. According to the CCP Constitution¹¹²:

Leadership of the Communist Party of China is the most essential attribute of socialism with Chinese characteristics, and the greatest strength of this system. The

¹¹¹ See Gao, Ch. - Xi: China Must Never Adopt Constitutionalism, Separation of Powers, or Judicial independence (see Chapter 2), available at: <https://thediomat.com/2019/02/xi-china-must-never-adopt-constitutionalism-separation-of-powers-or-judicial-independence/> (accessed on 13 February 2023).

¹¹² See the General Program of the CCP Constitution, available at: <https://english.news.cn/20221026/d7fff914d44f4100b6e586372d4060a4/c.html> (accessed on 15 February 2023).

Party is the highest force for political leadership. The Party exercises overall leadership over all areas of endeavour in every part of the country.

The CCP exercises its control over the country and its economy through a number of channels, among which the following are typically considered the core ones as far as the economy is concerned:

- full control over strategic sectors of the economy including control of the financial system and capital resources,
- control of personnel issues including all essential appointments,
- policy coordination through a formal network of Party entities/committees across State authorities and the economy, as well as informal networks among industrial entities and links between the Party and private enterprises¹¹³.

All this allows the CCP to also bring the private sector into line with the CCP agenda. Accordingly, this chapter will analyse the most salient aspects of the CCP's control over China's state apparatus (see Section 2.2) and its economy (see Section 2.3). In doing so, attention will be paid not only to the formal and institutional framework on which the CCP rule is based, but also to the more informal tools used by the Party. The latter aspect is all the more important given that the degree and magnitude of CCP's interventions has been changing over time and has been increasing since the rise to power of President Xi¹¹⁴.

3.2. RELATIONSHIP BETWEEN STATE AND PARTY

3.2.1. LEGAL FRAMEWORK

The CCP is the sole governing party of China. Its leadership is affirmed in the preamble of the Constitution:

Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of Three Represents, the Scientific Outlook on Development and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road [...].

Article 1 of the Constitution elaborates on the concept:

The People's Republic of China is a socialist state governed by a people's democratic dictatorship that is led by the working class and based on an alliance of workers and peasants.

¹¹³ See Wu, M. (2019), *China's rise and the growing doubts over trade multilateralism*; Trade War - The Clash of Economic Systems Endangering Global Prosperity, available at: digamoo.free.fr/tradewarcepr19.pdf (accessed on 15 February 2023). See further for example Ma, J., *Party-State relations under China's Communist Party: Separation of powers, control over government and reforms*, available at: www.scmp.com/news/china/politics/article/3133672/why-chinas-communist-party-inseparable-state (accessed on 15 February 2023).

¹¹⁴ See for example Blanchette, J. - Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10-19.

The socialist system is the fundamental system of the People's Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. It is prohibited for any organization or individual to damage the socialist system.

The references to the leadership of the CCP, Marxism-Leninism, Mao Zedong Thought, Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and the pledge to adhere to the socialist road and the people's democratic dictatorship are mirrored in various provisions of the CCP Constitution, in particular in its chapter titled 'the General Program' which states:

The Communist Party of China is the vanguard of the Chinese working class, the Chinese people, and the Chinese nation. It is the leadership core for the cause of socialism with Chinese characteristics and represents the developmental demands of China's advanced productive forces, the orientation for China's advanced culture, and the fundamental interests of the greatest possible majority of the Chinese people.

The Four Cardinal Principles - to keep to the socialist road and to uphold the people's democratic dictatorship, leadership by the Communist Party of China, and Marxism-Leninism and Mao Zedong Thought - are the foundation on which to build the country. Throughout the course of socialist modernization the Party must adhere to the Four Cardinal Principles and combat bourgeois liberalization. [...]

The Communist Party of China shall lead the people in developing socialist democracy. It shall preserve the organic unity of Party leadership, the running of the country by the people, and law-based governance, follow the Chinese socialist path of political development and the path of socialist rule of law with Chinese characteristics, expand socialist democracy, develop a socialist rule of law system with Chinese characteristics, and build a socialist rule of law country, thereby consolidating the people's democratic dictatorship and developing a socialist political civilization.

Both constitutions thus confirm the primordial role of the CCP in leading China and “*the cause of socialism with Chinese characteristics*”. The commitment to developing the socialist economy with Chinese characteristics is then routinely repeated in general provisions of various individual pieces of secondary legislation¹¹⁵.

The General Program of the CCP Constitution also makes clear that economic development is the central task of the Party:

In leading the cause of socialism, the Communist Party of China must persist in taking economic development as the central task, making all other work subordinate to and serve this central task.

¹¹⁵ See for example Article 1 of the Civil Code or Article 1 of the Law on State-Owned Assets in Enterprises (see Chapter 5 for more details).

Furthermore, the General Program of the CCP Constitution clearly states that it is for the CCP to develop the socialist market economy (See Chapter 2) as well as to guide the public and private sectors in the economy:

The Party must fundamentally reform the economic structure that constrains the development of the productive forces and uphold and improve the socialist market economy; and in congruence with this it must undertake political structural reform and reform in other fields.

The Communist Party of China shall lead the people in developing the socialist market economy. It shall be firm in consolidating and developing the public sector of the economy and shall remain steadfast in encouraging, supporting, and guiding the development of the non-public sector¹¹⁶.

The Party's claim to leading the country's development is complemented by the corresponding provisions¹¹⁷:

The entire Party must improve the capacity for political judgment, thinking, and implementation and become more self-motivated and resolute in implementing the Party's theories, lines, principles, and policies [...]; focus on improving the organizational system to train high-caliber officials who are loyal to the Party, clean, and responsible and to bring together talented people from all fields who are patriotic and dedicated; and select officials on the basis of both moral integrity and ability, with greater weight given to integrity, and on the basis of merit, so as to provide a strong organizational guarantee for upholding and strengthening overall leadership of the Party and upholding and developing socialism with Chinese characteristics. The whole Party must work to improve the political and organizational functions of Party organizations, train and select the good officials that our Party and people need, cultivate a large team of personnel who are capable of shouldering the mission of the times and well prepared to carry on the socialist cause, and bring together the brightest minds from all over, thus ensuring organizationally that the Party's basic theory, basic line, and basic policy are fully implemented and applied.

Those provisions in turn translate into obligations of individual CCP members to advance the Party's objectives and to respect the principle of so-called democratic centralism¹¹⁸:

All Party members must hold high the great banner of socialism with Chinese characteristics, have firm confidence in its path, theory, system, and culture, carry forward the fighting spirit and build up our fighting ability, implement the Party's basic theory, basic line, and basic policy, and strive to fulfil the three historic tasks of advancing modernization, achieving China's reunification, and safeguarding world peace and promoting common development, and realize the Second Centenary Goal and the Chinese Dream of national rejuvenation. [...]

¹¹⁶ See the Constitution of the Communist Party of China, General Program.

¹¹⁷ *Ibid.*

¹¹⁸ See General Program and Article 10 of the Constitution of the Communist Party of China for details.

[A]ll Party members must keep firmly in mind the need to maintain political integrity, think in big-picture terms, uphold the leadership core, and keep in alignment, and firmly uphold the authority and centralized, unified leadership of the Central Committee with Comrade Xi Jinping at the core.

The demand for comprehensive loyalty of individual members to the Party's leadership and to the supreme leader personally may have been considered a formality in the past. However, recent developments of the Xi era mark a shift towards full adherence to the directions given by the Party's central authorities is expected and enforced¹¹⁹, even if at times labelled as pursuing - or coinciding with - other objectives, such as the long-term anti-corruption campaign¹²⁰.

In sum, the Constitution, as the centrepiece of Chinese legislation, defines China's socio-economic setup as 'socialist system', in which the leadership is not only conferred upon the CCP but for which the Party leadership actually represents a constitutive element. The central document of the CCP's internal organisation – the CCP Constitution – mirrors the Constitution by:

- repeating that leadership role,
- by declaring the economic development to be the Party's central mission and
- by providing rules of conduct - both for the Party as a whole as well as for individual members – on how to achieve the objectives.

These objectives include China's economic development, as part of the long-term goal of the "great rejuvenation of the Chinese nation" (see Section 3.3.4).

3.2.2. CCP CONTROL OVER THE STATE INSTITUTIONS

The Constitution defines the role of various bodies of the State, including those which nominally represent the legislative, the executive and the judiciary branch of the government. However, since the principle of separation of powers is not accepted/adopted in China's political doctrine, the individual branches of government represent a functional division of tasks rather than ensuring balance of powers and, in any event, they remain subordinate to the CCP leadership (see Sections 3.1 and 3.2.1). All this was aptly summarized by a then member of the Standing Committee of the Central Political Bureau of the CCP and then Secretary of the Central Commission for Discipline Inspection¹²¹:

In China's history and tradition, 'government' is always understood as a broad concept, undertaking unlimited responsibility. The Party's organs, the NPC's organs, the administrative organs, the CPPCC's¹²² organs as well as the courts and prosecutors' offices are seen by the general public as all being the government.

¹¹⁹ See for example Hollingworth, J. and Gan, N. - *Xi Jinping only wants the most devoted Chinese Communist Party members. His tough membership rules could backfire* (2021), available at: <https://edition.cnn.com/2021/07/30/china/ccp-100-membership-xi-jinping-intl-hnk-dst/index.html> (accessed on 15 February 2023).

¹²⁰ See for example White, E. and Mallet, V., *How Xi Jinping's anticorruption crusade went global*, available at: www.ft.com/content/ae4d37bd-0440-491b-a4b7-25ab6158e6ad (accessed on 29 July 2022).

¹²¹ See at http://news.xinhuanet.com/politics/2017lh/2017-03/05/c_1120572195.htm (accessed on 15 February 2023).

¹²² Chinese People's Political Consultative Conference (reference added for information).

Under the leadership of the Party, there is no separation between the Party and the Government, there is only a division of work between the Party and the Government: on this matter, we must have a clear stand, be straightforward and be resolutely confident in the way, the theory, the system and the culture of Socialism with Chinese characteristics.

Even if the merits of a greater degree of separation between the State and the Party may have been under consideration by the CCP leadership at times¹²³, the recent developments show a clear trajectory towards an ever-closer integration of the State and Party structures. The most explicit manifestation of this trajectory may be the 2018 government reform which was carried out in line with the Plan for Deepening the Reform of Party and State Agencies issued by the Central Committee of the CCP ('2018 Government Reform Plan')¹²⁴. The introductory part of the plan is very explicit in this respect:

We must resolutely maintain the authority and centralized unified leadership of the Party Central Committee with Comrade Xi Jinping as the core. We must adapt to the development requirements of socialism with Chinese characteristics for a new era, persist in the general principle of seeking progress while maintaining stability, and adhere to the proper direction of reform. [...] We must take strengthening the Party's total leadership as our command and take modernizing our national governance structure and governance capacity as our orientation, with a focus on promoting the optimization, coordination, and efficient utilization of the functions of Party and state agencies. [...] We must improve our efficiency and effectiveness, and actively construct a functional system of Party and state agencies [...], setting out on our new journey of building a modernized socialist country, and realizing the Chinese dream of the great rejuvenation of the Chinese nation.

Similarly, Section 1 of the plan, titled "Plan for Deepening the Reform of Party Central Committee Agencies", requires a stronger Party leadership over State authorities, even by mergers between State and Party offices where appropriate:

The Party's organizational structure must be optimized, and the Party's leadership system for major tasks must be established and improved. Better play must be given to the role of functional departments, and the merger or establishment of joint Party-government offices must be promoted where duties are similar. Ministerial duties must be optimized, and the Party's ability and resolve to chart our course, craft overall plans, design policy, and promote reform must be improved. Pervasive Party leadership and firmer and more forceful Party leadership must be ensured.

This framework of the CCP's dominance over the State's apparatus must always be borne in mind when analysing the provisions of the Constitution. The highest organ of State power is the National People's Congress ('NPC'). Its role is defined in Article 57 of the Constitution:

¹²³ See for example Li, L., "Rule of law" in a Party-state – A conceptual interpretive framework of the constitutional reality of China, *Asian Journal of Law and Society*, Vol. 2(1), pp. 93-113, 2015.

¹²⁴ For the full text of the 2018 Government Reform Plan, see: <https://cset.georgetown.edu/publication/ccp-central-committee-publishes-plan-for-deepening-the-reform-of-party-and-state-agencies/> (accessed on 15 February 2023).

The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

Article 62 formally grants the NPC extensive powers, such as amending the Constitution; supervising its enforcement; enacting and amending laws; electing top officials including the President and Vice-President; deciding questions of war and peace; approving five-year plans 'FYPs'; and many other functions pertaining to the most important State decisions. In reality, however, the NPC exercises many of those powers in name only and essentially 'ratifies' Party decisions¹²⁵. Section 2 of the 2018 Government Reform Plan leaves no scope for doubts in this regard:

The people's congress system is a fundamental political institutional arrangement that adheres to the Party's leadership [...].

In addition, some 70% of NPC delegates were CCP members as of 2021, with another 13% being members of the political parties existing under the umbrella of the CCP-controlled United Front¹²⁶.

The executive branch of the State administration shows a similar picture of the Party's dominance. As of the writing of this Report, all ten members of the State Council's executive committee hold high-ranking positions within the CCP, with the Premier and Vice-Premiers being members of the Politburo or the Politburo Standing Committee¹²⁷. Among the 26 Ministers, 24 were CCP members, with the remaining two belonging to one of the United Front parties. Given the broad array of the State Council's competences listed in Article 89 of the Constitution¹²⁸, including those in the economic area, the State Council is one of the central institutions for implementing the State's economic agenda. At the same time, in view of the personal and organisational overlap with the Party, the State Council effectively forms an administrative platform for implementing the political decisions of the CCP. The CCP's understanding of the overall relation between the Party and the Government, as well as the 2018 Government Reform Plan described in Section 3.2.2, are in that respect a manifestation of the ever more direct role in policy formulation and implementation that the CCP has been taking¹²⁹.

As for the judiciary branch of the State, there are some provisions that point at first sight to a certain independence of the judiciary. Article 131 of the Constitution provides that

¹²⁵ Lawrence, S.V., and Martin, M.F. (2013). *Understanding China's Political System*, Congressional Research Service, p. 7.

¹²⁶ See for example: <https://npcobserver.com/about-npc/> (accessed on 15 February 2023).

¹²⁷ See at: english.www.gov.cn/statecouncil/ (accessed on 27 July 2022).

¹²⁸ See Article 89 (4) of the Constitution: "[...] to exercise unified leadership over the work of local state administrative organs at all levels nationwide and to stipulate the detailed division of functions and powers between the Central Government and state administrative organs in provinces, autonomous regions and cities directly under central government jurisdiction [...]" or Article 89 (5) of the Constitution: "[...] to draw up and to implement plans for national economic and social development and state budgets [...]"

¹²⁹ See also Johnson, C.K. and Kennedy, S. (2015). China's Un-Separation of Powers - The Blurred Lines of Party and Government, in *Foreign Affairs*, available at: <https://www.foreignaffairs.com/articles/china/2015-07-24/chinas-un-separation-powers> (accessed 15 February 2023).

[t]he people's courts shall, in accordance with the provisions of law, independently exercise adjudicatory power, and shall not be subject to interference from any administrative organ, social organization or individual.

This is echoed by Article 7 of the PRC Judges Law '*Judges Law*'¹³⁰, which imposes "no interference from administrative organs, public organisations or individuals".

However, there is a provision which explicitly codifies the CCP's control over the judiciary, namely Article 12 of the Judges Law. It stipulates the requirements for being eligible as judge. Among other requirements listed in Article 12, such as Chinese nationality or appropriate legal qualification, paragraph 2 of Article 12 provides that judges must "[u]phold [...] the Constitution of the People's Republic of China, the leadership of the Communist Party of China, and the socialist system".

According to Article 18 of the Judges Law, presidents of courts are appointed by the NPC or the local People's Congress at various levels, and other judicial appointments are approved by the standing committees of the People's Congresses at the corresponding levels. However, in practice the leadership of courts must at all levels be nominated by the respective CCP committees. When it comes to litigation, politically or economically sensitive cases may also be decided behind the scenes by a judicial committee, in consultation with the Party and administrative offices¹³¹.

Furthermore, the CCP controls the judiciary through Commissions of political and legal affairs at all levels of the CCP hierarchy¹³². These Commissions play a key role in the Chinese system of justice since they exercise political oversight over the police, the courts, and the offices of the public prosecutors; they instruct courts on certain judicial policies; and they may also issue instructions on the judicial outcomes of specific cases¹³³. They are regarded as staff organs of the Party committees¹³⁴.

Moreover, in the Chinese legal tradition, the concept of rule of law differs from that of Western legal systems in that law has been regarded as an instrument to guide and control.¹³⁵ The Chinese characters for 'rule of law' are often translated as 'rule by law'¹³⁶, and the CCP has

¹³⁰ See Judges Law of the PRC, available at: www.npc.gov.cn/englishnpc/c23934/202012/9c82d5dbefbc4ffa98f3dd815af62dfb.shtml#:~:text=Article%201%3A%20This%20Law%20is,in%20accordance%20with%20the%20law (accessed on 15 February 2023).

¹³¹ Liebman, B.L. (2015). Legal Reform: China's Law-Stability Paradox, *Daedalus* 143, p.104.

¹³² Heilmann, S. Shih, L., Rudolf, M. (2017), in Heilmann, S. (Ed.) (2017). *China's Political System*. Lanham, Maryland: Rowman & Littlefield, p. 138.

¹³³ Li, L. (2016). *The Chinese Communist Party and People's Courts: Judicial Dependence in China*, *American Journal of Comparative Law*, p. 59.

¹³⁴ Heilmann, S., Shih, L., Rudolf, M. (2017). in Heilmann, S. (Ed.) (2017). *China's Political System*. Lanham, Maryland: Rowman & Littlefield, p. 138.

¹³⁵ Also the latest Implementation Outline on Building a Rule of Law Government from 2021 to 2025 stresses strengthening the Party's leadership for the building of a government based on the rule of law, available at: english.www.gov.cn/policies/latestreleases/202108/12/content_WS611455aac6d0df57f98de545.html (accessed on 15 February 2023).

¹³⁶ Chen, G. (2017). *Le Droit, C'est Moi: Xi Jinping's New Rule-By-Law Approach*, in Oxford Human Rights Hub, p. 1.

been on the record stating that the leadership of the CCP and the socialist rule of law are consistent¹³⁷:

Implementing Party leadership in the entire process and all aspects of ruling the country according to the law is a fundamental experience of our country's Socialist rule of law construction. Our country's Constitution has established the leading position of the Chinese Communist Party. Persisting in the leadership of the party is a fundamental requirement for Socialist rule of law [...]. The leadership of the Party and Socialist rule of law are identical, Socialist rule of law must persist in the leadership of the Party, the leadership of the Party must rely on Socialist rule of law.

In 2017, the President of the Supreme People's Court 'SPC' stated that "China's courts must firmly resist erroneous Western notions, including constitutional democracy, separation of powers and judicial independence" and "resolutely fight against wrong words and deeds that deny the leadership of the Communist Party of China". Furthermore: "Only in this way can we fundamentally avoid falling into the 'trap' of Western erroneous thinking and judicial independence"¹³⁸. The SPC's official publicity department reaffirmed those views by stating that creating a legal system independent of the Party "clearly violates the constitution", which says administrative, trial and prosecution authorities are all subservient to the NPC¹³⁹.

A 2021 article by the CCP's newspaper summarizes the concept of rule of law in China in even clearer terms¹⁴⁰:

Different types of political systems determine different forms of the rule of law system. China is a socialist country under the people's democratic dictatorship, and the leadership of the party is the soul of the socialist rule of law with Chinese characteristics. This is the biggest difference between our rule of law and the rule of law in Western capitalist countries. Without the leadership of the Communist Party of China, a socialist legal system with Chinese characteristics and a socialist country under the rule of law cannot be established.

¹³⁷ Communiqué of the 4th Plenary Session of the 18th Central Committee of CPC, available at: http://www.china.org.cn/china/fourth_plenary_session/2014-12/02/content_34208801.htm (accessed on 15 February 2023).

¹³⁸ Reuters, (2017). China's top judge warns courts on judicial independence, available at: <http://www.reuters.com/article/us-china-policy-law-idUSKBN1500OF> (accessed on 15 February 2023). Also see: http://rmfyb.chinacourt.org/paper/html/2017-01/17/content_120935.htm?div=-1 (accessed on 15 February 2023).

¹³⁹ *Ibid.* The Commission does not have access to the Weibo account referred to in the Reuters article. However, the reference to independent legal system violating the constitution appears in line with additional statement in the article referenced in the previous footnote, such as: "For the People's court, resolutely implementing [the] important thesis and unswervingly following the path of socialist rule of law with Chinese characteristics is adhering to the fundamental strategy of "equal importance" of ruling the country by law and ruling the country by virtue, as well as vigorously promoting the socialist core values". Furthermore, according to Article 133 of the Constitution: "The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at various levels are responsible to the organs of state power which created them".

¹⁴⁰ See Four Comprehensive (Xi Jinping's Study Questions and Answers on Socialism with Chinese Characteristics for a New Era (20)), (original text in Chinese), available at: http://paper.people.com.cn/rmrb/html/2021-08/13/nw.D110000renmrb_20210813_1-05.htm?mc_cid=0bc681106a&mc_eid=523ec61747 (accessed on 15 February 2023).

An additional tool by which the CCP keeps control in virtually all areas of society is through the creation of Party organisations (also referred to as Party cells, or Party committees). The governmental structure at each level is matched by the organisation and structure of the Party, from the central level down to the village level. Decisions by State institutions must follow guidelines by the Party committees or Party groups established within the State institutions. Furthermore, CCP leaders often act through the offices they hold in the State administration rather than as Party cadres¹⁴¹. As such, government and CCP personnel remain in many ways fused, and the practical distinction between the two roles can be very difficult to discern¹⁴². As mentioned above with regard to the State Council, with very few exceptions, leading government representatives also tend to be Party members¹⁴³, which further contributes to the fusion between the State and the Party.

Articles 30 and 32 of the CCP Constitution state that primary Party organisations are to be formed in units which contain three full Party members¹⁴⁴:

A primary-level Party organisation shall be formed in any enterprise, [...], government organ, [...] and any other primary-level danwei [an organisation where people work] where there are three or more full Party members.

Primary-level Party organisations shall, according to the requirements of their work and Party member numbers, and with the approval of higher-level Party organisations, establish primary-level Party committees, general Party branch committees, or Party branch committees. [...]

Primary-level Party organisations play a key role for the Party in the basic units of social organisation; they are the foundation for all the Party's work and for its capacity to take on challenges. Their main tasks are:

1) to communicate to the public and carry out the Party's lines, principles and policies, the resolutions of the Party Central Committee and other higher-level Party organisations, and their own resolutions; to give full play to the exemplary and vanguard role of Party members, to excel in their work, and to unite and organize Party officials and non-party officials as well as Party members and non-party members to fulfil the tasks of their danwei. [...]

7) to ensure that Party officials and all other personnel strictly observe state laws and regulations and the state's financial and economic statutes and regulations on personnel, and that they do not infringe on the interests of the state, collectives, or the people.

¹⁴¹ Lawrence, S. (2013). *China's Political Institutions and Leaders in Charts*. Congressional Research Service, p. 4.

¹⁴² Ip, E.C. (2011). *The Supreme People's Court and Judicial Empowerment in China*, p. 379, in *Columbia Journal of Asian Law*.

¹⁴³ Lawrence, S. and Martin, M. (2013). *Understanding China's Political System*. Congressional Research Service, p. 28.

¹⁴⁴ See the CCP Constitution, Article 30 and Article 32

The primary Party organisations, as part of the basic structure of the Party¹⁴⁵, are complemented by leading Party members groups¹⁴⁶, which represent another channel through which the CCP makes incursions into the functioning of governmental institutions as well as non-public organisations. According to Articles 48-50 of the CCP Constitution, wherever formed, these bodies are granted the *de facto* leadership of such organisations¹⁴⁷:

A leading Party members group may be formed in the leading body of central or local state organs, people's organisations, economic or cultural institutions, or other non-Party organisations. Such a group shall play the leading role. Its main tasks are: to ensure that the Party's lines, principles, and policies are implemented; to strengthen leadership over Party building within its danwei and fulfil its responsibility for exercising strict Party self-governance in every respect; to discuss and make decisions on matters of major significance within its danwei; to manage officials to proper effect; to discuss and decide on important issues including adjusting the setup of primary-level Party organisations, admitting new Party members, and disciplining Party members; to encourage non-Party officials and the people in fulfilling the tasks entrusted to them by the Party and the state; and to exercise leadership over the work of the Party organisations of the danwei and those directly under it.

The composition of a leading Party members group is decided on by the Party organisation that approves its establishment. A leading Party members group shall appoint a secretary and, when necessary, deputy secretaries. A leading Party members group must accept the leadership of the Party organisation that approves its establishment.

The leading Party members groups have been becoming increasingly important in the Chinese system. While they have existed since the 1950s, they have been recently taking an unprecedented role in that they help define problems, set priorities, and determine the proper sequencing of policies across a wide range of areas¹⁴⁸.

3.2.3. CCP CONTROL OVER CADRES AND PERSONNEL

A key pillar of the CCP's power is its control of personnel appointments across all political institutions, the military, SOEs, and public institutions. The CCP, counting some 96.7 million members as of the end of 2021¹⁴⁹, essentially appoints all senior personnel in government and administrative bodies and also SOEs, centrally as well as regionally. This is done through the

¹⁴⁵ *Ibid.* Chapter II - The Party's Organizational System

¹⁴⁶ *Ibid.* Article 48.

¹⁴⁷ *Ibid.* Article 48 and Article 49.

¹⁴⁸ For further information on linkages between state and Party leaders, as well as on a further type of State/Party organisational entities, namely Small Leading Groups (effectively as an interagency executive committee, cutting across the government, party, and military systems), see Batke, J. and Stepan, M. (2017). *Party, State and Individual Leaders. The Who's Who of China's Leading Small Groups*. Mercator Institute for China Studies, available at: <https://merics.org/en/short-analysis/ccps-nerve-center-0> (accessed on 20 February 2023).

¹⁴⁹ Representing about 6.85% of the Chinese population. See for example at: www.statista.com/topics/1247/chinese-communist-party/#topicHeader_wrapper (accessed on 15 February 2023).

so-called cadre system. The CCP Organisation Department is the body in the Party bureaucracy responsible for the recruitment of Party members and their training, as well as assignments and appointments¹⁵⁰, doing so in line with the CCP's internal regulations, such as the 2021 Regulations on the Organizational Work of the Communist Party of China¹⁵¹. According to Article 5 of the Regulations *“the Central Organization Department guides the work of organizational departments at all levels, and the higher-level organizational departments guide the work of lower-level organizational departments,”* while Article 6 stipulates that *“the Party Central Committee decides on organizational work lines, principles, and policies, [...] comprehensively leads the Party's organizational system construction, cadre work, and talent work, and recommends, nominates, and appoints and dismisses cadres in accordance with relevant provisions”*.

The Organisation Department organises cadres according to rank (see in particular Article 8 of the Regulations on the Organization and Work of the CCP¹⁵²). Chinese political culture features carefully observed systems of ranks that identify the relative importance of people, official agencies, public institutions, SOEs, and geographic units. While the Party and bureaucratic ranking are different - formally not comparable – systems, Party ranking can be considered superseding any ranking in the State system due to the Party leadership position. Moreover, SOE leaders sometimes outrank the Party and government leaders in the geographic jurisdictions in which they are based, which can result in a specific dynamic where, for example local government cannot issue binding orders to such SOE leader while, at the same time, the SOE has to follow local government rules and decisions¹⁵³. Moreover, it is not unusual that SOE managers move between enterprises and government functions (see Sections 5.5.1 and 5.5.2). Investigations into the individual backgrounds of the members of the boards of directors and the supervisory councils of major industrial enterprises have revealed that a large majority of them are not only Party members, but also hold senior positions in the government and CCP hierarchy or have done so prior to serving in the corporate sector¹⁵⁴.

Furthermore, civil servants are obliged to adhere and carry out the policy of the Party, according to Article 4 of the Law of the PRC on Public Servants¹⁵⁵, which states:

¹⁵⁰ For an organisational overview of the CCP, see for instance: <http://www.chinatoday.com/org/cpc/> (accessed on 15 February 2023).

¹⁵¹ The Central Committee of the Communist Party of China issued the Regulations on the Organization and Work of the Communist Party of China (original text in Chinese), available at: www.gov.cn/zhengce/2021-06/02/content_5615053.htm (accessed on 15 February 2023).

¹⁵² According to Article 8, among the main duties of the Central Organization Department and the Organization Department of local Party Committees features also the responsibility for the unified management of cadre work and the cadre contingent, and the responsibility for specific work related to the construction of leading bodies in accordance with the authority and division of labor of cadres.

¹⁵³ See for example Lawrence, S.V., and Martin, M.F. (2013). *Understanding China's Political System*, Congressional Research Service, p. 15.

¹⁵⁴ Taube, M. and Schmidkonz, C. (2015). *Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition*, Report prepared by THINK!DESK China Research& Consulting for AEGIS EUROPE, p. 246. For more detailed examples, please see pp. 247-248.

¹⁵⁵ Law of the People's Republic of China on Public Servants (adopted by the NPC on 27 April 2005, last amended on December 29, 2018), http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-12/29/content_2071578.htm (accessed 20 February 2023).

In application of the public servant system, Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important thought of 'Three Represents', Scientific Outlook on Development and Xi Jinping's Thought on Socialism with Chinese Characteristics for a New Era shall be upheld as the guidance, the basic line for the primary stage of socialism shall be implemented, the organizational routes of the Communist Party of China for a new era shall be carried out, and the principle that cadres are under the administration of the Party shall be adhered to.

3.3. CCP's DOMINANCE OVER THE ECONOMY

To the extent that any state can exercise control over its economy, the CCP's dominance over the structures of the Chinese state translate directly into its grip over China's economy. The unique grip of the country's economy in view of the importance of the state-owned sector (see Chapter 5), combined with the Party cells and the powers of the Organisation Department to appoint also the cadres of SOEs, means that the CCP controls the economy particularly tightly. The CCP's control mechanisms may take somewhat different formats in the state-owned sector (see Section 3.3.1) and in the private one (see Section 3.3.2). Nevertheless, the resulting control over the economic operators, in combination with the control over the state structures described above in Section 3.2, allows the CCP to formulate and implement its economic policies by using a number of formalized and informal tools and channels (see Section 3.3.3). Those economic policies in turn demonstrate the Party's broader long-term strategic and economic considerations and priorities (see Section 3.3.4). The CCP's determination to control the economy recently has been restated in the book "*Outline for the Study of Xi Jinping's Economic Thought*" published in June 2022, where the first chapter is about strengthening the Party's overall leadership over economic work¹⁵⁶.

3.3.1. CCP CONTROL OF THE STATE-OWNED SECTOR

In view of the significant size of the state-owned sector in China and that it is the leading force of the economy (see Section 5.2) and given that SOEs are expected to pursue a number of goals not based on commercial considerations (see Section 5.3), the CCP has a natural interest to maintain firm control over the sector. In fact, the 3rd Plenum Decision in 2013 stated that "*the basic economic system with public ownership playing a dominant role and different economic sectors developing side by side is an important pillar of the socialist system with Chinese characteristics*" (see Section 2.2.4). Since then, the overall development of the state-owned sector can be described as a steady path towards more Party control. Irrespective of the reasons underlying this direction¹⁵⁷, the 2015 Guiding Opinions on Deepening the Reform of State-

¹⁵⁶ See General Secretary Xi Jinping creatively put forward a major theoretical point of view about strengthening the party's overall leadership over economic work (original text in Chinese), available at: <http://www.chinadevelopment.com.cn/fgw/2022/09/1798129.shtml> (accessed on 15 February 2023).

See also: What does the "Outline for the Study of Xi Jinping's Economic Thought" talk about and how to learn (original text in Chinese), available at: http://www.qstheory.cn/zhuanqu/2022-06/28/c_1128785253.htm (accessed on 15 February 2023).

¹⁵⁷ See for example Lin, L.Y.; Milhaupt, C.J. - *Party Building or Noisy Signaling? The Contours of Political Conformity in Chinese Corporate Governance*; Journal of Legal Studies (2020), linking the increasing Party presence in SOE's corporate governance with the need to counterbalance the corporatisation and mixed-ownership reform.

owned Enterprises already mandated unequivocally that Party building within the SOE be included into the respective enterprise's Articles of Association ('AoA') and that the SOE's Party organization leadership be included in the board of directors, the board of supervisors or the management (see Section 5.3 for more details).

The Action Plan for Corporate Reform of Central Enterprises¹⁵⁸ issued in 2017 reaffirmed the role of the Party in the restructuring process of SOEs:

4. Overall coordination and progress

(1) Party leadership shall be strengthened. The Party committee (group) of a central enterprise shall earnestly strengthen the organisation and leadership of the restructuring work, [...]. It is imperative to give full play to the core leadership and political role of the Party organisation of a central enterprise to ensure that Party leadership and Party building are fully embodied and effectively strengthened during enterprise restructuring; [...] and promptly report the major issues encountered during restructuring to the CPC Central Committee and the State Council.

(2) [...] A restructured enterprise shall also adhere to two unwavering principles that the Party shall always have leadership over SOEs and that the direction of SOE reforms is to establish the modern enterprise system, unify the efforts to strengthen Party leadership with those to improve corporate governance [...].

Furthermore, the 2017 amendments of the CCP Constitution¹⁵⁹ conferred on the Party organisation an extensive role in the operations of an SOE, and this provision remains in the 2022 amendments. According to Article 33 of the CCP Constitution, the Party organisation is empowered to participate in decision-making regarding major issues facing an enterprise:

The leading Party members groups or Party committees of state-owned enterprises shall play a leadership role, set the right direction, keep in mind the big picture, ensure the implementation of Party policies and principles, and discuss and decide on major issues of their enterprise in accordance with regulations. Primary-level Party organizations in state-owned or collective enterprises should focus their work on the operations of their enterprise. Primary-level Party organizations shall guarantee and oversee the implementation of the principles and policies of the Party and the state within their own enterprise and shall support the board of shareholders, board of directors, board of supervisors, and manager [...] in exercising their functions and powers [...].

¹⁵⁸ State Council General Office's Notice regarding the publication of the Action Plan for a Corporate Reform of Central Enterprises (original text in Chinese), available at: http://www.gov.cn/zhengce/content/2017-07/26/content_5213271.htm (accessed on 15 February 2023). See also: Action plan to reform central SOEs toward corporations, available at: http://english.gov.cn/policies/latest_releases/2017/07/26/content_281475754202054.htm (accessed on 15 February 2023).

¹⁵⁹ See at: http://english.www.gov.cn/news/top_news/2017/10/24/content_281475919837140.htm (accessed on 15 February 2023).

The revisions of individual SOEs' AoA prompted by the requirement for more direct CCP involvement in the companies' management¹⁶⁰ resulted in a situation where, by the end of 2018, some 90% of SOEs (central as well as sub-central) amended their statutes to comply with those requirements¹⁶¹.

China Railway Group is used as an example below. However, the changes in the AoA follow a similar model for most companies¹⁶². A specific chapter is introduced on the creation of a Party committee, which for China Railway Group contains the following elements¹⁶³:

Pursuant to the Constitution of Communist Party of China, the Company shall establish an organisation of the Communist Party of China 'Party', which shall play the role as the core of leadership, and the political nucleus, and take charge of the direction and overall situation and ensure the implementation of policies. The Company shall establish a work institution of the Party with a sufficient number of personnel responsible for the Party affairs and guarantee the working funds of the Party organisation.

In principle, the chairman of the board and the head of the Party committee is expected to be the same person¹⁶⁴:

The Company shall establish the Party Committee, which shall have one secretary and several members. The chairman of the board of directors shall concurrently serve as the secretary of the Party Committee.

The AoA then further elaborate on the role of the Party organisation. Its tasks include not only monitoring compliance with CCP and State policies, but also the practical implementation of Party decisions in the company. There is also a direct referral to the role of the SASAC Party committee¹⁶⁵:

To monitor the implementation of the principles and policies of the Party and of the State within the Company, and to implement material strategic decisions made by

¹⁶⁰ These requirements are elaborated in the 2017 Guiding Opinions of the General Office of the State Council on Further Improving the Corporate Governance Structure of State-owned Enterprises, available at: http://www.gov.cn/zhengce/content/2017-05/03/content_5190599.htm (accessed on 18 April 2023). For example, Article 5(3) requires SOEs and relevant authorities to “[u]phold and improve the two-way entry and cross appointment leadership system. Eligible members of Party organizations (committees) of state-owned enterprises may enter the board of directors, the board of supervisors and management through legal procedures. Eligible Party members among directors, supervisors and managers may enter Party organizations (committees) according to the relevant provisions and procedures. The Secretary of Party organizations (committees) or chairman is generally served by the same person. Promote the entry of full-time deputy secretaries of Party organizations (committees) of central enterprises into the board of directors. In the selection and appointment of managers by the board of directors, superior Party organizations and their departments and Party committees of state-owned asset supervision and administration institutions shall play the functions of determining standards, standardizing procedures, participating in investigation and recommending candidates.”

¹⁶¹ Lin, L.Y.; Milhaupt, C.J., p.4, concerning possible explanations why not the totality of SOEs has done so.
¹⁶² See Chapters 15 and 6 for further examples.

¹⁶³ See Chapter 17, Articles 251-253 of the AoA of China Railway Group Limited (amended in June 2017), available at: <http://www.hkexnews.hk/listedco/listconews/SEHK/2017/0628/LTN20170628958.pdf> (accessed on 15 February 2023).

¹⁶⁴ For an additional example, see Article 99 in the revised AoA for China Aluminum International Engineering Corporation Limited (Chalieco) (Chapter 15).

¹⁶⁵ Article 253 (1) of the AoA of China Railway Group Limited.

the Central Committee of the Party and the State Council as well as important work deployment assigned by the Party committee of the State-owned Assets Supervision and Administration Commission and Party organisations of higher levels.

The Party committee is furthermore tasked to play a decisive role in the selection and evaluation of officials, together with the board of directors¹⁶⁶:

To persist in combining the principle of the Party supervising the performance of officials with the legitimate selection by the board of directors of the managers and the legitimate use of human resources by the managers. The Party Committee shall consider and provide opinions on the candidates nominated by the board of directors or the president, or recommend nominees to the board of directors or the president; evaluate the proposed candidates in conjunction with the board of directors, collectively consider and make suggestions.

In addition, the Party committee is to be involved in key management decisions of the company¹⁶⁷:

To consider and discuss the matters on the reform, development and stability of the Company, major operation and management matters as well as key issues involving the vital interests of employees, and make suggestions.

The changes of the AoA cover also the provisions concerning the board of directors, stating that the Party committee has to be consulted before material issues are decided upon¹⁶⁸:

When the board of directors decides on material issues, it shall first listen to the opinions of the Party Committee of the Company.

The requirements for introducing Party building activities and the Party role in the decision making were however not limited to AoA of individual SOEs. Statutory documents of industry associations had to be adapted in a similar fashion (see Section 2.3.3, in particular concerning the Measures for Comprehensive Supervision on Industry Associations and Chambers of Commerce, as well as concerning the model text of statutes for industry associations). This established the CCP's formal control over the statutory bodies of the associations.

Furthermore, the CCP's claim to operational control over SOEs has been re-confirmed by a series of regulatory documents such as the 2020 Regulations on the work of CCP Grassroots Organizations in SOEs (according to which Party organisations in SOEs must "*persist in unifying the strengthening of the Party's leadership with the improvement of corporate governance, and integrate the Party's leadership into all aspects of corporate governance*")¹⁶⁹, the Three-year Action Plan on SOE Reforms (2020-2022) (which emphasizes the need to strengthen the leadership of the CCP in SOEs – see Section 5.3) as well as the Opinions on Further Promoting SOEs to Implement the "Three Important and One Large" Decision-making System (which are already in place since 2010 according to which "*the Board of Directors and*

¹⁶⁶ *Ibid.*, Article 253 (2).

¹⁶⁷ *Ibid.*, Article 253 (3).

¹⁶⁸ *Ibid.*, Article 155.

¹⁶⁹ See Article 3(1) of the Regulations; available at: www.gov.cn/zhengce/2020-01/05/content_5466687.htm (accessed on 15 February 2023).

*the management team should communicate with the Party committee (group) and listen to their views before discussing ‘three important and one large’ matters”*¹⁷⁰.

In sum, the recent policy and regulatory developments result in a situation in which the SOEs remain the backbone of the Chinese economy and in which the CCP can exercise control over the large state-owned sector. This control is not only exercised by virtue of the State shareholding or the government regulatory power but, crucially, also through direct involvement in the day-to-day management of the CCP’s organisation within individual SOEs. The legal framework as described above enables the CCP bodies established inside SOEs to wield significant influence including over business decisions of individual companies. This in turn further increases the importance and usefulness of SOEs as vehicles for the implementation of the Party’s economic objectives (see Section 3.3.4)

3.3.2. CCP CONTROL OVER THE PRIVATE SECTOR

Leaders of the private firms are not part of the cadre system. However, this does not mean that private companies would find themselves outside the Party’s sphere of influence - or even shielded from their direct interventions. As in the case of the state-owned sector, the recent dynamics of the relations between the Party and the privately owned companies is characterised by a mix of relatively settled principles on the role of the private economy within the Chinese economic system (see Section 2.2.1) and by new policy and regulatory moves towards stronger leverage of the Party over the private sector¹⁷¹.

On the formal level, the CCP Constitution bestows the Party organisation with considerable influence. In particular, according to Article 33 of the CCP Constitution:

Primary-level Party organisations in non-public sector entities shall implement the Party’s principles and policies, guide and oversee their enterprises’ observance of state laws and regulations, exercise leadership over trade unions, Communist Youth League organisations, and other people’s group organisations, promote unity and cohesion among workers and office staff, safeguard the legitimate rights and interests of all parties, and promote the healthy development of their enterprises.

The creation of party organisations is reconfirmed in relevant legislation such as in Article 19 of the Company Law¹⁷²:

In a company, an organisation of the Communist Party of China shall be established to carry out the activities of the party in accordance with the Constitution of the Communist Party of China. The company shall provide the necessary conditions for the activities of the party organisation.

¹⁷⁰ See Article 3(13) of the Opinions; available at: http://www.gov.cn/jrzq/2010-07/15/content_1655395.htm (accessed on 18 April 2023). Three important and one large" matters mainly refer to major decision-making matters, important appointment and dismissal of personnel, important project arrangement and large amount of capital employment.

¹⁷¹ See Kennedy, S.; Blanchette, J. (ed.), p. 13.

¹⁷² The Company Law, available at: <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml> (accessed on 15 February 2023).

While the requirement to create Party organisations has been a constant in legislation, it appears to not always have been followed or strictly enforced. However, this has been changing significantly over the past years.

In 2017, the *Opinions of the CCP Central Committee and the State Council on Creating a Healthy Environment for the Development of Entrepreneurs, Promoting Entrepreneurship and Allowing Full Play to the Role Played by Entrepreneurs* were released. Article 28 of the Opinions sets out also the following requirement concerning private enterprises¹⁷³:

Educate and guide private entrepreneurs to support the leadership of the party and support the party building work of enterprises. Establish and improve the party building work mechanism of non-public enterprises, actively explore various ways of party building work, and strive to expand the coverage of party organization and work in non-public enterprises. Give full play to the political core role of party organizations in the masses of workers and workers and the political leading role in the development of enterprises.

Characteristically, this provision is embedded in a section titled “*Strengthen the Party's leadership over the construction of the contingent of entrepreneurs*”¹⁷⁴, which is broader in its scope, containing instructions on the healthy growth of the entrepreneurial environment also to State authorities, municipalities and SOEs.

In 2020, the General Office of the CCP's Central Committee issued the Guidelines on stepping up the United Front work in the private sector for the new era¹⁷⁵. The introductory remarks to the Guidelines summarize the continuously ambiguous coexistence of the CCP and the private sector:

[W]e must [...] note that socialism with Chinese characteristics has entered a new era. The private sector continues to expand in scale, bringing markedly more risks and challenges. The values and interests of private-sector professionals have become increasingly diverse. [...] In order to fully implement the Party Central Committee's major policy decisions, further strengthen the Party's leadership over the private-sector United Front work, and more effectively pool the wisdom and strength of private-sector professionals towards achieving the goal of the great rejuvenation of the Chinese nation, we put forward the following guidelines.

¹⁷³ Opinions on Creating a Healthy Environment for the Development of Entrepreneurs, Promoting Entrepreneurship and Allowing Full Play to the Role Played by Entrepreneurs (original text in Chinese), available at: http://www.gov.cn/zhengce/2017-09/25/content_5227473.htm (accessed on 15 February 2023).

¹⁷⁴ See Section X of the Opinions.

¹⁷⁵ Available at: http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 15 February 2023).

However, while these guidelines explicitly acknowledge the importance of the private sector for China's economy¹⁷⁶, their main objective is developing the socialist system with Chinese characteristics of which the leadership of the Party is the most essential attribute¹⁷⁷:

[S]trengthening the United Front work in the private sector is an important element of the development and improvement of the socialist system with Chinese characteristics. In order to uphold and improve the socialist system with Chinese characteristics and to foster the modernisation of the country's governance system and capabilities, it is imperative to always adhere to and improve our fundamental economic system, unswervingly consolidate and develop our public-sector economy, and unswervingly encourage, support and guide the development of our non-public-sector economy.

Interestingly, the Guidelines not only lay claim to the CCP leadership over the private sector in the standard top-down regulatory approach, but they also seek to increase the Party's presence in private enterprises in a bottom-up manner by means of recruiting or at least training selected individuals from private companies into the CCP:

We must [...] actively and properly work to recruit Party members from among outstanding private-sector representatives and promptly bring into the Party those with good political qualities and high public approval who meet Party membership criteria. If there is no Party branch in the organisation where they work, the personnel department of the Party committee (leading Party group) above county level can liaise with them and organise their training directly¹⁷⁸.

The CCP's incursions into the private sector may be subject to adjustments, reflecting the insights of the Chinese leadership that addressing certain structural problems of the country's economy will not be possible without making better use of the private sector's potential. For example, the measures aimed at overcoming the weak economic growth include also nominal support for the development of the private sector, as exemplified by the Opinion of the Central Committee of the Communist Party of China and the State Council on Promoting the Development and Growth of the Private Economy ('Private Economy Opinion')¹⁷⁹, issued in July 2023 with the central goal "*to promote the development and growth of the private economy*".

Indeed, the Private Economy Opinion contains a number of provisions – ranging from competition-related issues, to bankruptcy proceedings, to access to finance, to IP rights¹⁸⁰ – which may have some positive impact on the practical operations of private companies. At the same time, the wording of the Private Economy Opinion confirms unequivocally the Party's

¹⁷⁶ See Article I(1) according to which "*as an intrinsic element of China's economic system, the private-sector economy has always been an important economic foundation for upholding and developing socialism with Chinese characteristics. Private-sector professionals, as 'one of us', have always been an important force that our Party must bring together and rely on for long-term governance*".

¹⁷⁷ See Article I(2) of the Guidelines.

¹⁷⁸ See Article IV(12) of the Guidelines.

¹⁷⁹ See at: https://www.gov.cn/zhengce/202307/content_6893055.htm (accessed on 20 November 2023).

¹⁸⁰ See points 2, 4-6, 8, 12 of the Private Economy Opinion.

intent to control the private sector and to steer its development in line with the existing industrial policies, in particular when it comes to technological upgrade in the SEIs¹⁸¹:

Support the upgrade of scientific and technological innovation capabilities. Encourage private enterprises in accordance with national strategic needs and industry development trends, continue to expand R&D investments, develop key core technology research, and actively undertake major national science and technology projects in accordance with regulations. Cultivate a number of clusters of private science and technology leading enterprises in key industries, of specialized and special new small and medium-sized enterprises, and of small and medium-sized enterprises with strong innovation capabilities. [...]

Encourage and raise international competitiveness. [...] Encourage private enterprises to expand overseas business, actively participate in the joint construction of the "Belt and Road" [...].

Support participation in major national strategies. [...] Support private enterprises to invest in the development of labor-intensive manufacturing, equipment manufacturing and ecological industries in the central and western regions and northeast China [...]. Support private enterprises to participate in the promotion of carbon peak and carbon neutrality, provide carbon reduction technologies and services, increase investment in renewable energy power generation and energy storage, and participate in the trading of carbon emission rights and energy use rights. [...]

Improve the mechanism for the ideological and political construction of people in the private economy. Actively and steadily do a good job in recruiting party members among the representatives of the private economy and advanced elements. Carry out in-depth education on ideals and beliefs and core socialist values. Educate and guide party members in the private economy to strengthen their ideals and beliefs, play a vanguard and exemplary role, and resolutely implement the party's theories, lines, principles and policies. Actively explore and create innovative work methods of party building in the field of private economy. [...]

Optimize the structure of the contingent of representatives of the private economy, improve the selection mechanism, taking into account different regions, industries and enterprise sizes, and appropriately give preference to strategic emerging industries, high-tech industries, advanced manufacturing, modern service industries, modern agriculture and other fields. [...]

Uphold and strengthen the Party's leadership. Adhere to the centralized and unified leadership of the Party Central Committee over the work of the private economy, and implement the Party's leadership in all aspects of the entire process of work. Adhere to the correct political direction, establish and improve the working mechanism for the development of the private economy and private enterprises, clarify and consolidate the responsibilities of administrative departments,

¹⁸¹ *Ibid.*, points 16, 18, 19, 21, 23, 29.

strengthen coordination and cooperation, and strengthen the linkage between the central and local governments. Support the Federation of Industry and Commerce to play a better role in promoting the healthy development of the private economy and the healthy growth of people in the private economy.

In November 2023, the Private Economy Opinion was complemented by the Notice on Strengthening Financial Support Measures to Help the Private Economy Develop and Grow¹⁸², the wording of which suggest the willingness of the Chinese authorities to balance some of the existing biases of the financial system (see Chapter 6) in favour of the state sector by putting an emphasis on the need of access to finance also for private companies, albeit within the limits of the industrial policy priorities set by the Government¹⁸³:

[...] Banking financial institutions should set annual targets concerning services provided to private enterprises, increase the weight of services provided to private enterprises in performance appraisals, increase financial support to private enterprises, and gradually increase the proportion of loans to private enterprises. [I]ncrease support for private enterprises in key areas such as technological innovation projects, "specific and special" projects, green and low carbon projects, and industrial base reengineering projects", and support private enterprises' investment in technological transformation and project construction, actively meet the reasonable financial needs of private small, medium and micro enterprises, and optimize the credit structure. Reasonably increase the tolerance concerning non-performing loans of private enterprises, establish and complete the loan due diligence exemption mechanism for private enterprises, and fully protect the enthusiasm of grassroots enterprises' personnel. [...]

Expand the scale of bond financing of private enterprises. Support private enterprises to register and issue science and technology innovation notes, science and technology innovation bonds, equity-bond products, green bonds, carbon-neutral bonds, transformation bonds, etc., to further meet the funding needs of private enterprises in the fields of technological innovation, green and low carbon etc. [...]

3.3.3. SETTING AND IMPLEMENTING ECONOMIC POLICIES

The CCP sets and steers all major economic policies in China, essentially by using the State administration as an instrument to exercise Party power, as well as via the various channels listed above to impose its will on both the public and private sectors. The most formalized channel through which the CCP sets and imposes its economic policies is the country's comprehensive and in-depth economic planning system (see Chapter 4). The CCP plays a

¹⁸² Available at: https://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/202311/t20231128_3918521.htm (accessed on 4 December 2023).

¹⁸³ *Ibid.*, points 1(1) and 1(6).

leading role in the preparation of the FYPs and is empowered to issue the full proposals for the FYPs¹⁸⁴, even though they are formally approved by the NPC.

In its introductory paragraph, the 14th FYP explicitly refers to recommendations from the CCP as the basis for the plan:

The [...] 14th Five Years Plan [...] has been drafted in accordance with the Proposal of the Central Committee of the Chinese Communist Party on Drawing Up the 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035 to clarify national strategic intentions, make clear the focus of government work, and guide and standardize the behaviour of market entities. It is a grand blueprint for China's embarkation on the new journey of building a modernized socialist country in an all-round way, and a common program of action for all ethnic groups in the country.

Section 2 of Article II of the 14th FYP expressly reaffirms the leading role of the CCP. The relevant paragraph titled “*Persist in the Party’s total leadership*” reads as follows:

We will adhere to and refine institutional mechanisms for the Party's leadership of economic and social development, adhere to and refine the system of socialism with Chinese characteristics, continue to raise capabilities and standards for implementing the new development concept and constructing the new development pattern, and provide fundamental assurance for achieving high-quality development.

According to Article LXIII of the 14th FYP, the CCP is also supposed to take a leading role in the implementation of the plan:

We will carry through the Party’s requirements for charting our course [...], making overall plans, designing policies, and promoting reform, promote the in-depth study and implementation of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era throughout the entire Party, [...], bring the Party’s leadership into all areas and into the whole process of planning and implementation, and ensure the implementation of the major decisions and arrangements of the CCP Central Committee. We will give full play to the guidance and assurance role of comprehensively running the Party strictly and integrate the improvement of the Party and state supervision system into plan implementation. We will improve the organizational system to feature top-to-bottom linkages and effective execution and improve the political ability and professionalism of leading groups and cadres at all levels so they can adapt to the new era and the new requirements, carry out reform, promote development, and maintain stability.

¹⁸⁴ See _____ for _____ example _____ at: http://english.www.gov.cn/policies/latestreleases/202011/03/content_WS5fa159efc6d0f7257693edc1.html 1 (accessed on 15 February 2023).

Lower level FYPs also echo the leading role of the CCP. To provide an example, the National Informatization 14th FYP lays out the following guiding ideology and basic principles in its Section II¹⁸⁵:

Deeply implement the spirit of the 19th Party Congress [...], persist in abiding by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, especially General Secretary Xi Jinping's important thoughts and instructions on a cyber superpower, [...] persist in the overall work style of [...], building a digital China as the overall objective [...]. [W]e will perfect innovation systems and development environments, comprehensively manage development and security, advance the modernization of the national governance system and governance capacities, strengthen the construction of a digital society, digital government, [...] and provide powerful drivers for the new march of building a modern Socialist country and the advance towards the second centenary struggle objective.

Uphold the comprehensive leadership of the Party. Uphold and perfect structures and mechanisms for the Party to lead informatization development, strengthen the top-level design, comprehensive coordination, overall advance, and supervision of implementation of building a digital China, and provide fundamental guarantees for realizing the high-quality development of informatization.

The FYPs and the manner in which the planning system and its implementation permeates the Chinese economy (see Chapter 4) represent however only one among the many tools which the CCP has at its disposal to steer the economy. Other means worth mentioning are the release of documents setting out long-term single issue horizontal policies that are considered by the CCP important across the economy. A pertinent example is the policy of indigenous innovation and technological advancement¹⁸⁶. Furthermore, the CCP shapes China's economy through its full control over the financial system (see Chapter 6) and the corresponding possibility to deliver direct and indirect monetary support for selected areas of the economy, typically for sectors considered of strategic importance (see also Chapter 2)¹⁸⁷. The available financial support for China's industrial policies significantly outsizes - in nominal terms as well as a share of gross domestic product 'GDP' – the support offered by other large economies, and it features certain types of support not available to economic operators outside China¹⁸⁸.

Moreover, the CCP exercises informal, yet powerful influence over the country's economy that is over and above the powers conferred by laws, planning documents etc. This informal influence has a significant and real impact on the economy insofar as economic operators adjust their market conduct to CCP's signalling. It is rooted in the all-encompassing powers of the

¹⁸⁵ See Section II (1) and (2) of the Plan. The full text of the Plan is available at: <https://digichina.stanford.edu/work/translation-14th-five-year-plan-for-national-informatization-dec-2021/> (accessed on 15 February 2023).

¹⁸⁶ See Naughton, B. – *Six Factors behind China's Shift to „Grand Steerage“*, in Kennedy, S.; Blanchette, J. (ed.), p. 6-7.

¹⁸⁷ See Batson, A. – *Some Facts about China's State Capitalism*, in Kennedy, S.; Blanchette, J. (ed.), p. 12-13.

¹⁸⁸ See DiPippo, G.; Mazzocco, I.; Kennedy, S. – *Red Ink, Estimating Chinese Industrial Policy Spending in Comparative Perspective*, CSIS (2022), p. 22, 29-30.

CCP over the country. For example, economic operators know well what will be expected from them following a mere mentioning of a possible upcoming regulatory move in President Xi's latest speech or following a government action targeting a single market player or even a single individual. They try to read these signals correctly, i.e. that a certain behaviour is no longer acceptable for the CCP and if they do not align '*voluntarily*' they would be exposed to more coercive actions. In short, the CCP (in conjunction with the State apparatus) can enforce a certain behaviour by economic operators even without issuing any legally binding documents¹⁸⁹.

3.3.4. BROADER CONTEXT OF CCP'S ECONOMIC POLICIES

The fact that significant portions of China's economy are private and may even operate in a highly competitive environment cannot alter the fact that this is accepted only to the extent it is not in conflict with the Party's agenda. In other words, the intervention into the economy is far from being limited to neutral regulation to address market failures. On the contrary, the goals underlying such intervention go significantly beyond. While a detailed description of these goals is of little or no relevance for this Report¹⁹⁰, they are ostensibly meant to contribute to the ultimate long-term goal of the '*great rejuvenation of the Chinese nation*', a notion invoked by President Xi since as early as 2012¹⁹¹ and referred to in virtually all relevant legislative¹⁹² and policy¹⁹³ documents.

The CCP considers the market-oriented approach to economic activity merely one ingredient among many, an ingredient which may be tested and tolerated when deemed useful by the Party (for example in certain non-strategic sectors) but which, when necessary, must give way to considerations of higher importance, such as political stability and control over the economy¹⁹⁴. Moreover, principles that are compatible with a market-based allocation of resources or that set the framework such as rule of law, judicial independence or equal treatment based on the

¹⁸⁹ See Kennedy, S.; Blanchette, J. (ed.), p. 1.

¹⁹⁰ See for example Kennedy, S.; Blanchette, J. (ed.), p. 2 or Grünberg, N. - *Party-state capitalism under Xi*, Section 1.

¹⁹¹ Berkeley, J. - Xi Jinping and the Chinese dream (2013), *The Economist*; available at: <https://www.economist.com/leaders/2013/05/04/xi-jinping-and-the-chinese-dream> (accessed on 15 February 2023).

¹⁹² See for example the Preamble of the Constitution: "[...] *We the Chinese people of all ethnic groups will continue [...] to build China into a great modern socialist country that is prosperous, strong, democratic, culturally advanced, harmonious and beautiful, and realize the great rejuvenation of the Chinese nation.*"

¹⁹³ See for example the introduction to the 2018 Government Reform Plan: "[...] *We must improve our efficiency and effectiveness, and actively construct a functional system of Party and state agencies with perfected systems, scientific norms, and high operational efficiency, to provide a powerful system guarantee for a decisive victory in establishing a well-off society in an all-round way, setting out on our new journey of building a modernized socialist country, and realizing the Chinese dream of the great rejuvenation of the Chinese nation.*"

¹⁹⁴ See for example a 2023 NDRC article, according to which: "*We are developing a market economy under the leadership of the Communist Party of China and the socialist system, and we must never forget the term "socialism." To accelerate the improvement of the socialist market economic system, we must firmly adhere to the leadership of the Communist Party of China, firmly adhere to public ownership as the main body and the common development of various ownership economies, firmly adhere to distribution according to work as the main body and the coexistence of various distribution methods [...]*". Available at: https://www.ndrc.gov.cn/xwdt/ztl/srxxgcxjpjjs/xjpjjsxyqk/202301/t20230117_1346858.html (accessed on 18 April 2023).

application of non-discretionary rules exist in China in letter only or are expressly dismissed (see Section 3.1) as not compatible with the ‘*socialist system with Chinese characteristics*’ and its core element, the leadership of the CCP¹⁹⁵. Instead what matters is the CCP’s nearly universal claim for “*overall leadership over all areas of endeavour in every part of the country*” (see Section 3.1), i.e. the CCP can and will instrumentalize large swaths of China’s economy to pursue political goals¹⁹⁶.

3.4. CHAPTER SUMMARY

The CCP is the only governing party in China with its leadership role assigned by the Constitution. This leadership role covers all aspects of the State (such as armed forces or education) including – importantly for the purposes of this Report – the government apparatus (see Section 3.2.2) and personnel (see Section 3.2.3). The recent years have seen a growing integration between the State and the Party, making the structures of the Party and those of the State functionally indistinguishable. This integration entailed not only government reforms geared towards boosting the CCP’s control over the State administration (see Section 3.2.2), but also an increasing tendency of the Party to inject itself directly into the corporate structures and the managerial decision-making of individual business operators, state-owned (see Section 3.3.1) and private (see Section 3.3.2) alike. Consequently, the CCP is in position to control the country’s economy both by using the State institutions, as well as through other – more direct and informal – channels, in particular Party structures within enterprises.

Consequently, the CCP sets the economic agenda and controls all aspects of its implementation far beyond macroeconomic control or other common regulatory interventions, such as consumer or environmental protection. In fact, the CCP is in position to extend its control to the level of business decisions of individual enterprises and is willing to do so whenever deemed appropriate (see Section 3.3 and Section 2.3). Given the primacy of politics over economy in present day China, anything can become subject to regulation, depending on the Party’s political agenda and economic or industrial policy priorities (see Section 3.3.4).

¹⁹⁵ See Crosby, D. C. – *Chinese State Capitalism and the Challenge of Systemic Interface with the Multilateral Trading System*, in Kennedy, S.; Blanchette, J. (ed.), p. 61-63.

¹⁹⁶ See Grünberg, N. – *Party-state capitalism under Xi*, Section 2.

4. PLANNING SYSTEM

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4.1. INTRODUCTION

When China introduced its first FYP, it set out on a course of social and economic development strategies to set forth the country’s economic targets and priorities every five years. China's 1st FYP which covered the period from 1953 – 1957 started the practice of planning and implementing successive FYPs, the latest adopted in March 2021. The first plan was largely modelled on the system of economic planning which was followed by the Soviet Union since 1928. The central objectives of the 1st FYP were the nationalization and rapid development of the industrial sector (in particular iron and steel, electric power, coal, heavy engineering, building materials, and basic chemicals) as well as the collectivization of agriculture.

Some seventy years later and with the 14th FYP in place, many aspects of the planning system in China have evolved and changed. While the earlier FYPs were characterized by prescribing very specific targets to achieve the given set of objectives, this has been largely replaced by guideline-like goals¹⁹⁷ in the recent plans¹⁹⁸, starting with the 11th FYP¹⁹⁹.

Even since the release of the 11th FYP, the substance of the plans has changed significantly. The structure of the plans has grown in complexity and emphasis has shifted to include conceptual goals which previously were not part of the planning or which were less in the focus of the planning process. The FYPs of the 14th planning cycle, for example, focus in part on green and low carbon development, as well as on security²⁰⁰, general concepts that would have been somewhat out of place in previous plans.

Moreover, whereas the top-level FYPs outline broader objectives, more precise targets are generally specified in lower-level plans, i.e. provincial-, municipal- or even district-level FYPs. Additionally, an increasing number of industry targets that used to be explicitly set out in FYPs are now detailed in additional policy documents (see Section 4.2.1 below).

However, such gradual developments do not alter the very nature of the plans. China's formal plans are more than just strategic visions, they determine the direction of the Chinese economy, set out priorities and prescribe the goals which the central and local governments and their related bodies²⁰¹ must strive to implement, for example, through implementation plans, action plans and notices (see Section 4.2.1 for more details). This is understood by authorities at the corresponding levels of government, as well as by enterprises and industry associations, as FYPs frequently explicitly specify which authority, department or administration is in charge of its implementation. Because the formal evaluation of national, provincial, and municipal officials includes an assessment of effectiveness in implementing the plans, they have a strong incentive to devote time and resources to carrying them out.

4.2. OVERVIEW OF THE CHINESE PLANNING SYSTEM

4.2.1. STRUCTURE OF THE PLANNING SYSTEM

The Chinese planning system forms a matrix encompassing virtually all economic activity in the country, as well as other areas, such as social welfare, environmental protection, technological research, the social credit system and education. In 2005, in the State Council's Several Opinions on Strengthening Drafting Work for the National Economic and Social Development Plan, the Government provided a 'three-by-three' system to organize the plans. According to this system, plans are divided into three vertical divisions (national, provincial and municipal/county plans) and three functional divisions (comprehensive, macro-regional

¹⁹⁷ Which distinguish between 'predictive' and 'mandatory' targets.

¹⁹⁸ At least on the higher levels of state planning (see below in sections 4.2.5 and 4.2.6).

¹⁹⁹ Melton, O., *China's Five-Year Planning System: Implications for the Reform Agenda, Testimony for the U.S.-China Economic and Security Review Commission*, 2015, p. 5.

²⁰⁰ See Grüberg, N.; Brussee, V. - *China's 14th Five-Year Plan – strengthening the domestic base to become a superpower*, MERICS, 9 April 2021; available at: <https://merics.org/en/comment/chinas-14th-five-year-plan-strengthening-domestic-base-become-superpower> (accessed on 11 August 2023).

²⁰¹ Such as the national and local reform and development commissions.

and specialized plans)²⁰². Under this rubric, the Chinese economy is extensively covered by a complex web of FYPs and accompanying policy documents.

The first point to note is that there is no publicly accessible single and comprehensive central or provincial repository of FYPs. Many FYPs are indeed officially published, but they are not always available on the relevant authorities' websites. Furthermore, not all plans are public and only a short summary is published by the relevant authorities.

The research undertaken for the update of this Report has also shown that while the 14th FYPs are often less specific compared to previous planning cycles, they are frequently complemented by implementing plans, action plans, guiding opinions, guidelines, notices etc. issued by central²⁰³ and sub-central authorities. The evidence found shows in that respect that each sector of the economy analyzed in this Report is covered by a comprehensive constellation of such documents. Examples can be found in Chapters 12, 14, 15 or 16.

All this leads to the conclusion that FYPs remain at the core of the Chinese economy. Despite the lack of transparency surrounding some of them, there is solid evidence that FYPs cover the whole economic sphere – irrespective of the ownership type/structure of individual economic operators subject to the plans – and have a most pervasive effect on the economic activity in China, including on the sectors examined in this Report. Indeed, Chapter 3 provide further details on how private economic operators align their business conduct with the policies set by the CCP, including the policies outlined in the planning documents.

At the top of the entire system sits the central national plan (currently the 14th FYP), as well as some overarching strategies, such as the China Manufacturing 2025 plan ('*Made in China 2025*', see Section 4.2.3), the Belt and Road Initiative ('*BRI*', also '*One Belt One Road*' or '*OBOR*'), (see Section 4.2.4) and other medium and long-term strategic plans. With reference to the central FYP and the overarching strategies, hundreds of additional plans²⁰⁴ are issued at various levels of government and at various points in time, forming eventually a matrix-like structure in which the subsequent / lower level plans further detail the pre-existing / higher level ones are aligned with them²⁰⁵ and implement them (see Sections 4.2.1 and 4.2.2).

Table 4.1 below gives an overview of the planning system, including a list of a number of sectoral plans which have been adopted following the adoption of the 14th FYP. While this list is only illustrative (as mentioned above, planning covers virtually every economic activity with plans in place in the areas such as tourism industry, food safety, health information etc.) and in any event limited to the top layer within the structure of plans, it demonstrates the extent of the

²⁰² See Section 1.1 of Several Opinions on Strengthening Drafting Work for the National Economic and Social Development Plan, issued by State Council 22 October 2005; available at: https://www.gov.cn/gongbao/content/2005/content_121467.htm (accessed 11 August 2023).

²⁰³ See, for example, the Raw Materials Chapter of this report for several examples of lower level planning documents, complementing FYPs.

²⁰⁴ See Kennedy, S., *Impressions of the 13th FYP Proposal*. in: *State and Market in Contemporary China*, CSIS, 2016, p. 51.

²⁰⁵ One of the mechanisms to ensure consistency in the planning process is reviewing of lower administrative levels' draft plans of by higher level government bodies before adoption. See Taube, M. and Schmidkonz, C., *Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition*. Think!Desk, 2015, p. 42.

Chinese planning system. Note also that this list is not exhaustive even as far as sectoral plans are concerned.

Table 4.1: Illustrative list of China's Planning System²⁰⁶

Overarching Strategies
Made in China 2025
BRI
FYPs
National FYPs
14 th FYP
Sectoral Plans
Industry (sectors)
14 th FYP on cultural industry development
14 th FYP on developing the raw materials industry
14 th FYP on the development of big data industry
14 th FYP on developing fisheries
14 th FYP on the development of medical equipment industry
14 th FYP on new energy vehicles
14 th FYP on the development of e-commerce
14 th FYP on developing pharmaceutical industry
14 th FYP on developing pesticide industry
14 th FYP on information and communication industry
14 th FYP on the development of robotics industry
14 th FYP on developing scrap steel industry
14 th FYP on developing civil aviation
Industry (issues)
14 th FYP on fostering the development of small and medium-sized enterprises ('SMEs')
14 th FYP on high quality development of foreign trade
14 th FYP on human resources development and social security

²⁰⁶ Within the limitations mentioned above, the full text of the plans is available on the websites of the respective authorities which have issued the plans, typically the State Council, the NDRC, the relevant line ministries (such as the Ministry of Industry and Information Technology ('MIIT'), Ministry of Finance ('MOF'), Ministry of Agriculture) or other agencies (e.g. the National Energy Administration ('NEA')).

14 th FYP on the green development of industry
14 th FYP on the use of foreign investment
14 th FYP on trade in services
14 th FYP on agriculture and rural technology development
14 th FYP on developing digital economy
14 th FYP on ecological and environmental sci-tech innovation
14 th FYP on the development of national high tech industry development zones
14 th FYP on developing agriculture mechanization
14 th FYP on boosting employment
14 th FYP on building a national standardisation system fostering high quality development
14 th FYP on circular economy
14 th FYP on commerce development
14 th FYP on promoting clean production
14 th FYP on developing revitalisation of particular regions
14 th FYP on implementing a high-quality development of the resources regions
14 th FYP on building a modern circulation system
14 th FYP on modernizing market surveillance
14 th FYP on developing financial standardization
14 th FYP Action plan on deepening the reform of price mechanism
14 th FYP on developing crop planting at national level
14 th FYP on supporting industrial transformation and upgrading of traditional industrial cities and resource-based city demo zones
14 th FYP on the deep joint development of informatization and industrialisation
14 th FYP on the development of intellectual property right (' <i>IPR</i> ') protection and use
14 th FYP on the development of smart manufacturing
14 th FYP on the development of software and IT services
14 th FYP on developing domestic trade
14 th FYP on patents and trademarks examination
14 th FYP action plan on high quality development of environmental protection equipment manufacturing

14 th FYP on developing market supervision technology
14 th FYP on developing modern logistics
14 th FYP on implementing the domestic demand expansion
14 th FYP on building Rule of law in China 2020-2025
14 th FYP on informatization
14 th FYP on sewage treatment and resource utilisation
14 th FYP on standardization
Energy
14 th FYP on developing new types of energy storage
14 th FYP on a modern energy system
14 th FYP on the development of renewable energy
14 th FYP comprehensive working plan on energy saving and emission reduction
14 th FYP on developing energy saving buildings and green buildings
Science and Technology
14 th FYP on science and technology innovation in culture and tourism
14 th FYP on science and technology innovation in transport
14 th FYP on science and technology innovation in energy
14 th FYP on railways science and technology innovation
Transportation
14 th FYP on comprehensive transport services
14 th FYP on developing green transport

The system is not strictly segmented along a fixed classification of industries/sectors²⁰⁷. Rather, the plans for specific sectors are complemented by plans which reflect the broader priorities of the leadership in a given planning period. Such priorities (e.g., ‘*innovation-driven development*’, ‘*digitalization-based development*’, ‘*green development*’)²⁰⁸ are in turn interlinked with additional objectives proclaimed by the Government. The special priorities are often threaded and expanded upon in successive FYPs.

The emphasis on SEIs is an example of a priority that flows through multiple successive plans. As such, it is present in Chinese policy making since at least 2010 and has evolved gradually as the Government keeps issuing new iterations of the Strategic Emerging Industries Key

²⁰⁷ Taube, M. and Schmidkonz, C., *Assessment of the normative and policy framework governing the Chinese economy and its impact on international competition*. Think!Desk, 2015, pp. 35-36.

²⁰⁸ See, for example, Parts 2, 5 and 11 of the 14th FYP.

Product and Services Catalogue²⁰⁹. As of writing of this Report, it covers eight sectors – next generation information technology, high-end equipment manufacturing, new materials, biotechnology, new-energy vehicles, new energy, energy efficient and environmental technologies, as well as digital innovation - and a ninth category covering related services. Those priorities and objectives are respected when the Government’s guidance is translated into policies at lower levels of administration. The following provinces and municipalities have published 14th FYPs related to SEIs: Fujian, Guangxi, Guizhou, Hebei, Hunan, Jilin, Shanxi, Shandong, Dalian Municipality, Chongqing Municipality, Shanghai Municipality.

The same applies also to strategic objectives of the Government stemming from the overarching initiatives which exceed the regular planning system. The entire system (which in itself does not form a fixed structure but rather a constantly developing area of policy making, subject to reviews and adjustments) must be therefore understood as embedded in the wider context of the Chinese policy and decision-making which in turn feeds back into the planning process. Sub-plans, at the sectoral or provincial level are drawn up in reference to the national plans to ensure consistency and elaborated in accordance with the objectives of the national plans²¹⁰ (see Section 4.2.2 for more details).

The provincial Plans for Social and Economic Development and plans issued by lower-level governmental authorities can be found on the vertical axis of the planning matrix. Table 4.2 below contains a list of provincial plans adopted under the 14th FYP, as well as some examples of municipal plans.

Table 4.2: Plans for provinces and provincial-level municipalities and autonomous regions adopted in connection with the 14th FYP²¹¹

Provincial 14 th FYPs
Anhui 14 th FYP for economic and social development and 2035 perspectives
Beijing Municipality 14 th FYP for economic and social development and 2035 perspectives
Chongqing Municipality 14 th FYP for economic and social development and 2035 perspectives
Fujian 14 th FYP for economic and social development and 2035 perspectives
Gansu 14 th FYP for economic and social development and 2035 perspectives
Guangdong 14 th FYP for economic and social development and 2035 perspectives

²⁰⁹ Full Catalogue available at: <https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/W020190905485683837526.pdf> (accessed on 11 August 2023). The current revised edition was published in February 2017 by NDRC together with the Ministry of Science and Technology, the Ministry of Industry and Information Technology and the Ministry of Finance. The eight/nine SEIs are further divided into 174 subcategories and 4 000 more detailed products and services.

²¹⁰ Kennedy, S. and Johnson, K., *Perfecting China, Inc. The 13th Five-Year Plan*, CSIS, 2016, pp. 13-14.

²¹¹ Within the limitations mentioned above, the full text of the plans is available on the websites of the respective authorities which have issued the plans, typically the provincial governments.

Guangxi Autonomous Region 14 th FYP for economic and social development and 2035 perspectives
Guizhou 14 th FYP for economic and social development and 2035 perspectives
Hainan 14 th FYP for economic and social development and 2035 perspectives
Hebei 14 th FYP for economic and social development and 2035 perspectives
Heilongjiang 14 th FYP for economic and social development and 2035 perspectives
Henan 14 th FYP for economic and social development and 2035 perspectives
Hubei 14 th FYP for economic and social development and 2035 perspectives
Hunan 14 th FYP for economic and social development and 2035 perspectives
Inner Mongolia Autonomous Region 14 th FYP for economic and social development and 2035 perspectives
Jiangsu 14 th FYP for economic and social development and 2035 perspectives
Jiangxi 14 th FYP for economic and social development and 2035 perspectives
Jilin 14 th FYP for economic and social development and 2035 perspectives
Liaoning 14 th FYP for economic and social development and 2035 perspectives
Liaoning Dalian Municipality 14 th FYP for economic and social development and 2035 perspectives
Ningxia Autonomous Region 14 th FYP for economic and social development and 2035 perspectives
Qinghai 14 th FYP for economic and social development and 2035 perspectives
Shaanxi 14 th FYP for economic and social development and 2035 perspectives
Shandong 14 th FYP for economic and social development and 2035 perspectives
Shanghai Municipality 14 th FYP for economic and social development and 2035 perspectives
Shanxi 14 th FYP for economic and social development and 2035 perspectives
Sichuan 14 th FYP for economic and social development and 2035 perspectives
Tianjin Municipality 14 th FYP for economic and social development and 2035 perspectives
Tibet Autonomous Region 14 th FYP for economic and social development and 2035 perspectives
Xinjiang Autonomous Region 14 th FYP for economic and social development and 2035 perspectives
Yunnan 14 th FYP for economic and social development and 2035 perspectives

Each such provincial-level plan is further detailed by respective sectoral plans issued by individual provinces and lower administrative levels, such as counties and municipalities. To give an example, Table 4.3 and Table 4.4 below contain a non-exhaustive list of plans related to the steel and aluminium industries on the central, provincial and local/municipal level.

Table 4.3: 14th FYPs and related policy documents on the central, provincial, and local/municipal level concerning the steel industry²¹²

Central	Provincial	Local/Municipal
14th FYP 14 th FYP on developing the raw materials industry 14 th FYP on developing scrap steel industry 14 th FYP on the green development of industry 14 th FYP on promoting clean production Guiding Opinions on Promoting High-quality Development of the Steel Industry (2022)	Hebei 14th FYP on economic and social development and 2035 perspectives Hebei 14 th FYP on Strategic and emerging industries development Hebei 14 th FYP on high quality development of manufacturing industry Hebei 14 th FYP on green development of industry Hebei 14 th FYP several measures to speed up and foster high quality development of steel industry 2022 Hebei Province's Three-year action plan on cluster development in the steel industry chain 2020-2022	Hebei Shijiazhuang Municipality 14th FYP on economic and social development and 2035 perspectives Hebei Shijiazhuang Municipality 14 th FYP on high quality development of manufacturing industry Hebei Handan Municipality Implementation Plan to speed up and promote the high-quality development of the steel sector 2022 Hebei Tangshan Municipality Iron and steel 1+3 action plan 2022

²¹² Within the limitations mentioned above, the full text of the plans is available on the websites of the respective authorities which have issued the plans.

	Shandong 14th FYP on economic and social development Shandong 14th FYP on the steel industry development Shandong 14th FYP on developing the construction materials industry Shandong 14th FYP on developing shipbuilding and marine engineering equipment Shandong Province Advanced Steel Manufacturing Industry Base Planning (2018—2025) Liaoning 14th FYP on economic and social development Liaoning 14th FYP on developing raw materials industry Liaoning 14th FYP on ecological economic development	Shandong Yingkou Municipality 14th FYP on developing the steel industry Shandong Qingdao Municipality 14th FYP on developing new and emerging industries Liaoning Dalian Municipality 14th FYP on economic and social development (mentioning steel) Liaoning Dalian Municipality 14th FYP on developing strategic and emerging industries Liaoning Dandong Municipality 14th FYP on industry development

Table 4.4: 14th FYPs and related policy documents on the central, provincial, and local/municipal level concerning the aluminium industry²¹³

Central	Provincial	Local/Municipal
14th FYP 14th FYP on developing the raw materials industry 14th FYP on the green development of industry 14th FYP on promoting clean production	Shandong 14th FYP on economic and social development Shandong 14th FYP on the aluminium industry development Shandong 14th FYP 14th FYP on building a strong manufacturing province Henan 14th FYP on high quality development of manufacturing industry Henan 14th FYP on recycled metal industry Shanxi 2023 action plan for the transformation and upgrade of the non-ferrous metal sector Shanxi 2022 action plan for the transformation and upgrade of the non-ferrous metal sector Shaanxi 14th FYP on developing new materials industry	Liaoning Yingkou Municipality 14th FYP on the aluminium industry development Chongqing/Sichuan work plan to coordinate the extension of the aluminium industry chain 2023

²¹³ Within the limitations mentioned above, the full text of the plans is available on the websites of the respective authorities which have issued the plans.

	Guangxi 14th FYP on economic and social development Guangxi Standing Committee of the People's congress decision on promoting the high-quality development of the aluminium industry 2022 Yunnan 14th FYP on economic and social development Yunnan 3-year action plan on developing green aluminium industry (2022-2024) and policy measures to support the development of a green aluminium industry Hubei 14th FYP on high quality development of new materials industry	

In addition, individual FYPs are also issued by entities which are formally not government bodies, such as state-run research institutes and SOEs. To provide an example, the state-owned steel producer Baowu, currently the biggest steel producer in the world (see Chapter 14), has drafted and implemented its own FYP²¹⁴. Furthermore, industry associations, industrial parks and universities etc. may also draw up their own FYPs.

4.2.2. SUBSTANCE OF THE PLANS

As for substance of individual plans, the level of detail in terms of policy objectives, output targets, etc., tends to increase as the administrative level at which the respective plan was issued

²¹⁴ See interview with the Chairman of Baosteel Co., Ltd., available at: <http://www.zgyj.org.cn/interview/6621102010.html> or: <https://finance.sina.com.cn/stock/hkstock/hkstocknews/2020-09-19/doc-iivhvpwy7677982.shtml> (accessed on 11 August 2023).

decreases. The 14th FYP covers a vast array of topics ranging from economy, to culture, social welfare, environmental protection or issues of national defence and may therefore need to remain limited to setting broad overall priorities. Similarly, the overarching strategies may be more specific in some aspects (e.g. the Made in China 2025 only focuses on manufacturing industry) but will be formulated in a rather general manner for other reasons, such as their longer time horizon or their cross-cutting nature. However, the planning system taken in its entirety – covering all levels of government with an ever-growing precision concerning actions to be taken – sets China apart from mere programmatic declarations outlining the government’s policies and priorities seen in other countries. While such programmatic declarations provide political legitimacy for the government’s actions and ensure its accountability, the Chinese planning system is geared towards allowing manifold government interventions into the economy. Even though the section on guiding principles²¹⁵ in the 14th FYP does refer to the economic reforms which are supposed to make “*significant advances in reforming the property rights system and the market-based allocation of the factors of production*”²¹⁶, it only does so in the broader context of the socialist market economy²¹⁷ under the CCP’s exclusive leadership²¹⁸:

We shall adhere to and refine institutional mechanisms for the Party's leadership of economic and social development, adhere to and refine the system of socialism with Chinese characteristics, continue to raise capabilities and standards for implementing the new development concept and constructing the new development pattern, and provide fundamental assurance for achieving high-quality development.

Indeed, virtually all the plans under the 14th FYP also refer to Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era²¹⁹. Even if the inclusion of these terms represent boilerplate, honorific language to some extent, stemming also from the fact that all official documents and actions are required to acknowledge the supremacy of Xi Jinping Thought and the primacy of the Party, they remain a clear reminder of the overall political and economic framework in which the planning documents are prepared and carried out.

Within the Chinese coordinated planning system, the form which specific government interventions will take follows the general rule of the higher-level plans setting broad outlines and overall targets and frequently specific authorities to enable lower-level units to achieve those targets, whereas the more practical aspects of how the centrally set goals should be achieved are specified in the plans at the lower levels. This central feature of the planning

²¹⁵ These principles are in one or another form part of all the related FYPs at the lower levels of administration.

²¹⁶ See Chapter 3, section 2 of the 14th FYP.

²¹⁷ *Ibid.*

²¹⁸ See Chapter 2, Section 2 of the 14th FYP.

²¹⁹ *Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era* is the current guiding ideology of the PRC, putting the Communist Party and socialist ideology at the core of the Chinese political system, as well as ensuring that decision-making power is centralized in the hands of the party, most notably through the General Secretary of the Chinese Communist Party and president of the PRC. See also: Buckley C., *Xi Jinping Thought Explained: A New Ideology for a New Era*, The New York Times, 26 February 2018; available at: <https://www.nytimes.com/2018/02/26/world/asia/xi-jinping-thought-explained-a-new-ideology-for-a-new-era.html> (accessed on 11 August 2023).

system, where initial broadly drawn guidelines gradually seep down the government structure and eventually take the shape of individual administrative measures on resource allocation, holds true also for the 14th planning cycle with overarching priorities and goals set out in the 14th FYP being translated into more specific targets and actions in the sectoral provincial plans.

Moreover, the coherence of lower levels of planning with the 14th FYP is maintained through the ‘*interpretation notes*’ of the NDRC specifying the mechanisms and implementation of the 14th FYP. Note 43²²⁰ outlines concrete steps to take to preserve coherence among various planning levels:

Focusing on the strategic priorities and main tasks identified in the [14th FYP], formulate and implement a number of national key special plans in the fields of science and technology innovation, digital economy, green development and ecology, and people's livelihood guarantees, and establish and detail the timetable and roadmap for the implementation of development tasks. [...]

In accordance with the regional development strategic tasks determined in the [14th FYP], formulate and implement a batch of national-level implementation guidelines for regional plans . [...]

When formulating and implementing local plans, the implementation of the development strategies, main objectives, key tasks, and major engineering projects set out in the [14th FYP] must be strengthened at all levels. It is necessary to improve the management mechanisms used for the plans such as catalogues and lists, drafting and filing, connection and coordination, to develop a list of national-level special plans and other catalogues for the 14th FYP period, to promote planning filing based on the national planning comprehensive management information platform, and ensure that the various plans are covered by a unified management. [...]

It is necessary to establish a comprehensive coordination mechanism of plans; plans submitted to the Party Central Committee and the State Council for approval must be coordinated with the [14th FYP] before being submitted for approval, so as to ensure that national spatial plans, sectoral plans, regional plans and provincial development plans are in line with the [14th FYP].²²¹

4.2.3. MADE IN CHINA 2025

Made in China 2025 is a national strategic plan and industrial policy, issued by the CCP in May 2015. It is a comprehensive, long-term programme focused on manufacturing, with the main goal to shift Chinese manufacturing to higher value-added manufacturing, emphasizing in particular the use of innovative manufacturing technologies.

It targets ten sectors, for which strategic tasks and goals are specified, and the related government support measures laid down:

- advanced IT

²²⁰ Available at: https://www.ndrc.gov.cn/fggz/fzzlgh/gjfgzh/202112/t20211225_1309731.html (accessed on 11 August 2023).

²²¹ *Ibid.*

- aerospace and aeronautics
- agricultural equipment
- automated machines and robotics
- biopharma and medical products
- maritime equipment and shipping
- new-energy vehicles and equipment
- new materials
- power equipment
- rail transport equipment²²².

Made in China 2025 envisages three steps for the development of Chinese manufacturing. The first step aims to “*turn China into a major manufacturing power in ten years*”, the second step, which should be implemented between 2025 and 2035 aims at China reaching “*intermediate level among world manufacturing powers*”²²³, and in the third step, ending in 2049, China is supposed to achieve a more consolidated manufacturing sector which will allow China to “*transform [itself] into the global manufacturing leader before the centennial of the founding of New China*”²²⁴. To achieve the goal of becoming the global manufacturing leader, China is supposed to “*strengthen overall planning, ensure innovation-driven breakthroughs, set out specific policies, make the most of the system's advantages, mobilize all the society's forces to work hard, rely still more on domestic equipment, rely on domestic brands*”²²⁵.

China is pursuing a policy of promoting these industries through various support measures, including the comparatively recent instrument of Government Guidance Funds (‘GGFs’) (see Chapters 5 and 6 for more details on GGFs, as well as an example of their practical implications for the New Materials industry in Section 12.3.2). These funds, created through collaborations between central and local governments and private venture capital firms, aim to invest in priority sectors chosen by the State, including SEIs. GGFs are intended to enhance the availability of capital for high-tech ventures that often face challenges in obtaining funding. Indeed, as of 2021, there were over 1800 GGFs, with a projected capital size of approximately USD 1.52 trillion²²⁶. In 2018, subsidiaries of the China Construction Bank (‘CCB’) contributed 5.3 billion Chinese Yuan (‘RMB’) to the Strategic Emerging Industry Development Fund which

²²² Many of them overlap with the 2010 SEIs (see also Section 4.2.1 above). More specific goals and targets for individual industries, including time horizons for their achievement, are specified in the Made in China 2025 Roadmap (‘*Made in China 2025 Roadmap*’), issued originally in 2015, available at: <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 21 August 2023) and updated in 2017; available at: https://www.gov.cn/xinwen/2018-01/29/content_5261911.htm; available at: <http://www.cm2025.org/show-15-166-1.html> (accessed on 5 June 2023).

²²³ See Made in China 2025, Section 2.3.

²²⁴ That is before 2049 – see Overview section of Made in China 2025. For intermediate steps which should have been achieved by 2020 and to be achieved by 2035 and 2049, respectively, see Made in China 2025, Section 2.3.

²²⁵ See Made in China 2025, Section 1.3.

²²⁶ *The Promise and Pitfalls of Government Guidance Funds in China*, The China Quarterly, pp. 1–21; available at: <https://www.cambridge.org/core/journals/china-quarterly/article/promise-and-pitfalls-of-government-guidance-funds-in-china/9211F2954E797A29E82B540DA6D9A714> (accessed on 11 August 2023). *Understanding Chinese Government Guidance Funds*, March 2023, Center for Security and Emerging Technology; available at: <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf> (accessed on 11 August 2023).

was jointly launched by CCB and NDRC²²⁷. CCB later created a sub-fund dedicated to the Made in China 2025 under the Strategic Emerging Industry Development Fund benefiting targeted industries²²⁸.

The government support to achieve the overall goals of Made in China 2025 includes a number of measures, in particular financial support policies²²⁹:

We shall

- *deepen financial reform by widening manufacturing financing channels and reducing financing costs, [...]*
- *support Export-Import Bank of China to strengthen services for manufacturing “going out” within its scope of business,*
- *encourage the China Development Bank to increase loans for manufacturing Enterprises,*
- *lead financing institutions to develop products and business for manufacturing Enterprises, [...]*
- *lead venture capital and private equity to support manufacturing sector innovation.*

Furthermore, there are preferential fiscal and taxation policies listed in the document²³⁰:

We shall

- *make full use of present channels to strengthen financial support and the policy environment for manufacturing with a focus on key areas for manufacturing transformation, namely intelligent manufacturing, [...]*
- *innovate the support way of fiscal fund by transforming from subsidizing construction to subsidizing operation step by step and increase the effectiveness of financial fund,*
- *deepen technology planning (special projects and funds), technology management reform, and manufacturing technology research and demonstration projects to support technology innovation and structural adjustment,*
- *perfect and implement government purchasing policies supporting innovation [...].*

Made in China 2025 refers to deepening reforms and giving markets the decisive role in allocating resources²³¹, as known from other contexts (see Chapter 5). However, the strategy remains top-down driven, relying on heavy government intervention in favor of domestic producers (“we shall strengthen planning”, “we shall encourage enterprises”, “we shall support

²²⁷ See Announcement on Contribution by Subsidiaries to Strategic Emerging Industry Development Fund; available at:

http://www.ccb.com/en/newinvestor/upload/20181128_1543386176/20181128142101603123.pdf (accessed on 11 August 2023).

²²⁸ See at http://fund.eastmoney.com/data/xininfo_001825.html (accessed 21 August 2023).

²²⁹ See Made in China 2025, Section 4.3.

²³⁰ *Ibid.*, Section 4.4.

²³¹ *Ibid.*, Section 2.2.

enterprises”)²³² (see also Chapter 7) which would be carried out by using the above support measures and would result in non-market outcomes, etc. Consequently, the ultimate goal - namely for China to become one of the world's most advanced and competitive economies, with domestic firms being globally competitive, while gradually substituting foreign technology with local technology – was not meant to be implemented based on market forces. The MIIT guidelines on industrial upgrade (Made in China 2025) project funding (departmental budget)²³³ published in August 2017 only confirm this by emphasizing that within the goal of fully implementing the Made in China 2025 strategy, “[f]unding support [shall be] allocated in principle to sectors that cannot get funding from the market and need national-level support”²³⁴. Because of international criticism directed at Made in China 2025, Chinese officials began to publicly discuss the plan less frequently over time²³⁵, though there is no evidence that the country backed away from the plan’s goals and targets. It is widely believed²³⁶ that the Government has reduced the public mentioning of Made in China 2025 in order to downplay the plan’s significance and impact on resource allocation. Such adjustments in the rhetoric surrounding the programme did result in a decreased number of direct references to Made in China 2025 in company filings and other available data, making also the assessment of its effects more difficult²³⁷. Nevertheless, the overall objectives remain the same, especially reducing the dependence of Chinese industries on foreign technologies and inputs, through a narrative on developing high quality manufacturing, using distortive instruments²³⁸ and the impacts of Made in China 2025 are estimated to be significant, as apparent not least from the strong growth of the sectors covered by the programme as a proportion of China’s GDP²³⁹.

Central and sub-central authorities have also issued specific policies to implement the overarching Made in China 2025 plan. For example, central government agencies issued a total of 11 guidelines related to Made in China 2025 implementation²⁴⁰. Other policy documents

²³² *Ibid.*, Part III. The mechanism of how the generally worded goals of the strategic initiatives are translated into more specific targets in plans on lower administrative levels is described further below, see in particular Sections 4.2.9 and 4.2.10

²³³ Available at: http://www.caam.org.cn/chn/9/cate_103/con_5210981.html (accessed on 11 August 2023).

²³⁴ *Ibid.*

²³⁵ McBride, J. & Chatzky, A. (2019). *Is ‘Made in China 2025’ a threat to global trade?* Council on Foreign Relations. <https://www.cfr.org/background/made-china-2025-threat-global-trade> (accessed on 3 March 2023).

²³⁶ See *Evolving Made in China 2025. China’s industrial policy in the quest for global tech leadership*, Merics, 2 July 2019; available at: <https://merics.org/en/report/evolving-made-china-2025> (accessed on 11 August 2023) and Holland T., *Beijing’s ‘Made in China 2025’ plan isn’t dead, it’s out of control*, 8 April 2019, available at: <https://www.scmp.com/week-asia/opinion/article/3004900/beijings-made-china-2025-plan-isnt-dead-its-out-control> (accessed on 11 August 2023).

²³⁷ See for example Branstetter, L. G. and Guangwei, L. – Does „Made in China 2025“ work for China? Evidence from Chinese listed firms; (2022), NBER Working Paper Series; available at: https://www.nber.org/system/files/working_papers/w30676/w30676.pdf (accessed on 11 August 2023)

²³⁸ *Ibid.*

²³⁹ See for example *Economic Power Play: Assessing China’s Trade Policies* (2021), The Economist Intelligence Unit; available at: https://impact.economist.com/perspectives/sites/default/files/economic_power_play_assessing_chinas_trade_policies_0608.pdf (accessd on 11 August 2023)

²⁴⁰ These guidelines include (i) implementation guidelines for five big projects, including constructing a national manufacturing innovation center, developing a strong industrial foundation, promoting intelligent

implementing Made in China 2025 include, for example, *Several Opinions on the Financial Sector's Support for Steady Growth, Structural Adjustment, and Performance Improvement in the Industrial Sector*²⁴¹ or the *Guiding Opinions on Financial Support for Building a Strong Manufacturing Country*²⁴², which instructed financial institutions to provide financial support, such as loans and financing, to the manufacturing industry.

Sub-central governments also issued their own plans to implement Made in China 2025. Examples include the *Made in China 2025 Action Plans* issued by Jiangsu²⁴³, Zhejiang²⁴⁴, Beijing²⁴⁵, Shanghai²⁴⁶ and Shenzhen²⁴⁷. These local action plans set strategic goals, identify regional key areas and major projects to be developed and describe the measures and tools to achieve the goals.

4.2.4. BELT AND ROAD INITIATIVE

The BRI, initially floated by President Xi in autumn 2013, represents another strategic government program, focusing primarily on infrastructure projects that would span a significant number of countries around the globe. On 28 March 2015, NDRC, the Ministry of Foreign Affairs ('MFA'), and the Ministry of Commerce ('MOFCOM'), with State Council authorization, issued the One Belt One Road Action Plan, which provides further details²⁴⁸. *While the Action Plan states that BRI overall "aims to promote the connectivity of Asian, European and African continents and their adjacent seas", it leaves no doubt that the initiative is closely linked to China's strategy of internationalization and becoming a global industrial leader: "China shall stay committed to the basic policy of opening-up, build a new pattern of*

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- manufacturing, promoting green manufacturing, and promoting high-end equipment innovation; (ii) two special action guidelines for developing service-oriented manufacturing and improving the quality and brand of equipment manufacturing and (iii) four development and planning guidelines for the new materials industry, information industry, pharmaceutical industry, and highly skilled personnel in the manufacturing sector. MIIT (2017). 'Made in China 2025' '1+X' Planning System Released; available at: http://www.gov.cn/xinwen/2017-02/10/content_5167126.htm (accessed on 11 August 2023).
- ²⁴¹ PBOC (2016). *Several Opinions on Financial Sector's Support for Steady Growth, Structural Adjustment, and Performance Improvement in the Industrial Sector*; available at: http://www.gov.cn/xinwen/2016-02/16/content_5041671.htm (accessed on 11 August 2023).
- ²⁴² MIIT (2017). *Guiding Opinions on Financial Support for Building a Strong Manufacturing Country*; available at: http://www.gov.cn/xinwen/2017-03/30/content_5181983.htm (accessed on 11 August 2023).
- ²⁴³ Jiangsu Provincial Committee and Jiangsu Provincial People's Government (2015). 'Made in China 2025' Jiangsu Province Action Plan; available at: <https://www.waizi.org.cn/policy/64745.html> (accessed on 11 August 2023).
- ²⁴⁴ Zhejiang Provincial People's Government (2015). 'Made in China 2025' Zhejiang Province Action Plan; available at: https://www.zj.gov.cn/art/2016/1/19/art_1229019364_63912.html (accessed on 11 August 2023).
- ²⁴⁵ Beijing Municipal People's Government (2015). 'Made in China 2025' Beijing Action Plan; available at: http://kw.beijing.gov.cn/art/2015/12/29/art_2384_2478.html (accessed on 11 August 2023).
- ²⁴⁶ Shanghai Municipal People's Government (2016). 'Made in China 2025' Shanghai Action Plan; available at: <https://jjyx.sheitc.sh.gov.cn/uploadfiles/File/20161026181827609.pdf> (accessed on 11 August 2023).
- ²⁴⁷ Shenzhen Municipal People's Government (2015). 'Made in China 2025' Shenzhen Action Plan; available at: http://www.sz.gov.cn/zfgb/2016/gb946/content/post_4997315.html (accessed on 11 August 2023).
- ²⁴⁸ Full text available at: http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm (accessed on 11 August 2023).

all-around opening-up, and integrate itself deeper into the world economic system. The Initiative will enable China to further expand and deepen its opening-up”²⁴⁹.

The Action Plan lists various cooperation modalities among participating countries²⁵⁰. However, it also contains a dedicated section on the role of China and its regions in the BRI context: “*China shall fully leverage the comparative advantages of its various regions, adopt a proactive strategy of further opening-up, strengthen interaction and cooperation among the eastern, western and central regions, and comprehensively improve the openness of the Chinese economy*”²⁵¹. It is in particular this section which fits into the scheme of the Chinese planning system, as it sets specific policy goals and priorities for individual areas. For example, with respect to the north and north-west regions, the Action Plan states that²⁵²:

[...] we shall make good use of Xinjiang’s geographic advantages and its role as a window of westward opening-up to deepen communication and cooperation with Central, South and West Asian countries, make it a key transportation, trade, logistics, culture, science and education center [and] we should give full play to Inner Mongolia’s proximity to Mongolia and Russia [...] and advance the construction of an Eurasian high-speed transport corridor linking Beijing and Moscow with the goal of building key windows opening to the north.

Or, with respect to coastal regions²⁵³:

We shall use opening-up to motivate these areas to carry out deeper reform, create new systems and mechanisms of open economy, step up scientific and technological innovation, develop new advantages for participating in and leading international cooperation and competition, and become the pacesetter and main force in the BRI.

And concerning the inland regions²⁵⁴:

We shall build Chongqing into an important pivot for developing and opening up the western region, and make Chengdu, Zhengzhou, Wuhan, Changsha, Nanchang and Hefei leading areas of opening-up in the inland regions. [...] We shall support inland cities such as Zhengzhou and Xi’an in building airports and international land ports.

While Made in China 2025 is different from the five-year planning cycle due to its time horizon and focus on manufacturing industry, in the case of BRI, it is its international scale and focus on infrastructure which distinguishes it from the usual FYPs. At the same time, BRI forms part of the entire planning system, insofar as it contains the familiar features of the Chinese economic plans, in particular putting emphasis on selected sectors or actions (including by envisaging support for such actions) which the local governments and local officials are required to take into account when setting their local policies via their respective plans and policies. Indeed, the 14th FYP itself dedicates a whole chapter called “*Promote high-quality*

²⁴⁹ See Action Plan, Part I.

²⁵⁰ Such as facilities connectivity, unimpeded trade or financial integration.

²⁵¹ See Action Plan, Part VI.

²⁵² *Ibid.* Concerning Xinjiang, see also Section 13.9

²⁵³ Action Plan, Part VI.

²⁵⁴ *Ibid.*

*‘Belt and Road’ development”*²⁵⁵ to the BRI, and local governments such as Beijing have published action plans on the BRI²⁵⁶, which further emphasize the development and strengthening of BRI structures.

It is important to note that while the notion of *‘opening-up’* features frequently in the BRI Action Plan, *the focus is rather on supporting the Chinese industry in expanding abroad, in line with the policy of creating a set of internationally competitive national champions (see Section 5.5.1) and going global (see for example Section 14.1.1).* Through the BRI, the Government is also seeking to improve the security of raw materials supply. Chinese investments in Africa have, for example, targeted natural resources, trade-facilitating transport and power infrastructure, also in light of growing demand for resources and energy consumption for the Chinese economy²⁵⁷. The 14th FYP confirms this growing trend: *“We shall persist in [...] going global with China's investments, make efficient use of global resources [and] promote the improvement of industrial competitiveness”*²⁵⁸.

However, the BRI has faced numerous failures and controversies. One significant concern has been the inadequate quality of work associated with some BRI projects and their corresponding long-term sustainability and effectiveness²⁵⁹. Another controversy revolves around the debt repayment conditions imposed on recipient countries. On the one hand, critics have questioned the transparency and fairness of the loan agreements, arguing that China’s lending practices under the BRI have in some cases created debt dependency²⁶⁰, while on the other hand, an argument also exist that the level of debt induced by BRI project was to a degree an unintended consequence of the expansive lending policy of Chinese banks, rather than representing a distinctive policy of the Government²⁶¹. Furthermore, the import of Chinese labour for BRI projects in some countries has been a point of contention. Many recipient countries have witnessed a significant influx of Chinese workers, limiting employment opportunities for local labour force and contributing to social tensions. This aspect has raised questions about the initiative's impact on local communities and their economic

²⁵⁵ See 14th FYP, Chapter 41.

²⁵⁶ See, for example, *Notice on the Issuance of Beijing's Action Plan for Promoting the High-quality Development of the "Belt and Road" (2021-2025)*; available at: https://www.beijing.gov.cn/zhengce/zhengcefagui/202112/t20211219_2564427.html (accessed on 11 August 2023).

²⁵⁷ See, for example: *Ethiopia - A new horizon for African - Chinese relations*, The Economist Intelligence Unit, 9 August 2022; available at: <https://country.eiu.com/article.aspx?articleid=762341459> (accessed on 11 August 2023).

²⁵⁸ 14th FYP, Chapter 13, Section 2.

²⁵⁹ *China's Global Mega-Projects Are Falling Apart*, The Wall Street Journal, 20 January 2023; available at: <https://www.wsj.com/articles/china-global-mega-projects-infrastructure-falling-apart-11674166180> (accessed on 11 August 2023).

²⁶⁰ *It's a (Debt) Trap! Managing China-IMF Cooperation Across the Belt and Road*, CSIS, 17 October 2018; available at: <https://www.csis.org/analysis/its-debt-trap-managing-china-imf-cooperation-across-belt-and-road> (accessed on 11 August 2023).

²⁶¹ See for example *How China's Belt and Road Initiative is changing after a decade of big projects and big debts* (2023), Associated Press; available at: <https://apnews.com/article/china-belt-road-initiative-a4b08290cf94e4f2dffe368a013c5129> (accessed on 11 August 2023).

development²⁶². Environmental concerns have also emerged as a significant issue associated with the BRI when the construction and operation of infrastructure projects have resulted in environmental degradation²⁶³. As a result of these failures and controversies, there has been a negative shift in perception regarding the BRI and Chinese influence²⁶⁴.

4.2.5. 14TH FYP

The 14th FYP is the top-tier planning document, aimed at providing general guidance on policies on all administrative levels. Unlike previous central FYPs, the 14th FYP does not contain concrete targets for overall GDP growth and only mentions a limited number of quantitative targets²⁶⁵. The wording of individual chapters in the 14th FYP is also kept open and flexible. For instance, the first chapter is dedicated to the overall goals and directives for the 14th planning period, whilst outlining the achievements under the 13th FYP. The chapter highlights the successful completion of the 13th FYP's objectives, acknowledging the need to steer development goals towards high-quality development, address imbalances, enhance innovation capacity, and improve social governance²⁶⁶:

China has shifted directions toward a phase of high-quality development [...] At the same time, the imbalance and insufficiency in our development is still prominent, and the reform tasks to be done in key areas and key links are still arduous. Our capacity for innovation is insufficient for the requirements of high-quality development. The agricultural base is relatively weak. The disparities in development and income distribution between rural and urban regions remain stark. We have a long way to go in environmental protection, there are shortcomings in livelihood protection, and weaknesses in social governance.

It further, as required for all official documents of this type emphasizes the role of CCP ideology and leadership in the planning and decision-making process²⁶⁷. Correspondingly, the “*guiding ideologies, principles, and strategic orientations*”²⁶⁸ for the 14th five-year period, drawn-up in the next chapter of the 14th FYP, put socialism with Chinese characteristics at the core of the planning system, confirming that the Chinese authorities will “[...] *deeply implement the spirit of the 19th Party Congress and the Second, Third, Fourth, and Fifth Plenums of the 19th CCP*

²⁶² Who Built That? Labor and the Belt and Road Initiative, Council on Foreign Relations, 6 July 2021; available at: <https://www.cfr.org/blog/who-built-labor-and-belt-and-road-initiative> (accessed on 11 August 2023).

²⁶³ Belt and Road Economics: Opportunities and Risks of Transport Corridors, The World Bank, 18 June 2019; available at: <https://www.worldbank.org/en/topic/regional-integration/publication/belt-and-road-economics-opportunities-and-risks-of-transport-corridors> (accessed on 11 August 2023).

²⁶⁴ Global trends in countries' perceptions of the Belt and Road Initiative, Bruegel, 25 April 2023; available at: https://www.bruegel.org/sites/default/files/2023-04/WP%2004_0.pdf (accessed on 11 August 2023). What Happened to the Belt and Road Initiative?, The Diplomat, 6 September 2022; available at: <https://thediplomat.com/2022/09/what-happened-to-the-belt-and-road-initiative/> (accessed on 11 August 2023).

²⁶⁵ China's 14th Five-Year Plan – strengthening the domestic base to become a superpower, Merics, 9 April 2021; available at: <https://merics.org/en/comment/chinas-14th-five-year-plan-strengthening-domestic-base-become-superpower> (accessed on 11 August 2023).

²⁶⁶ 14th FYP, Chapter 1, Section 2.

²⁶⁷ Ibid., Chapter 1, Section 1.

²⁶⁸ Ibid., Chapter 2, Introduction.

Central Committee”²⁶⁹. Chapter 2 of the 14th FYP also further elaborates on the principles that must be followed by all Chinese entities subject to FYPs, most notably on the Party’s total leadership: “We shall adhere to and refine institutional mechanisms for the Party’s leadership of economic and social development, adhere to and refine the system of socialism with Chinese characteristics [...]”²⁷⁰. The document then goes on to outline the main goals for the 14th five-year period, as well as the long-term goals for 2035 in Chapter 3²⁷¹:

Fresh progress in economic development will be made. [...] Development must adhere to the new development concept. [...] We shall strengthen the domestic market, further optimize the economic structure, and significantly improve our capacity for innovation. The [research and development (‘R&D’)] expenditure of society as a whole will increase by more than 7% annually [...]. We shall further refine the socialist market economy and basically complete construction of a high-standard market system, and market players shall be more energetic; significant advances shall be made in reforming the property rights system and the market-based allocation of the factors of production [...].

The following parts and chapters of the 14th FYP outline various policies, goals and targets that remain core to the development of the Chinese economy, such as the development of science and technology, as specified in Chapter 4²⁷²:

[We] shall promote the optimization and combination of innovation systems guided by the strategic needs of the state and accelerate the construction of strategic [science and technology] power under the leadership of national laboratories [...].

[We] shall increase the intensity of financial investment in basic research, optimize the expenditure structure, implement tax incentives to encourage enterprises to invest in basic research, encourage society to invest through multiple channels such as donations and fund establishment, form a continuous and stable investment mechanism, and raise the proportion of basic research funding as a portion of R&D funding to over 8%.

The next chapter outlines various mechanisms and policies used by the Government to promote innovation and technological advancement²⁷³:

We shall strengthen universally beneficial policy support, such as granting an extra deduction of R&D expenses and offering tax incentives for high-tech enterprises. We shall expand and optimize the insurance compensation and incentive policies for the first unit (set) of major technical equipment, give play to the leading and demonstrative role of major projects, and use government procurement policies to support innovative products and services. [...] We shall improve assessment systems that encourage R&D by SOEs [...]. We shall improve preferential tax policies that

²⁶⁹ *Ibid.*, Chapter 2, Section 1.

²⁷⁰ *Ibid.*, Chapter 2, Section 2.

²⁷¹ *Ibid.*, Chapter 3, Section 2.

²⁷² *Ibid.*, Chapter 4, Sections 1 and 3.

²⁷³ *Ibid.*, Chapter 5, Section 1.

encourage innovation by small- and medium-sized scientific and technological enterprises.

Chapter 8, titled “Deepen the implementation of the manufacturing powerhouse strategy”, also focuses industrial development with the Chinese authorities intending to²⁷⁴:

[O]ptimize the layout of regional production chains, guide the key links of production chains to remain in China, and further enhance the capacity of the central and western regions and the northeast region as destinations of industrial relocation. [...] We shall implement the pilot enterprise cultivation project and cultivate a group of leading enterprises that possess core competitiveness and can dominate in their respective ecosystems. We shall support SMEs to enhance their professional advantages and foster specialized and new “little giant” enterprises^[275] and single product champion enterprises in the manufacturing industry.

And further²⁷⁶:

It is crucial to build more secure, resilient, and efficient modern supply chains not subject to disruptions and outside interference. It is also crucial to ensure that the share of manufacturing in the economy remains stable, and to enhance the competitive advantages of the manufacturing sector with a focus on quality improvement.

Indeed, the policy goals for manufacturing in the period of 2021-2025 demonstrate a strong focus on manufacturing. The objective is to enhance China competitiveness by establishing and strengthening comprehensive domestic supply chains across various sectors such as technology, high-speed railways, power equipment, renewable energy, and ship manufacturing. A notable focus is placed on diversifying supply chains to reduce reliance on foreign actors, as well as preserving crucial industrial chains within the country, aiming to counter the ongoing migration of certain industries to other regions, such as Southeast Asia²⁷⁷.

In line with this strategy, the 14th FYP emphasizes the development of SEIs, outlining that the Government will²⁷⁸:

focus on seizing opportunities for future industrial development, cultivate leading and pillar industries, promote the integrated and ecosystem-driven development of strategic emerging technology clusters, so that the contribution of such industries to GDP will exceed 17%.

Further, the Government intends to²⁷⁹:

focus on strategic emerging industries such as new generation information technology, biotechnology, new energy, new materials, high-end equipment, new energy vehicles, green and environmentally friendly products, and aerospace and

²⁷⁴ *Ibid.*, Chapter 8, Section 2.

²⁷⁵ See Section 2.3.2

²⁷⁶ *Ibid.*, Chapter 8, Introduction.

²⁷⁷ *Manufacturing makes a comeback in the 14th five-year plan*, The Economist Intelligence Unit, 17 March 2021; available at: <https://www.eiu.com/n/manufacturing-makes-a-comeback-in-the-14th-five-year-plan/> (accessed on 11 August 2023).

²⁷⁸ 14th FYP, Chapter 9, Introduction.

²⁷⁹ *Ibid.*, Chapter 9, Section 1.

marine equipment, accelerate the innovation and application of key and core technologies, enhance the country's capacity of ensuring supply of productive factors, and cultivate new driving forces for industrial development ...; promote projects to develop China's strategic emerging industry clusters, improve the mechanisms for organization, management and professional promotion of industrial clusters, build public service complexes for innovation, and build a number of strategic emerging industry growth engines with distinctive characteristics, complementary advantages, and reasonable structures. We shall encourage technological innovation and enterprise mergers and restructuring and we shall prevent low-quality and redundant construction. We shall give full play to the guiding role of industry investment funds and increase the strength of financing guarantees and risk compensation.

In his Report on the Work of the Government in March 2023, the then Prime Minister Li Keqiang announced that the Government invested RMB 740 billion on major 14th FYP projects in 2022²⁸⁰.

Part 6 of the 14th FYP is dedicated to the role of government authorities, including an emphasis on the role of the state sector and SOEs²⁸¹:

To better serve national strategies, we shall make plans on where to advance and where to withdraw, what to do and what not to do, accelerate the layout optimization, structural adjustment, and strategic reorganization of the state-owned sector, enhance the competitiveness, innovation, control, influence, and anti-risk capabilities of the state-owned sector, and strengthen and optimize state-owned capital and SOEs. We shall give full play to the strategic supporting role of the state-owned sector, encourage the state-owned sector to focus more on helping to ensure strategic security, promote industry leadership, bolster the national economy, raise people's living standards, improve public services, and other functions. We shall adjust and revitalize inventory assets, optimize the allocation of incremental capital, concentrate on important industries that are related to national security and the lifelines of the national economy, concentrate on important industries related to the national economy and the people's livelihoods, such as those involved in the provision of public services, emergency capacity building, and public welfare, and concentrate on forward-looking strategic emerging industries.

Part 17 of the 14th FYP outlines the goal of consolidating the socialist democracy, the rule of law (see Section 3.2.2) concerning the concept of rule of law in present-day China) and the Party and State supervision system, stating that the government: “[...] shall adhere to the organic integration of the leadership of the Chinese Communist Party, the running of the country by the people, and the rule of law, and promote the self-refinement and development of

²⁸⁰ See Report on the Work of the Government, 15 March 2023; available at: http://english.www.gov.cn/news/topnews/202303/15/content_WS64110ba2c6d0f528699db479.html (accessed on 16 August 2023).

²⁸¹ *Ibid.*, Chapter 19, Section 1.

socialist political system with Chinese characteristics.”²⁸² And further: “We shall adhere to and improve the Party’s leadership system that takes full control over the overall situation and coordinates across all parties and implement the Party’s leadership in the development of all aspects of the nation”²⁸³. Correspondingly, the 14th FYP states that the Chinese authorities will “unswervingly follow the path of socialist rule of law with Chinese characteristics, [...] make efforts to pursue parallel progress in the rule of law for national governance, exercise of state power, and government administration, build a country under the rule of law, a government under the rule of law, and a society under the rule of law [...]”²⁸⁴ and that the supervision role of the Party over the implementation of the 14th FYP needs to be strengthened²⁸⁵:

We shall improve the supervision system characterized by the Party's unified leadership, comprehensive coverage, and authoritative and efficient oversight, and form a political power operation mechanism featuring scientific decision-making, resolute execution, and strong supervision. We shall ensure that leadership and oversight responsibilities for strict self-governance are properly assumed, strengthen political supervision, and deepen political inspections and strengthen the implementation of rectification. We shall promote the coordination of disciplinary action, supervisory mechanism, dispatched resident teams, and inspections, take inner-party supervision as the leading factor and promote the coordination of various types of supervision, form a normal and long-lasting supervisory force, and better integrate the supervision system into the national governance system. We shall deepen the reform of the discipline inspection and supervision system, strengthen the leadership of higher-level supervisory committees for discipline inspection over lower-level supervisory committees for discipline inspection, promote standardized and rule-of-law-based discipline inspection and supervision work, and give full play to their role of oversight in ensuring implementation and promoting improvement and development. [and] construct a full-coverage responsibility and supervision system.

The final part of the 14th FYP, part 19, outlines the binding nature of the plan, outlining the implementation modalities and calling upon all industries to ensure successful application. It emphasizes the need to strengthen organization, coordination, and supervision of plan implementation, as well as establish monitoring and evaluation mechanisms. The language used suggests that adherence to the plan is expected. The plan further assigns responsibilities, sets indicators, and tasks, and allocates resources to regions and departments. It emphasizes the importance of timely completion, achievement of objectives, and a favorable policy environment. In summary, the 14th FYP requires comprehensive implementation at all levels of administration, with clear responsibilities, monitoring mechanisms, and alignment with annual goals and tasks (see further in Section 4.3.1, as well as for example Sections 14.1.2 or 16.3.1)²⁸⁶.

4.2.6. SECTORAL PLANS AT NATIONAL LEVEL

²⁸² *Ibid.*, Part 17, Introduction.

²⁸³ *Ibid.*, Chapter 58.

²⁸⁴ *Ibid.*, Chapter 59.

²⁸⁵ *Ibid.*, Chapter 60.

²⁸⁶ *Ibid.*, Part 19.

At the level of national sectoral plans, the general goals and targets of the 14th FYP become more specific, taking the form of measures such as²⁸⁷:

- a) General governmental control over industry sectors: market entry conditional upon complying with efficiency targets set in the respective plan (see Chapter 12); upgrading the industrial base coupled with phasing out outdated production (see Section 14);
- b) Quantitative and qualitative development targets: setting improvement targets for various productions parameters, for instance annual labour productivity, material quality, ratio in which certain inputs are to be used or energy consumption, level of R&D expenditures (see Section 14.1.1, see further Section 4.2.10);
- c) Governmental control over production capacity: specific methods of capacity control are envisaged in relevant sectors; these include also addressing the issue of overcapacity, e.g. by the effective withdrawal of low-efficiency production capacities or developing upstream and downstream alliances (see Section 14.1.1, see further Section 15.2.3);
- d) Control of geographical industry distribution in China: specific industries are earmarked for being developed in or re-located to certain areas in line with other governmental policies (see in particular Section 14.1.1; see further Section 12.2.2); enterprises located in certain areas are encouraged to expand further (see Section 16.2.3);
- e) Interventions into the structure of enterprises: specifying what type of enterprises in terms of size and ownership structure should be active in a given sector (see Chapter 12), envisaging consolidation of industrial sectors through mergers (see Section 5.5.1), sometimes explicitly aimed at reducing competition (see Section 14.1.1); support for setting up industrial alliances (see Chapter 12.3.1);
- f) Development of specific industries: support being envisaged for industrial sectors manufacturing products identified by the plans (see for example Chapters 12, 14 or 16);
- g) Governmental steering of private initiatives: this is referred to as '*guiding*' private capital into sectors selected by the Government (see Chapter 6); establishing GGFs from private and public sources to invest in key industries (see Chapter 6); CCP control and leverage over privately owned enterprises (see Chapter 3).
- h) Industry support measures: financial support from the government to selected industries / industrial activities (see Chapter 12); encouraging cooperation between the financial sector and manufacturing industry (see Chapter 6); instructions to lower level of administration to explore possibilities to support selected industries (see Section 14.1.1); mechanisms to lower energy costs for selected industrial users (see Chapter 10 and further Section 15.5);
- i) Ensuring security of supply: measures to support development of domestic industry in a given sector are envisaged for supply chain stability, such as the steel industry (see Chapter 14).

Just as the 14th FYP requires all government officials and their departments to carry out its implementation, the sectoral national plans also provide for rigorous implementation by relevant authorities (see for example, Section 12.2.1.1 concerning the implementation of the 14th FYP on Developing Raw Materials Industry). In addition, sectoral industry associations can be

²⁸⁷ But not limited to.

given the task of identifying potential issues of the plan's implementation and formulating corresponding policy suggestions (see Section 4.3.3 and Section 14.7).

4.2.7. PROVINCIAL GENERAL PLANS

Similar to the sectoral plans, the provincial plans provide more details on how the objectives of the 14th FYP should be translated into policies within individual provinces. By way of example, in the 14th FYP on Economic and Social Development and 2035 Perspectives of the Shandong Province²⁸⁸ the following types of government intervention measures can be found:

- a) General governmental control over industry sectors: *“encourage enterprises, universities, scientific research institutes and industry parks to share resources, collaborate to innovate and jointly build industry and technology innovation alliances, comprehensive service centers for small and medium-sized enterprises, parks gathering science-related education and industry-related education parks as well as bases for effective study and training”*²⁸⁹.
- b) Quantitative and qualitative development targets: *“[S]ignificantly increase the coverage of R&D activities of industrial enterprises above a certain size and achieve full coverage of R&D institutions in large industrial enterprises. [...] Implement the “doubling” plan for national high-tech enterprises and science and technology SMEs and gradually cultivate more “single-area champions”, “gazelles” and “unicorns” [...] By 2025, the number of national high-tech enterprises and the number of science and technology SMEs shall reach 25,000 and 30,000 respectively”*²⁹⁰.
- c) Detailed production targets: *“By 2025, all coal mines in the province shall implement smart mining, the province’s coal production shall be stabilized at about 100 million tons; the total power generation installed in the province shall reach 190 million kilowatts approximately [...] the installed power generation based on renewable energy in operation shall exceed 80 million kilowatts, and the scale of installed nuclear power generation in operation shall reach approximately 13 million kilowatts, the amount of power received from outside the province shall exceed 150 billion kWh; the length of the natural gas pipeline network shall reach 8,500 kilometers, and the liquefied natural gas’ coastal loading and unloading capacity shall reach about 25 million tons per year”*²⁹¹.
- d) Governmental control over production capacity: *“[E]nsure that the comprehensive grain production capacity is stabilized at 550 billion kilograms and ensure the security of supply of important agricultural products. Ensure coordination and adjustment of grain and feed planting structure, improve the production, purchase, marketing, storage and transportation systems, and deepen implementation of high-quality grain projects [...]”*²⁹².
- e) Control of geographical industry distribution in the province: *“[D]rive the grouped development of suburban new cities, achieve industry-city integration [...] support all municipalities and districts to promote the differentiated positioning and cluster*

²⁸⁸ See Shandong 14th FYP on Economic and Social development and 2035 Perspectives, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dffzgh/202105/P020210513602621066980.pdf> (accessed on 16 August 2023).

²⁸⁹ *Ibid.*, Chapter 10.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*, Chapter 53.

²⁹² *Ibid.*, Chapter 24.

development of manufacturing industries based on their specific resources and industrial bases”²⁹³. Furthermore: “[The Shandong government] shall build three ‘golden corridors.’” For example, the Jinang-Qingdao corridor for science, innovation and manufacturing shall “take the “Jinan-Zibo-Weifang-Qingdao-Yantai-Weihai” line as the main axis, enhance long-term technological advantages and product standard discourse power in industrial internet, railways equipment, marine engineering equipment, hydrogen energy, new energy and new materials, health care, modern agriculture and other key areas, and create a world-class advanced manufacturing cluster zone”²⁹⁴.

- f) Interventions into the structure of enterprises: “Through the introduction of new methods for creation, integration and reorganization, etc. cultivate a group of backbone enterprises and high-growth enterprises [...]. Promote the establishment of industry alliances, strengthen vertical connections and consistency as well as horizontal joint interaction to form industrial clusters worth RMB 100 billion, RMB 500 billion, and RMB 1 trillion. Cultivate specialized and specific new “little giant” enterprises and individual champion enterprises in the manufacturing industry, foster the transformation of “individual business into enterprises” and of “small enterprises into large scale enterprises”, and form a pattern of coordinated development of numerous leading enterprises, large enterprises and SMEs”²⁹⁵.
- g) Development of specific industries: The Shandong Province 14th FYP earmarks a number of key industrial parks and enterprise clusters for transition and upgrade and lists a number of selected projects in these sectors:
- “High-end equipment manufacturing: Qingdao Rail Transit Key Equipment Industrial Park, Qingdao Laixi Aviation Industrial Park, Weifang Magnetic Levitation Power Equipment Industrial Park [...]
 - Automobile Manufacturing: Qingdao Laixi New Energy Vehicle Industry Cluster, Geely High-end Commercial Vehicle Production Capacity Integration and Improvement and Automotive Industrial Park, Rizhao Great Wall Automobile Industrial Park [...]
 - High-End Chemicals: Yulangdao Refining and Chemical Integration Project, Wanhua Ethylene, Dongying Weilian Chemical Paraxylene Project [...]
 - New Energy: China Northern Wind Power Mother Port Industrial Park, China Aerospace New Energy Industrial Park, China National Defense Power Battery Industrial Park [...]
 - New Materials: National Rubber and Tire Engineering Technology Research Center Functional New Materials Industrial Park Project, China Xinfu Green Aluminium Deep Processing Wisdom Industrial Park, Dongying Rare Earth New Materials Industrial Park [...]
 - Biomedicine: Qilu Pharmaceutical Biomedical Industrial Park, Huaxi Biological Life and Health Industrial Park, Zibo Yellow River Delta Pharmaceutical Valley Industrial Park [...]

²⁹³ *Ibid.*, Chapter 33.

²⁹⁴ *Ibid.*, Chapter 32.

²⁹⁵ *Ibid.*, Chapter 15.

²⁹⁶ This list is not exhaustive. See Shandong 14th FYP on Economic and Social Development and 2035 Perspectives, Chapter 15, Table 3.

- h) Governmental steering of private entities: “By 2025, the number of national high-tech enterprises and science and technology-based SMEs shall be increased to 25,000 and 30,000 respectively”²⁹⁷.
- i) Industry support measures: “Cultivate local multinational companies with both domestic and foreign operations, strong international competitiveness and risk prevention capabilities, support export companies to expand their domestic market [...]”²⁹⁸.

In addition to the FYPs, provinces also outline planned government support in other documents, such as in the lists of key investment projects. Such compilations of projects may reflect not only the priorities of the respective central and provincial FYPs but can also be based on the strategic initiatives (such as, for example, Made in China 2025) and other relevant policy guidelines by the central authorities. Using again the example of Shandong, the province has established a list of key investment projects in January 2022²⁹⁹. The list introduces two categories of key projects at the provincial level in the fields of industry, science and technology, infrastructure and social livelihood³⁰⁰. It counts 600 projects, subdivided into two categories of 449 and 151, respectively, effectively representing a list of companies and projects earmarked for support from the provincial government in accordance with the guidelines and goals of the 14th FYP, as illustrated by the below examples:

Group 1: Projects to be implemented (449 projects/enterprises)

- Precision metal components: Aitam Alloy (Shandong) Co., Ltd. (Project Nr. 180)
- Metallurgy: Jinan Magang Steel Pipe Manufacturing Co., Ltd. (annual output of 200 000 tons of high-grade spiral welded pipes, 1 200 sets of production equipment) (Project Nr. 85)
- Battery Industry: Shandong Lizhong New Energy Materials Co., Ltd. (annual output of 18 000 tons of lithium hexafluorophosphate, 8 000 tons of lithium bisfluorosulfonimide, and 35 000 tons of fluoride salt) (Project Nr. 195)
- Transport: Xiongshang High-speed Railway Shandong Section Project (Project Nr. 2)
- Solar Energy: Shandong Energy Offshore Land, Wind, Solar Storage Multi-energy Complementary Clean Energy Base Project (Project Nr. 11)
- Electronics: New Focus Automotive Technology Holdings Co., Ltd. New Focus Automotive Electronics Manufacturing Production Base Project (annual output of 10 million pieces of vehicle inverters, multi-functional mobile power supplies, etc.) (Project Nr. 97)
- New materials: Yantai Donghua New Materials Co., Ltd. maleic anhydride and special resin engineering project (annual output of 100 000 tons of maleic anhydride, 5 000 tons of multifunctional special epoxy resin, and 8 680 tons of cycloaliphatic epoxy resin) (Project Nr. 141)
- Bio-industry: Yantai Panelo Biotechnology Co., Ltd. (Project Nr. 148)

²⁹⁷ *Ibid.*, Chapter 10.

²⁹⁸ *Ibid.*, Chapter 22.

²⁹⁹ Available at: http://www.shandong.gov.cn/art/2022/1/20/art_107851_117019.html (accessed on 16 August 2023).

³⁰⁰ Available at: <https://www.yuncheng.gov.cn/doc/2022/03/28/217627.shtml> (accessed on 16 August 2023).

- Energy saving and environmental protection: Shandong Jishun Energy Saving Building Materials Co., Ltd. Nano Thermal Insulation New Material Project (Project Nr. 243)
- New energy sources: Shandong Ruiyang New Energy Technology Co., Ltd. (Project Nr. 287)
- Equipment manufacturing: Qingdao Saijie Aviation Technology Co., Ltd. Saijie Aviation Equipment Manufacturing Project (Project Nr. 96)
- Chemical industry: Shandong Hengyuan Petrochemical Co., Ltd. (Project Nr. 255)
- Construction: Jinan Yaoqiang International Airport Phase II Reconstruction and Expansion Project (Project Nr. 12)
- Energy: Caijin National Energy Urban Heating Main Network and Supporting Projects (Project Nr. 74)

Group 2: Projects currently in preparation (151 projects/enterprises)

- Advanced manufacturing equipment: Shandong Shengtong Steel Cord Co., Ltd. (annual output of 150 000 tons of precision wire by intelligent manufacturing) (Project Nr. 62)
- Electronics and IT: Weifang Xingming Optoelectronics Technology Co., Ltd. OLED substrate project (Project Nr. 85)
- New materials: Zibo Qinding Changchang Special Steel Technology Co., Ltd. (Project Nr. 43)
- Battery Industry: Shandong Shanhai New Materials Co., Ltd. lithium battery material-carbonate project (Project Nr. 52)
- Bio-industry: Blue Molecule (Qingdao) Biotechnology Co., Ltd. International Pharmaceutical Industrial Park Project (Project Nr. 38)
- Energy saving and environmental protection: Shandong Qilu Huaxin Hi-tech Environmental Protection New Materials Co., Ltd. (Project Nr. 41)
- New energy sources: Zhongqi Holding Group Co., Ltd. photovoltaic new energy module and distributed photovoltaic power station project (Project Nr. 13)
- Equipment manufacturing: Zaozhuang Hualong Garment Co., Ltd. intelligent equipment manufacturing construction project (Project Nr. 57)
- Metallurgy: Zibo Qinding Changchang Special Steel Technology Co., Ltd. (Project Nr. 43)
- Chemical industry: Shandong Xinhecheng Refining Technology Co., Ltd. (Project Nr. 81)
- Construction: Wudi Hongji Construction and Development Co., Ltd. Lubei Four Ports Linkage Multimodal Transport Intelligent Logistics Center Project (Project Nr. 139)
- Energy: Advanced Nuclear Energy Research Base of Tsinghua University (Rongcheng) (Project Nr. 137)
- Transport: CSTC Standard Technical Service Co., Ltd. (Project Nr. 132)³⁰¹.

China's official newspaper confirmed in November 2022 that the Shandong government has completed the annual investment plan related to key projects in the province, citing the advanced construction of the Dezhou Hengyuan Petrochemical High-end Carbon Material

³⁰¹ Available at: http://www.shandong.gov.cn/art/2022/1/20/art_107851_117019.html (accessed on 16 August 2023).

Industrial Park, the acceleration of administrative procedures in the Xinfu Modern Agricultural Industrial Park project, a total investment of RMB 4.09 billion in the Hengyuan Petrochemical High-end Carbon Material Industrial Park for the production of needle coke, for ultra-high power graphite electrodes and also other power battery anode materials, as well as construction of facilities and a total investment of RMB 5 billion in the Xinfu Modern Agricultural Industrial Park. The provincial Development and Reform Commission (‘DRC’) has also stated that a total of over RMB 411 billion has been invested in Shandong key projects, exceeding the annual investment plan by 3.1%, that a special bond quota of RMB 306.9 billion had been issued at the beginning of 2022 and that a new balance bond limit of RMB 40 billion had been targeted at Shandong key projects³⁰².

The lists of key investment projects constitute one of the points where the policy settings of the plans are subsequently implemented through the actual allocation of financial resources by the government. Even though a considerable portion of the investment is likely to be spent on projects which are not objectionable in the context of this Report (infrastructure, housing), the language of the lists of key investment projects shows equally clearly that the interventionist toolkit of setting development targets, supporting selected industrial sectors, control over geographical distribution of industry etc. remains in place to promote goals outlined in the general provincial plan and the higher-level plans.

4.2.8. PROVINCIAL SECTORAL PLANS

The 14th FYP (2021-25) on Developing Steel industry in Shandong Province (the ‘14th Shandong FYP on Steel’, see also Chapter 14) provides an example of how the policy objective and targets are passed from the national level onto the next level of administration. Following a review of the achievements under the 13th FYP, the plan identifies main developments and main problems for the upcoming five-year period, such as the need to increase the proportion of high-end steel for special use, especially in the automobile, marine, rail and engineering machinery industry³⁰³:

The output value of high-end steel products in automobile, shipbuilding, marine engineering, rail transit, and engineering machinery industries accounts for less than 8%. The supply of special steel and stainless steel is way below the demand level. The supply of high-end bearing steel, gear steel, die steel, military steel, 300-series stainless steel, household appliance plate, and marine engineering steel still relies on other provinces or foreign countries.

In its next section, the general idea of the plan is outlined as follows³⁰⁴:

[Shandong shall]

³⁰² Available at: <http://sd.people.com.cn/n2/2022/1111/c166192-40190483.html> (accessed on 16 August 2023).

³⁰³ Shandong 14th FYP on Steel Industry Development, Chapter 1, Section 2; available at: <http://gxt.shandong.gov.cn/module/download/downloadfile.jsp?classid=0&filename=1f79d908601e479f83707e67b133e347.pdf> (accessed on 16 August 2023).

³⁰⁴ *Ibid.*, Chapter 2, Section 1.

- *Deeply implement Xi Jinping's Thought on Socialism with Chinese Characteristics for a New Era, firmly establish a new development concept, integrate it into the new development pattern, and implement the requirements of high-quality development;*
- *take the supply side structural reform as the main direction and improving the competitiveness of steel industry in all respects as the goal;*
- *strictly control production capacity and output, optimize industrial layout, strengthen innovation drive and promote green development to build an advanced steel manufacturing base with first-class domestic market competitiveness and international influence;*
- *establish a modern steel industry system and accelerate the transformation from a large steel province into a strong steel province*

The main development goals in terms of industrial scale include³⁰⁵:

1. *Industry competitiveness. During the 14th Five Years Plan period, the income of main businesses shall increase by about 10% on average annually and the proportion of short-process steelmaking shall reach about 20%. The labor productivity of steel enterprises shall double to 1 500 tons per person per year. A modern steel industry system with an optimized structure, improved quality and efficiency, environmental protection awareness and strong competitiveness shall be initially formed.*
2. *Industrial layout. Cities such as Jinan (except Laiwu and Gangcheng District), Zibo, Liaocheng, Binzhou, Weifang serving as transmission channels and those along Qingdao-Jinan route shall cut their production as much as possible. The proportion of steel production capacity in Qingdao Dongjiakou, Rizhao Lanshan, Linyi Lingang and other coastal areas shall be increased so as to exceed 70%.*
3. *Product structure. By 2025, the total output value of the steel smelting, rolling, deep processing and distribution industry shall exceed RMB 1 trillion, among which high-end high-quality steel will account for 50%, the high-quality deep processing 25%, and scrap steel in steel raw materials about 30%.*
4. *Technological innovation. R&D investment in steel products shall account for more than 3% of the main business income. Ten enterprise technological centers at provincial-level and 2-3 technological centers at national level shall emerge. Every year, breakthroughs shall be made in three to five key areas including in steel materials known as short slab, hydrogen metallurgy, non-blast furnace ironmaking, clean steel smelting, endless rolling and other cutting-edge technologies.*

The subsequent chapters list a number of key steel products to support, including high-end stainless steel and steel used for high-end equipment, marine engineering, rail transit, household appliances, military, and engineering machinery ³⁰⁶, as well as the development of industrial

³⁰⁵ *Ibid.*, Chapter 2, Section 3

³⁰⁶ *Ibid.*, Chapter 4, Section 1.

chains³⁰⁷ in key regions of Shandong³⁰⁸. The plan also outlines a number of quantitative goals and specific projects³⁰⁹:

[Shandong shall]

- *strive to build two major steel production bases along the coast and inland with governmental support, with environmental protection as a driving force, with strict standard control, production capacity replacement, mergers and reorganizations and other means [...]*
- *give full play to the advantages of Rizhao, Qingdao Dongjiakou, and Linyi Lingang in resources and logistics and vigorously foster the transfer of inland production towards coastal areas [...].*
- *promote cooperation among leading enterprises in the province, take the two major steel production bases as the core to establish a scrap recycling network with multi-point layout and regional radiation, and jointly build a platform for comprehensive utilization of scrap resources in a closed-loop development mode with the integration and docking of online information flow, capital flow, offline logistics and business flow. By 2025, scrap steel shall account for about 30% of steel raw materials and become an important source for raw materials for the steel industry in Shandong province.*

The final section of the 14th Shandong FYP on Steel contains a set of measures to safeguard the achievement of goals set out in the previous sections. Such measures include general ideas of strengthening organizational leadership, increasing policy support, fostering talent and improving the level of workforce skills, deepening international cooperation, leveraging industry associations³¹⁰ as well as a range of measures which make it possible for the Shandong government to directly intervene into the industry, including³¹¹:

[S]trengthen the joint working mechanism for the high-quality development of the province's steel industry, strengthen coordination between administration departments and establish links between different levels, clarify the division of responsibilities, formulate relevant policies for integrated industrial development, review major projects, coordinate on major problems, and supervise the implementation of the Plan. All relevant cities and the two major steel bases shall formulate local development plans for steel industry in their respective regions based on realities, speed up the implementation of key projects and orderly cut out inefficient production capacity. implementation, supervision, inspection, evaluation and assessment mechanism shall be improved to ensure the effective implementation of the plan, strengthen the monitoring of industrial economic operations and accurately grasp the situation of the steel industry.

[I]mplement various national policies and measures to support steel industry and subsequent high-quality and deep processing industries, make good use of the

³⁰⁷ *Ibid.*, Chapter 4, Section 3.

³⁰⁸ *Ibid.*, Chapter 3.

³⁰⁹ *Ibid.*, Chapter 3; Chapter 3, Section 1 and Chapter 5, Section 2.

³¹⁰ *Ibid.*, Chapter 8.

³¹¹ *Ibid.*, Chapter 8, Sections 1 and 2.

package of policies for major projects, support the leading steel enterprises and major projects and provide such guarantees as financial incentives, land supply, tax preferential treatment and technological innovation. Implement R&D and supporting policies for high-end steel products and accelerate independent innovation and industrialization of brand products. [...]

Similar structures in terms of development objectives, industry upgrading, and project support can be observed in other provincial sectoral plans. For instance, in the 14th FYP on High-end Development of Chemical Industry of Jiangsu³¹² (see further Section 16.3.1), similar efforts are made to enhance the production and quality of chemical products to meet industry demands, optimize the industrial layout and foster the construction of industry facilities. Likewise, in the 14th FYP on High Quality Development of Manufacturing Industry of Fujian³¹³ (see further Section 12.2.1.1), strategies are formulated to promote the technological upgrade of materials, enhancing the overall competitiveness of the industry, and ensure a stable supply of raw materials for various industries. Furthermore, 14th FYP for Industry and Informatisation Development in Guangzhou³¹⁴ (see further Section 19.3.2.2) highlights plans aimed at advancing the manufacturing capabilities of semiconductor materials and components, supporting the growth of the semiconductor industry in Guangzhou. These examples demonstrate the widespread adoption of similar planning structures and objectives in various provincial sectoral plans throughout China. They mark the coordinated approach taken by the Government to guide and support regional development, ensuring the alignment of policies and targets at different administrative levels.

4.2.9. INDUSTRIAL RESTRUCTURING – DECISION NO. 40

The Decision of the State Council Regarding Promulgating the Implementation of Interim Provisions on the Promotion of Industrial Restructuring (*‘Decision No. 40’*)³¹⁵ is very important in the context of China’s industrial restructuring. Published in 2005 as an implementing measure of the 11th FYP, Decision No. 40 remains in force. It covers all areas of the economy including agriculture, transport, environment, development of manufacturing industry, high-tech industry and the service industry. Chapter III of Decision No. 40 provides guidance with regard to achieving the goal of industrial restructuring by setting out how the Guidance Catalogue for Industrial Structure Adjustment (which is an implementing measure of Decision No. 40 applicable to enterprises within China, and which was issued in four successive versions in 2005, in 2011 - amended 2013 - , in 2019, and in 2024, effective as of 1 February 2024³¹⁶)

³¹² 14th FYP on high-end development of chemical industry of Jiangsu; available at: http://gxt.jiangsu.gov.cn/art/2021/8/25/art_83673_10000511.html (accessed on 13 October 2023).

³¹³ 14th FYP on High Quality Development of Manufacturing Industry of Fujian; available at: <https://huanbao.bjx.com.cn/news/20210707/1162695.shtml> (accessed on 16 August 2023).

³¹⁴ 14th FYP for Industry and Informatisation Development in Guangzhou; available at: https://www.gz.gov.cn/zwgk/fggw/sfbgtwj/content/post_8319334.html (accessed on 16 August 2023).

³¹⁵ Decision of the State Council Regarding Promulgating the Implementation of Interim Provisions on the Promotion of Industrial Restructuring No. 40; available at: www.asianlii.org/cn/legis/cen/laws/tpopisa783/ (accessed on 16 August 2023).

³¹⁶ The first Guidance Catalogue for the Structural Adjustment of Industry was issued in 2005 (NDRC, Order [2005] No. 40, issued on 2 December 2005). The 2024 edition of the Guiding Catalogue is available at:

and the Guidance Catalogue for Foreign Invested Industries (applicable to foreign funded enterprises) is formulated³¹⁷. In this context, Decision No. 40 states that the Guidance Catalogue for Industrial Structure Adjustment will divide industrial sectors into ‘*encouraged*’, ‘*restricted*’ and ‘*eliminated*’³¹⁸ categories. The sectors within each of the categories are described in broad terms e.g., in the encouraged category³¹⁹:

The encouraged category mainly includes the key technologies, equipment and products to have important promoting functions to economic and social development, to conducive to resource saving, environmental protection, and industrial structure optimization and upgrading, and require to be encouraged and supported by policies and measures.

Inclusion of a sector in the ‘*encouraged*’ sector clearly implies preferential treatment³²⁰:

The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. All financial institutions shall provide credit supports in compliance with credit principles. The equipment imported within the total amount of investments for self-use, except for the commodities listed in the "Catalogue of Non-tax-free Imported Commodities for Domestic Investment Projects (Amended in 2000)" promulgated by the Ministry of Finance, shall still be exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects on non-exempted tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall be applied

As regards the ‘*eliminated*’ category³²¹, investment is prohibited with clear instructions regarding the actions to be taken to ensure no such investment takes place³²²:

Investments are prohibited from being contributed to projects under the eliminated category. All financial institutions shall stop various forms of credit granting supports to such projects and take measures to take back the granted loans. All localities and departments as well as the relevant enterprises shall take powerful measures to eliminate such projects within the prescribed time limit. The state price administrative department may, within the time limit for elimination, raise the electricity price. No production technique, equipment or product to be eliminated

https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/t20231229_1362999.html (accessed on 9 January 2024).; an English translation of the 2019 edition of catalogue is also available on the website of the Australian trade defence authority at: https://www.industry.gov.au/sites/default/files/adc/public-record/exhibit_d16.1_-_catalogue_for_guiding_industry_restructuring_-_en.pdf (accessed on 16 August 2023).

³¹⁷ Decision No. 40, Chapter 3, Article 12.

³¹⁸ *Ibid.*, Article 13.

³¹⁹ *Ibid.*, Article 14.

³²⁰ *Ibid.*, Article 17; emphasis added.

³²¹ *Ibid.*, Article 16, according to which this category „mainly include[s] the outdated industrial arts and techniques, equipment and products which do not conform to the relevant law and regulations, seriously waste resources, pollute environment, do not meet the work safety conditions and need to be eliminated“.

³²² *Ibid.*, Article 19.

by the state by explicit order may be imported, transferred, produced, sold, used or adopted.

New investments in the ‘restricted’ category are prohibited with clear guidelines on how this is to be pursued³²³.

The new investments project under the restricted category shall be prohibited. The investment administrative department shall not examine, approve, ratify or archive the projects under the restricted category. No financial institution shall grant loans for such projects, and no administrative department of land administration, urban planning, construction, environmental protection, quality inspection, fire prevention, customs, or industry and commerce, etc. shall handle the relevant procedures for such projects.

Decision No. 40 also sets out the repercussions for failure to comply with the provisions under both the restricted and eliminated categories³²⁴:

[Restricted]: In case of any violation of the provisions to carry out construction based on investment or financing, the relevant entities and persons shall be subject to liabilities.

[Eliminated]: If any enterprise violates the provisions, its persons directly held liable and the relevant leaders shall be subject to liabilities in accordance with the law.

Decision No. 40 further states that the Guiding Catalogue for Industrial Structure Adjustment, is an important basis for guiding investment directions. It guides the government to administer investment projects, and to formulate and enforce policies on public finance, taxation, credit, land, import and export³²⁵.

Accordingly, the Guidance Catalogue itself and the inclusion of various industrial areas into one of the three categories, reflects the industrial policy preferences of the Chinese authorities at various points in time. Concerning the 2024 edition of the catalogue, the NDRC emphasized the following policy objectives behind the Guiding Catalogue, fully corresponding to the Government’s overall priorities, in particular those of industrial upgrade, technological self-reliance, as well as green innovation³²⁶:

(1) Promote the high-end, intelligent and green manufacturing industry. Continue to enhance the core competitiveness of the manufacturing industry, promote quality improvement and brand building, and continue to guide the industry towards the mid-to-high end. With intelligent manufacturing as the main focus , we shall promote industrial technological transformation and further optimization , accelerate the promotion and application of new intelligent manufacturing technologies, and promote the transformation of the manufacturing industry model. Encourage green technology innovation as well as the development

³²³ *Ibid.*, Article 18.

³²⁴ *Ibid.*, Articles 18 and 19.

³²⁵ Decision No. 40, Chapter 3, Article 12.

³²⁶ See at: https://www.gov.cn/zhengce/202312/content_6923484.htm (accessed on 9 January 2024).

of green environmental protection industries, promote energy conservation, carbon reduction and green transformation in key sectors, and resolutely curb the blind development of high energy consumption, high emissions and low-level projects.

(2) Consolidate the leading position in advantageous industries. Accelerate the transformation and upgrading of traditional industries, increase the proportion of advanced production capacity, and effectively expand high-quality supply. Resolve excess production capacity and eliminate backward production capacity in accordance with laws and regulations. Vigorously develop and expand strategic emerging industries, accelerate the development of the digital economy, proactively layout future industries, and build a new engine for industrial development. [...]

(3) [...] Accelerate the realization of high-level scientific and technological self-reliance and, following the national strategic needs, gather strength to carry out original and leading scientific and technological research, and resolutely win the battle in the field of key core technologies. Accelerate the reconstruction of industry bases as well as the work on major technical equipment and improve the security of supply of strategic resources.

4.2.10. SUBSTANCE OF PLANS – SUMMARY

The above description and examples demonstrate the essential features of the Chinese planning system in terms of substance, namely that broadly formulated industrial policy goals from the higher-level plans are reflected and translated into more specific targets and implementing measures with each successive plan at the respective level below.

When looking at the entirety of the planning system in China, it becomes apparent what the general notions of the 14th FYP effectively mean. The concept of *‘promot[ing] the high-quality development of the manufacturing industry’* (see Section 4.2.5.) is turned into a list of individual product / product ranges in selected industrial sectors earmarked for preferential development by the government authorities (see Section 4.2.6). The mention of *‘enhanc[ing] the competitive advantage of the manufacturing industry’* (see Section 4.2.5) or the *‘introduction of new construction, integration and reorganization, [to] cultivate a group of backbone enterprises and high-growth enterprises [...] and promot[ing] the establishment of industry alliances’* (see Section 4.2.5) effectively aims at eliminating competition through regrouping, reorganization and relocating of industries. Finally, *‘increas[ing] investment in and support for manufacturing resources’*, as well as *‘coordinat[ing] and arrang[ing] funds to support the construction of major industrial projects in the manufacturing industry’* (see Section 4.2.5) points towards availability of various support policies and tools, not least financial, for the selected projects and sectors (see Sections 4.2.6 and 4.3.3).

4.3. IMPLEMENTATION OF PLANS

4.3.1. BINDING NATURE OF PLANS

The status and importance of the plans in the economic governance of China is recognized and addressed in the Constitution which attributes the power to approve the central FYP to the NPC. According to the Constitution³²⁷:

The National People's Congress shall exercise the following functions and powers:

[...] reviewing and approving the plan for national economic and social development and the report on its implementation.

And further³²⁸:

The National People's Congress Standing Committee shall exercise the following functions and powers:

[...] when the National People's Congress is out of session, reviewing and approving partial adjustments to the plan for national economic and social development and the state budget that must be made in the course of implementation.

Accordingly, the 14th FYP was adopted in March 2021 by the NPC³²⁹. Preparing the draft FYP for the legislator's approval is the task of the State Council, as stipulated in Article 89 of the Constitution³³⁰:

The State Council shall exercise the following functions and powers:

[...] drawing up and implementing plans for national economic and social development and state budgets.

Despite this strong constitutional backing, Chinese sources would sometimes claim that the plans lack a binding character³³¹, mainly because they do not have a place in the ranking table of authoritative legislative documents under the Legislation Law of the PRC³³².

However, the fact that the FYPs (or the overarching strategies) do not have a precisely defined status within the Chinese legal order does not undermine their important role in guiding the direction of the economy. Neither does it put in question their binding nature which transpires from other pieces of legislation, such as the Organic Law of the Local People's Congresses and Local People's Governments of the PRC³³³. This law unequivocally obliges said authorities to implement the FYPs. Its Article 11 reads as follows:

³²⁷ See Article 62 of the Constitution; available at : <http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml> (accessed on 16 August 2023).

³²⁸ See Article 67 of the Constitution.

³²⁹ Available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 16 August 2023).

³³⁰ See Article 89 of the Constitution.

³³¹ Kennedy, S., Johnson, K., *Perfecting China, Inc. The 13th Five-Year Plan*, CSIS, 2016, p. 1.

³³² Available at: <http://www.npc.gov.cn/npc/kgfb/202303/eb5e0e60ff5f43f7a3bfa2a10bbe6ba.shtml> (accessed on 16 August 2023). See in particular Chapters 2-4.

³³³ Available at: <http://www.npc.gov.cn/npc/kgfb/202203/0ff47fbc69b443e3b9a99bef91adcb26.shtml> (accessed on 16 August 2023). See further on the binding nature of the 14th FYP: *Key issues for China's 14th Five Year Plan*, The Oxford Institute for Energy Studies, March 2021; available at: <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2021/03/Key-issues-for-Chinas-14th-Five-Year-Plan.pdf> (accessed on 16 August 2023). See also further on the achievement of FYP targets under FYP: Kennedy S., *China's Planners Succeed, but What About China?*, CSIS, 11 November 2020; available at: <https://www.csis.org/blogs/trustee-china-hand/chinas-planners-succeed-what-about-china> (accessed on 16 August 2023).

The local People's congresses at or above the county level shall exercise the following powers and functions: [...]

(1) ensure, within their respective administrative areas, the observance and execution of the Constitution, laws, administrative regulations and resolutions of the People's congresses at higher levels and their standing committees, and ensure the implementation of national plans and state budgets; [...]

(2) examine and approve the outlines of plans for national economic and social development, plans for national economic and social development, and budgets of their administrative regions and reports on the implementation of such outlines, plans and budgets, to examine and supervise government debts, and to supervise the management of state-owned assets by the people's governments at their corresponding levels. [...]

And Article 12 prescribes that:

The People's congresses of townships, ethnic townships, and towns shall exercise the following powers and functions: [...]

(3) decide, in accordance with national plans, on development plans and projects for the economy, cultural affairs and public services within their respective administrative regions; [...]

(4) examine and approve budgets and reports on their implementation within their respective administrative areas, supervise the implementation of budgets at their corresponding levels, examine and approve plans for adjusting budgets at their corresponding levels, and examine and approve final accounts at their corresponding levels; [...]

(5) decide on the plans for civil affairs within their respective administrative areas [...].

Article 50 stipulates further:

The standing committee of a local people's congress at or above the county level shall exercise the following powers and functions: [...]

(5) upon the recommendation of the people's government at the same level, examine and approve the adjustments to the outlines of the plans for national economic and social development, plans for national economic and social development, and budgets of its administrative area; [...]

(6) supervise the implementation of the outlines of the plans for national economic and social development, plans for national economic and social development, and budgets of its administrative area, examine and approve the final accounts at its level, supervise the rectification of the problems identified through auditing, and examine and supervise government debt; [...].

According to Article 73:

A local People's government at or above the county level shall exercise the following powers and functions: [...]

(5) prepare and implement the outline of the plan for national economic and social development, the plan for national economic and social development, and the budget, administer the economy, education, science, culture, public health, sports, urban and rural construction, etc., and conduct administrative work concerning ecological environment protection, natural resources, finance, civil affairs, social security, public security, ethnic affairs, judicial administration, population and family planning within its administrative area; [...].

Article 76 further outlines:

The People's government of a township, ethnic township, or town shall exercise the following powers and functions: [...]

(2) implement the outline of the plan for national economic and social development and the budget of its administrative area and conduct administrative work concerning economy, education, science, culture, public health, sports, ecological environment protection, finance, civil affairs, social security, public security, judicial administration, population and family planning within its administrative area; [...].

These legislative requirements for all levels of administration to implement the respective FYPs fully correspond to the wording of the plans themselves which presumes that the plans will be observed. For instance, the final chapter of the 14th FYP sets out the modalities for its implementation and calls on all recipient entities to ensure its successful application³³⁴:

We shall strengthen organization, coordination, and supervision of the implementation of this plan and establish and improve planning and implementation monitoring and evaluation, policy assurance, and assessment and supervision mechanisms.

And further³³⁵:

All regions and departments shall divide work according to their responsibilities and formulate implementation plans to achieve the main goals and tasks herein. This plan sets out binding indicators, major engineering projects, and tasks in public services, environmental protection, safety assurance, and other fields. It clarifies the responsible parties and schedule requirements, reasonably allocates public resources, guides and controls social resources, and ensures completion as scheduled. This plan proposes expected indicators and tasks in the fields of industrial development and structural adjustment and mainly relies on the role of market players to achieve these tasks. Governments at all levels must create a favorable policy environment, institutional environment, and legal environment. Annual plans shall implement the development goals and key tasks proposed in this plan. The main indicators determined in this plan shall be broken down into

³³⁴ See 14th FYP, Chapter 65, Introduction.

³³⁵ Ibid, Chapter 65, Section 1.

an annual plan indicator system to set annual goals, strike a comprehensive balance between years, and reasonably determine the focus of annual work.

Similarly to the 14th FYP, sectoral, provincial and/or municipal plans also provide for rigorous implementation by the relevant authorities. For example, the 14th FYP on the Development of Smart Manufacturing³³⁶ addresses the roles of the administration in setting out the modalities to implement the plan³³⁷:

The [MIIT], together with relevant departments, shall coordinate the plan's implementation; each relevant department shall, in accordance with the division of responsibilities, adopt concrete and effective policy measures and focus on the implementation of key tasks. All localities shall implement relevant supporting policies taking local realities into account and ensure information feedback. Relevant industry organizations shall be fully involved as bridges and links and jointly promote the effective implementation of the plan.

In the same vein, the 14th FYP on Developing Raw Material Industry³³⁸ ('14th Raw Materials FYP'), contains a section on implementation measures (see Section 12.2.1.1 for more details) requesting diligent implementation not only by the relevant authorities and but also by industry organizations: "[I]ndustry organizations shall be fully involved as a bridge between enterprises and the government and timely provide feedback as problems arising in the course of the Plan's implementation and their suggestions"³³⁹.

Regarding implementation of provincial plans, the Guangdong 14th FYP provides an example, insofar as it contains the implementation requirement, recalling also the Party's leadership³⁴⁰:

[Guangdong shall] adhere to the leadership of the Party, further improve the planning system, innovate and improve the planning implementation mechanism, strengthen planning constraints, strengthen supervision and evaluation, strengthen the supporting role of major carriers, and ensure the effective implementation of the plan. [...] Strengthening the overall leadership of the Party and leading economic and social development with development planning is an important way for the Party to govern the country and an important manifestation of the development model of socialism with Chinese characteristics.

The municipal level plans contain corresponding provisions ensuring strict implementation. For instance, the Chongqing Municipal 14th FYP states that the main goal of the plan is to: "[s]trengthen the government's target responsibility, the binding indicators and public service areas proposed in this plan" and further that "[t]he tasks in the area of public services, is the

³³⁶ 14th FYP on the Development of Smart Manufacturing; available at: <https://www.gov.cn/zhengce/zhengceku/2021-12/28/5664996/files/a22270cdb0504e518a7630fa318dbcd8.pdf> (accessed on 16 August 2023).

³³⁷ Ibid, Chapter V.

³³⁸ 14th FYP on Developing Raw Material Industry; available at: <https://www.gov.cn/zhengce/zhengceku/2021-12/29/5665166/files/90c1c79a00b44c67b59c29392476c862.pdf> (accessed on 16 August 2023).

³³⁹ Ibid.

³⁴⁰ Guangdong 14th FYP; available at: https://www.gd.gov.cn/zwgk/wjk/qbwj/yf/content/post_3268751.html (accessed on 16 August 2023).

*solemn commitment of the government to the people of the city, to be decomposed and implemented to each district, county governments and relevant municipal departments”*³⁴¹.

In view of the above, it is apparent that the implementation and reference to higher level plans is resolutely addressed across plans at every level, often in the introductory part or the final chapters of the respective FYPs and other planning documents. This cannot be dismissed as simply aspirational language since the implementation of plans is mandated by law, including by the Constitution. In addition, the implementation and fulfilment of targets set by various plans are regularly monitored and evaluated (see Section 4.3.2).

4.3.2. MONITORING AND EVALUATION OF FYPs’ IMPLEMENTATION

As mentioned in the previous Section, plans are not simply drawn up, but they are expected (and legally mandated) to be implemented. This is evidenced not only by the level of detail and the setting of targets, but by the systematic review, monitoring and reporting mechanisms that are established and executed for the FYPs at all levels.

The 14th FYP states³⁴²:

We shall carry out dynamic monitoring, mid-term evaluation, and summary evaluation of the implementation of the plan, submit the mid-term evaluation and summary evaluation to the Central Committee Politburo Standing Committee [...] for deliberation in accordance with procedures, report to the [NPC] Standing Committee on the status of the implementation of the plan, and consciously accept the supervision of the NPC. We shall give full play to the supervisory role of national supervisory agencies and auditing agencies in promoting the implementation of the plan. We shall incorporate the implementation of the plan into the evaluation systems of relevant departments, local leadership groups, and cadres and use it as an important basis for improving government work. When this plan needs to be adjusted, the adjustment plan must be proposed by the State Council and reported to the NPC Standing Committee for approval.

Monitoring and evaluation mean that targets are set against which progress can be measured. These drive the projects, initiatives, policies, and reform measures specified in the plans while also determining the schedule.

In addition, moving forward in the planning process requires a stocktaking of the achievements to steer the way ahead. As mentioned in Section 4.2.2, FYPs set out targets to be met, that tend to increase in level of detail as the administrative level of the plan issues decreases. Virtually all 14th FYPs contain in their introduction part or in the first chapter a section dedicated to the evaluation of the implementation of the 13th FYPs and drawing appropriate lessons.

³⁴¹ See Chongqing 14th FYP, Chapter 55, Section 1; available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dffzgh/202106/P020210617666449412183.pdf> (accessed on 16 August 2023).

³⁴² See 14th FYP, Chapter 65, Section 2.

Moreover, authorities at various levels of government are required to report to the people's congresses at the corresponding level³⁴³. Additionally, on the central level, periodical reports on developments of the FYP, such as the one on the first year of the 14th FYP presented to the NPC by the then Premier Li Keqiang, sets out targets and a work program for the following years³⁴⁴.

4.3.3. MOTIVATION TO IMPLEMENT FYPs

In addition to the formal mandatory nature of the plans stemming from relevant laws and from the wording of the plans themselves, another component complements the functioning of the planning system in China, namely the motivation – of government officials and enterprises alike – to actually implement the plans.

In the case of cadres, in particular leading cadres, it is important to bear in mind that implementation of the various plans features among the criteria on which their performance is evaluated. Because these evaluations help determine if they will be promoted or possibly demoted, there are strong incentives for them to implement the plans³⁴⁵.

In the case of industry, such motivation is apparent. Given that the plans lay down the government priorities, the regulatory and financial support will be primarily channelled into such selected priority sectors. The Chinese businesses, state-owned as well as private, have therefore a strong incentive to align their activities with the priorities identified in the relevant plans, as being consistent with the plans is more likely to result in favorable treatment by the government authorities, typically in terms of market access or financial support³⁴⁶. Concerning private businesses, the influence which the plans exert on their operation must be further considered also in combination with further developments towards an ever tighter State/Party control over the private sector (see also Section 2.3.2 on government intervention into private businesses or Section 3.3.2 on CCP control over the private sector). In this sense, the planning system represents an additional component through which the authorities exercise control of private business against the background of the ongoing wider ideological debate in China on the role of the private sector in the country's economy³⁴⁷.

Also, the role of the industry associations in the implementation of plans and industrial policies is a standard feature of FYPs. In addition to the above-mentioned example of the 14th Raw Materials FYP (see Section 4.3.1), the 14th FYP on the Development of Robotics Industry illustrates the role of industry associations in implementing plans and industrial policies: “*Give full play to the role of bridges such as industry associations and intermediary organizations,*

³⁴³ For additional details, see, for example, *Chinese premier delivers government work report*, Xinhua, 5 March 2023; available at: https://english.www.gov.cn/premier/news/202303/05/content_WS6403edf8c6d0a757729e7a15.html (accessed on 16 August 2023).

³⁴⁴ See *Report on the Work of the Government*, 12 March 2022; available at: https://english.www.gov.cn/premier/news/202203/12/content_WS622c96d7c6d09c94e48a68ff.html (accessed on 16 August 2023).

³⁴⁵ See for example at: https://www.gov.cn/jrzq/2013-12/09/content_2545183.htm (accessed on 21 August 2023).

³⁴⁶ Kennedy, S., Johnson, K., *Perfecting China, Inc. The 13th Five-Year Plan*, CSIS, 2016, p. 4.

³⁴⁷ See, for example, Gore, L., *Behind Xi Jinping's Resurrection of Ideological Orthodoxy* in Pieke, F. N., Hofman, B. (editors), *CPC Futures, the New Era of Socialism with Chinese Characteristics*, 2022.

strengthen the dynamic monitoring of the robot industry, give timely feedback on problems in the planning and implementation process and make suggestions”³⁴⁸. Additionally, various industry associations also publish their FYPs, such as the 14th FYP on textiles³⁴⁹ published by the China Textile industry or the 14th FYP on scrap steel³⁵⁰ issued by the scrap steel association.

At the same time, government officials have also a strong motivation to ensure appropriate plan implementation, since reviewing the effectiveness of plan implementation inevitably contains an element of assessing the performance of the local leaders who are in charge of the plan implementation. As it has been reported, not complying with the targets set by the relevant plans can result in a career advancement veto for the cadres concerned³⁵¹.

4.4. CHAPTER SUMMARY

China’s multi-layered planning system is an important tool for China’s leadership to shape the economic and social development of the country. This holds true despite the fact that their complex structure is sometimes combined with wording open to interpretation (see Section 4.2.1). Far from merely constituting a platform for possible government interventions into the economy, the planning system is more systemic, as the initially broader policy orientations of the higher-level plans (see in particular Section 4.2.2) are gradually fleshed out (see Sections 4.2.2, 4.2.6, 4.2.7, 4.2.8) to the point of translating broader policy goals into specific targets or individual projects receiving government support (see Sections 4.2.6 and 4.2.7). In the 14th planning period, an increasing number of these targets are enshrined in lower level FYPs and ad hoc policy documents (see Section 4.2.1). The set of interventionist tools which the plans envisage to be employed by government bodies ranges from quantitative and qualitative development targets, production targets, capacity control, to financial support, to security of supply or to interventions into the corporate structure of businesses (see Section 4.2) and is mirrored by the pledge to encourage and support the sectors/areas/companies which the plans designate as priorities (see in particular Section 4.2.9).

Plans are more than just strategic visions. Numerous provisions in laws and in the plans themselves attest to their binding nature. They determine the direction of the Chinese economy, set out priorities and prescribe the goals which all levels of government and emanations of the State must focus on and strive to implement. The objectives set by the plans are of a binding nature (see Section 4.3.1) and the higher level authorities regularly control and monitor the progress of their implementation (see Section 4.3.2).

Overall, the structure of the existing planning system, as well as substance of the set of 14th FYPs at the respective levels of administration, suggests that even though the planning documents maintain the stated objective of allowing the markets to play a decisive role in resource allocation (see Sections 4.2), the Chinese leadership continues to rely on a planning mechanism to strongly encourage the direction of resources towards sectors deemed to be

³⁴⁸ 14th FYP on the Development of Robotics Industry, Chapter 4, Section 1.

³⁴⁹ Available at: <http://info.texnet.com.cn/detail-857651.html> (accessed on 16 August 2023).

³⁵⁰ Available at: http://www.csteelnews.com/xwzx/jrrd/202109/t20210917_55000.html (accessed on 16 August 2023).

³⁵¹ Melton, O., *China's Five-Year Planning System: Implications for the Reform Agenda*, 2015, p. 5.

strategic or otherwise important, thereby setting the conditions of competition based on public policy objectives and maintaining a decisive impact on the economy.

5. STATE OWNED ENTERPRISES

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5.1. INTRODUCTION

This chapter examines the extent to which the Chinese market is served by enterprises which operate under the ownership, control or policy supervision or guidance of the Chinese authorities. The chapter examines the relevant legal and institutional framework. It pays special attention to how the Chinese authorities control SOEs and use them as important tools to implement the country's industrial policies. In that connection, the chapter also highlights the new and additional tools that the Government has increasingly used in recent years, in particular the Government Guidance Funds. Government Guidance Funds provide the State authorities with additional channels to influence the economy, structurally similar to those of using SOEs.

5.2. SOES AND THEIR WEIGHT IN THE CHINESE ECONOMY

The Organisation for Economic Co-operation and Development ('OECD') has consistently defined an SOE as follows:

[A]ny corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature.

Furthermore, the following companies are considered SOEs³⁵²:

[...] enterprises [...] under the control of the state, either by the state being the ultimate beneficiary owner of the majority of voting shares or otherwise exercising an equivalent degree of control. Examples of an equivalent degree of control would include, for instance, cases where legal stipulations or corporate articles of association ensure continued state control over an enterprise or its board of directors in which it holds a minority stake.

The definitions used by Chinese legislation and the World Trade Organization ('WTO') Trade Policy Review Body are not dissimilar. The relevant Chinese legislation refers to 'state-invested enterprises' and defines them as 'a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling'³⁵³. Official Chinese statistics are based on the categories of 'state-owned enterprises' and 'state-holding enterprises'³⁵⁴. The WTO Trade Policy Review Body, for its part, uses the term 'state-controlled enterprises' instead of 'state-holding enterprises'. Both terms encompass enterprises with more than 50% state ownership, as well as those where the State has less than 50% ownership but more than other shareholders or those where the State owns fewer shares than other shareholders but obtains control through agreement³⁵⁵. This latter definition would come closest to the above OECD notion of SOEs as entities in which the State effectively exercises control.

³⁵² See OECD (2015), *OECD Guidelines on Corporate Governance of State-Owned Enterprises*, 2015 Edition, OECD Publishing, Paris, p. 14, available at: <https://doi.org/10.1787/9789264244160-en> (accessed on 25 January 2023). It further refers to border line cases which need to be assessed on a case-by-case basis. See also OECD, *Recommendation of the Council on Competitive Neutrality*, OECD/LEGAL/0462, adopted on 31 May 2021, p. 5, 6; available at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462> (accessed on 25 January 2023).

³⁵³ Law on the State-Owned Assets of Enterprises, Article 5 (see further section 5.2).

³⁵⁴ See the China Statistical Yearbook (2020), in particular sections 1-7 and 1-8 including the explanatory notes after sections 1-8 and 13-15, available at: <http://www.stats.gov.cn/tjsj/ndsj/2020/indexeh.htm> (accessed on 26 January 2023). The category 'state-owned enterprise' comprises 'non-corporation economic units where the entire assets are owned by the State and which have been registered in accordance with the Regulation of the People's Republic of China on the Management of Registration of Corporate Enterprises' whereas the category 'state-holding enterprises' refers to 'the original state-owned enterprises and state-holding enterprises. They are classified according to the actual investment made by the contributors of state-owned part in the paid-in capital of the enterprises, or the degree of control or dominance of the contributor on the assets of the enterprises. The following cases are regarded as state-holding: (1) Absolute state-holding in which the contributors of state-owned parts possess more than 50% of all the paid-in capital (stocks) of the enterprises; (2) Relative state-holding in which the contributors of state-owned parts possess no more than 50% of the paid-in capital (stocks) of the enterprises, but more than that of any other contributors; or agreed state-holding in which the contributors of state-owned parts possess no more than other contributors but have actual control over the enterprises according to agreements; (3) In case both contributors possess 50% and it is not clear which one is in absolute holding position, the enterprise is regarded as state-holding enterprise if one of the contributor has state-owned elements.' See also OECD Working Group on Privatisation and Corporate Governance of State Owned Assets (2009), *State Owned Enterprises in China: Reviewing the Evidence*, available at: <http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/42095493.pdf>, p. 5-6 (accessed on 26 January 2023).

³⁵⁵ WTO Trade Policy Review China report - WT/TPR/S/342 (2016), p. 96, available at: https://www.wto.org/english/tratop_e/tp_r_e/tp442_e.htm (accessed on 6 January 2021).

The aforementioned definitions cannot be exhaustive in delineating the precise extent of the state-owned and/or state-controlled sector of the economy. Indeed, standard corporate metrics may ‘fail to capture key aspects of Chinese corporate governance and industrial organization’³⁵⁶ since, in the Chinese economy, control is reportedly sometimes conferred not only via the ownership- or agreement-based channels but can originate from other, more informal arrangements. Such arrangements which have also been described as ‘networked hierarchy’³⁵⁷ originate typically in a dense network of connections and personal links between individual SOEs managers and political cadres which in turn are an expression of the Party exercising control over the economy.

Given the above limitations with respect to defining SOEs in China, as well as the lack of reliable figures in particular on the sub-central level of government, several of the following figures illustrating the importance of SOEs in the Chinese economy are estimates. They are likely to underestimate the actual extent of government ownership and/or control in China as none of the above-mentioned SOE definitions captures all the complexities of the relevant ownership/control structures. According to the State Council’s own statement, there were some 13 000 SOEs by the end of 2019, including 97 central SOEs³⁵⁸, 990 provincial SOEs, 12 294 SOEs at the county, district, municipal, and prefectural levels, as well as 167 000 subsidiaries at all levels³⁵⁹. The statement further indicates that the total assets of Chinese SOEs were worth, as of 2019, RMB 201.3 trillion and that SOEs generated 12.8% of China’s 2019 GDP. However, other sources estimate the SOEs’ contribution to China’s GDP significantly higher, accounting for some 25%³⁶⁰, possibly even more³⁶¹. As for central SOEs under the supervision of the central SASAC, their registered total assets amounted to RMB 63.4 trillion³⁶². The International Monetary Fund (‘IMF’) points out in this respect that as of 2018, total assets of Chinese SOEs

³⁵⁶ Lin, L. and Milhaupt, C. (2013). *We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*. Stanford Law Review Vol. 65:697, p. 706 ff.

³⁵⁷ *Ibid.*

³⁵⁸ In October 2022, the SASAC SOE directory listed 96 central SOEs.

³⁵⁹ *Special Report of the State Council on the Management of State Assets of Enterprises under the Supervision of the State Assets Supervision and Administration Commission in 2019* (original text in Chinese), p. 1-2, available at: <http://www.npc.gov.cn/npc/c30834/202010/92861cc1660044d0b4c1511083bab902.shtml> (accessed on 26 January 2023). See further Lardy, Nicholas: *Xi Jinping’s turn away from the market puts Chinese growth at risk*, available at: <https://www.ft.com/content/3e37af94-17f8-11e9-b191-175523b59d1d> (accessed on 26 January 2023).

³⁶⁰ Estimates for SOEs share in Chinese economy vary from 20% all the way up to 30%. See Grünberg, N. (2021) *Party-state capitalism under Xi: integrating political control and economic efficiency*, available at: <https://merics.org/en/party-state-capitalism-under-xi-integrating-political-control-and-economic-efficiency> (accessed on 4 February 2023), where the share of SOEs in the Chinese GDP was estimated at 20%-25%. See further WTO Trade Policy Review China report – WT/TPR/S/415 (2021), p. 98, available at: https://www.wto.org/english/tratop_e/tpr_e/s415_e.pdf (accessed on 4 February 2023), where that share was estimated to be between 23% and 28% in 2017. See also Kennedy, S., Blanchette, J. (2021). *Chinese State Capitalism – Diagnosis and Prognosis*, Center for Strategic and International Studies, p. 9, available at: <https://www.csis.org/analysis/chinese-state-capitalism> (accessed on 4 February 2023), where the range was estimated at 25% - 30%.

³⁶¹ See Guluzade, A. (2020), *How reform has made China’s state-owned enterprises stronger*, available at: <https://www.weforum.org/agenda/2020/05/how-reform-has-made-chinas-state-owned-enterprises-stronger/> (accessed on 4 February 2023).

³⁶² Special Report of the State Council, p. 1.

stood at 194% of GDP, higher than in the early 2000s³⁶³. Some estimates suggest that the current value of SOEs' assets may be as high as approximately 220% of China's GDP³⁶⁴. In addition to the overall extent of government ownership in China, SOEs also tend to be several times larger than private enterprises irrespective of the metrics used. A 2021 IMF paper estimates, referencing available data for listed companies, SOEs to have on average 2.5 times as many workers and a 7 times larger average capital stock than private companies³⁶⁵.

The number of SOEs under direct supervision of central SASAC (see further in Section 5.2) amounted to 97 in June 2021³⁶⁶. According to the 2021 edition of the Fortune Global 500 list, three China-based SOEs feature among the five largest companies in terms of revenue globally – State Grid Corporation of China, China National Petroleum Corporation, and Sinopec Group as numbers two, four, and five, respectively³⁶⁷. Moreover, among the 30 Chinese companies featuring in the top one hundred of the Fortune Global 500 list, only six are not state-owned.

In terms of the manufacturing sector only, according to the latest figures published by the IMF, Chinese SOEs account for some 39% of total industrial corporate assets and for approximately the same portion of total corporate debt³⁶⁸. At the same time, estimates consistently suggest that SOEs account for only around 18% of China's industrial profit³⁶⁹. While the figures on the exact share of SOEs in China's GDP vary slightly over the years and across sources, the relative size of SOEs in the Chinese economy has not changed substantially in the past 25 years³⁷⁰. At the

³⁶³ International Monetary Fund (2021), People's Republic of China: *Selected Issues, Country Report No. 2021/012*, p. 9, available at: <https://www.imf.org/en/Publications/CR/Issues/2021/01/13/Peoples-Republic-of-China-Selected-Issues-50007> (accessed on 4 February 2023).

³⁶⁴ Rosen, D., Hanemann, T., Lietzow, R., Featherston, R., Lipsky, J., Graham N. (2021), *China Pathfinder: Annual Scorecard*, p. 31, available at: <https://www.atlanticcouncil.org/wp-content/uploads/2021/10/China-Pathfinder-Annual-Scorecard-2021.pdf> (accessed on 4 February 2023).

³⁶⁵ International Monetary Fund (2021) - Jurzyk, E.M., Ruane, C., *Resource Misallocation Among Listed Firms in China: The Evolving Role of State-Owned Enterprises*, p. 8-9, available at: <https://www.imf.org/en/Publications/WP/Issues/2021/03/12/Resource-Misallocation-Among-Listed-Firms-in-China-The-Evolving-Role-of-State-Owned-50167> (accessed on 4 February 2023).

³⁶⁶ See the full list on the SASAC, available at: <http://www.sasac.gov.cn/n2588035/n2641579/n2641645/index.html> (accessed on 4 February 2023).

³⁶⁷ See Fortune Global 500, available at: https://fortune.com/global500/search/?fg500_country=China (accessed on 4 February 2023). There are altogether 135 China based companies on the Fortune Global 500 list, the vast majority of them being SOEs, as confirmed by SASAC, available at: http://en.sasac.gov.cn/2021/08/03/c_7528.htm (accessed on 1 December 2021). To give just a few examples, the China State Construction Engineering Corp. features on position 13, the Chinese state-owned banks – ICBC, CCB, ABC and BOC occupy positions 20, 25, 29 and 39, respectively and China Railway Engineering Group coming in at number 35. All of the aforementioned companies have improved their ranking in the 2021 Fortune Global 500 list compared with the previous year.

³⁶⁸ International Monetary Fund (2021), *IMF Country Report No. 2021/006: 2020 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for the People's Republic of China*, p. 62., available at: <https://www.imf.org/en/Publications/CR/Issues/2021/01/06/Peoples-Republic-of-China-2020-Article-IV-Consultation-Press-Release-Staff-Report-and-49992> (accessed on 4 February 2023).

³⁶⁹ Rosen, D.H., Leutert, W., Shan, G., (2018). *Missing Link: Corporate Governance in China's State Sector, An Asia Society Special Report with Rhodium Group*. p. 9, available at: <https://rhg.com/research/missing-link-corporate-governance-in-chinas-state-sector/> (accessed on 4 February 2023).

³⁷⁰ Kennedy, S., Blanchette, J. (2021). *Chinese State Capitalism - Diagnosis and Prognosis*, Center for Strategic and International Studies, p. 9. See also Grünberg, N. (2021). *Party-State Capitalism under Xi: aligning the economy with political objectives*, in: *The CCP's Next Century - Expanding economic control*,

same time, while SOEs are present in most sectors of the Chinese economy, they are dominant in energy, transportation, public utilities and other strategic sectors³⁷¹, and the State Council itself also acknowledged the domination of SOEs in the following strategic sectors³⁷²:

SOEs have provided nearly 100% of crude oil and on-grid energy, and 97.4% of natural gas across the country, built a nationwide basic telecommunications network, and played an important role in the construction and operation of major infrastructures and livelihood projects.

Besides the effective control of those strategic sectors, the Chinese authorities put an emphasis on SOEs boosting their presence in sectors of the modern services and technologies. As stated by SASAC in late 2019 “[t]he focus will be on ramping up technological innovation by [SOEs], and making the most of SOEs to encourage innovation and develop the advanced manufacturing sector”³⁷³. It should be noted that the concepts of ‘technological innovation’ or ‘advanced manufacturing’ are cross-sectoral in nature. In other words, SOEs keep playing an important role in such sectors as steel (see Chapter 14), aluminium (see Chapter 15) or chemicals (see Chapter 16).

Even though SOEs at the sub-central level account for the majority of entities, assets and employees, the centrally controlled SOEs are best positioned and have the task to represent China and deliver on industrial policy objectives³⁷⁴, as aptly summarized by the State Council itself³⁷⁵:

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- digital governance and national security, no. 10, MERICS, p. 24, available at: https://merics.org/sites/default/files/2021-07/MERICSPapersOnChinaCCP100_3_1.pdf (accessed on 4 February 2023).
- ³⁷¹ Ibidem. See further: *OECD Economic Surveys: China 2019*, p. 47-48, available at: https://www.oecd-ilibrary.org/economics/oecd-economic-surveys-china_20725027 (accessed on 4 February 2023). See also *China Pathfinder: Annual Scorecard*, October 2021, p. 30.
- ³⁷² *Special Report of the State Council*, p. 2. Defence, electricity generation and distribution, petroleum and petrochemicals, telecommunications, coal, civil aviation and waterway transport were designated as strategic sectors in 2006. See: e.g. Huanxin, Z. (2006), *China names key industries for absolute state control*, available at: http://www.chinadaily.com.cn/china/2006-12/19/content_762056.htm (accessed on 6 February 2023). The assessment whether or not an industrial sector should be classified as being of strategic importance evolves over time and appears to vary also depending on the political context (see e.g. the 2017 designation as Strategic Emerging Industries of the following sectors: next-generation IT, high-end equipment manufacturing, new materials, biotechnology, new-energy vehicles, new energy, energy efficient and environmental technologies, digital innovation, related services). See more details in Ban, V., *China Names Latest “Strategic Emerging Industries”* (2017), available at: <https://www.globalpolicywatch.com/2017/03/china-names-latest-strategic-emerging-industries/> (accessed on 6 February 2023). See also *Guiding Opinions on Expanding Investment in Strategic Emerging Industries and Cultivating Strengthened New Growth Points and Growth Poles*, NDRC High Technology (2020) Document No. 1409, English translation, available at: <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/new-chinese-ambitions-strategic-emerging-industries-translated/> (accessed on 6 February 2023) - this policy document issued by several PRC ministries in September 2020 lists those same industries as key sectors.
- ³⁷³ See *China’s SOEs set for year of innovation reform in 2020, SASAC says* (2019), available at: <https://www.scmp.com/economy/china-economy/article/3043580/2020-be-year-innovation-reform-chinas-state-firms-sasac-says> (accessed on 13 February 2023).
- ³⁷⁴ See Batson, A., (2017). *The State of the State Sector*. Gavekal Dragonomics. p. 9, available at: https://www.cebc.org.br/sites/default/files/the_state_of_the_state_sector.pdf (accessed on 1 March 2022).
- ³⁷⁵ *Special Report of the State Council*, p. 1-2.

A large number of backbone enterprises with core competitiveness emerged one after another, making important contributions to promoting economic and social development, safeguarding and improving people's livelihoods, and enhancing comprehensive national strength.

The presence of SOEs is not limited to sectors that the Chinese government considers strategic. Indeed, strong SOE presence or even dominance covers also sectors such as construction, wholesale and retail, transport and storage or even hotel and catering³⁷⁶. Moreover, SOEs' presence is particularly high in the financial sector with state-owned financial institutions holding 88% of the total assets of the sector at the end of 2017³⁷⁷, while IMF estimates that Chinese state-owned banks held around 60% of the banking system assets in 2016³⁷⁸. At the same time, the number of China's official big state-owned banks rose to six in January 2019, four of which are designated as global systemically important banks by the Financial Stability Board³⁷⁹, referring to their size and global (and thus also national) importance (see also Chapter 6).

The substantial role which SOEs maintain in the Chinese economy as described above³⁸⁰ gives the Government an exceptionally favourable platform to exert control over the country's economy. Despite numerous announcements by the Government at various points in time that pro-market SOE reforms would be imminent, the recent developments in the relevant institutional and legal framework confirm rather the opposite tendency, namely to use SOEs to pursue other goals, such as supporting the Government's industrial strategies, instead of aligning the SOEs' conduct with market principles. As pointed out by the IMF in 2021, reform progress on SOEs and competitive neutrality has been lagging, contributing to lower productivity and growth. The IMF also notes in this connection that the COVID-19 pandemic exacerbated existing structural problems by prolonging the economic life of non-viable and low-productivity firms, including SOEs³⁸¹. Considering the significant share of SOEs in the

³⁷⁶ According to a 2019 World Bank Paper, in the construction sector the sales revenues by SOEs in China were to be estimated at some 38% of the sector's sales revenues, with corresponding figures for wholesale and retail amounting to 36%, transport, storage and post 77%, hotel and catering 9%. See: Chunlin, Z., *How Much Do State-Owned Enterprises Contribute to China's GDP and Employment?* (2019), p. 4-6; available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/32306/How-Much-Do-State-Owned-Enterprises-Contribute-to-China-s-GDP-and-Employment.pdf?sequence=1&isAllowed=y> (accessed on 6 February 2023).

³⁷⁷ *Ibid.*

³⁷⁸ Chapter 3 - *State-Owned Enterprises: the Other Government*. In *Fiscal Monitor, April 2020*, International Monetary Fund; available at: <https://www.elibrary.imf.org/view/books/089/28929-9781513537511-en/ch03.xml> (accessed on 3 January 2022).

³⁷⁹ WTO Trade Policy Review China Report - WT/TPR/S/415 (2021), p. 156.

³⁸⁰ See World Bank and the Development Research Center of the State Council, P. R. China., (2013), *China 2030: Building a Modern, Harmonious, and Creative Society*, Washington, DC: World Bank, p. 26, available at: <http://documents.worldbank.org/curated/en/781101468239669951/pdf/762990PUB0china0Box374372B00PUBLIC0.pdf> (accessed on 6 February 2023). This report concedes that 'government ownership is widespread and varied, covering most sectors and ranging from outright ownership to controlling interest to minority shareholder' (p. 26).

³⁸¹ IMF Country Report No. 2021/006, p. 5, 9, available at: <https://www.imf.org/en/Publications/CR/Issues/2021/01/06/Peoples-Republic-of-China-2020-Article-IV-Consultation-Press-Release-Staff-Report-and-49992> (accessed on 6 February 2023).

Chinese economy, it is not surprising that SOEs produced only one fifth of total industrial output and accounted for almost three-fifths of total losses of industrial enterprises in 2016³⁸². IMF economists estimate that SOEs are on average 30% less productive than their counterparts in the private sector, primarily due to inefficient investments³⁸³. In addition, the SOE sector is characterised by high levels of corporate leverage, as discussed in more detail in Section 11.2.1). This gives some indication of the costs China incurs as it sacrifices potential economic growth in exchange for political control over the economy. At the same time, the Commission’s own research based on statistical data up to 2021³⁸⁴ suggests a certain convergence of SOEs’ and privately owned companies’ economic performance, in particular when considering profitability as a function of revenue³⁸⁵. This convergence tendency varies significantly in individual sectors, however, observed across the Chinese economy overall, the trend appears to hold true, even if private enterprises keep outperforming SOEs in terms of revenue and profit in absolute terms, as well as growth rates (see Figure 5.1 and Figure 5.2).

Figure 5.5.1: Assets, revenue and profit of SOEs

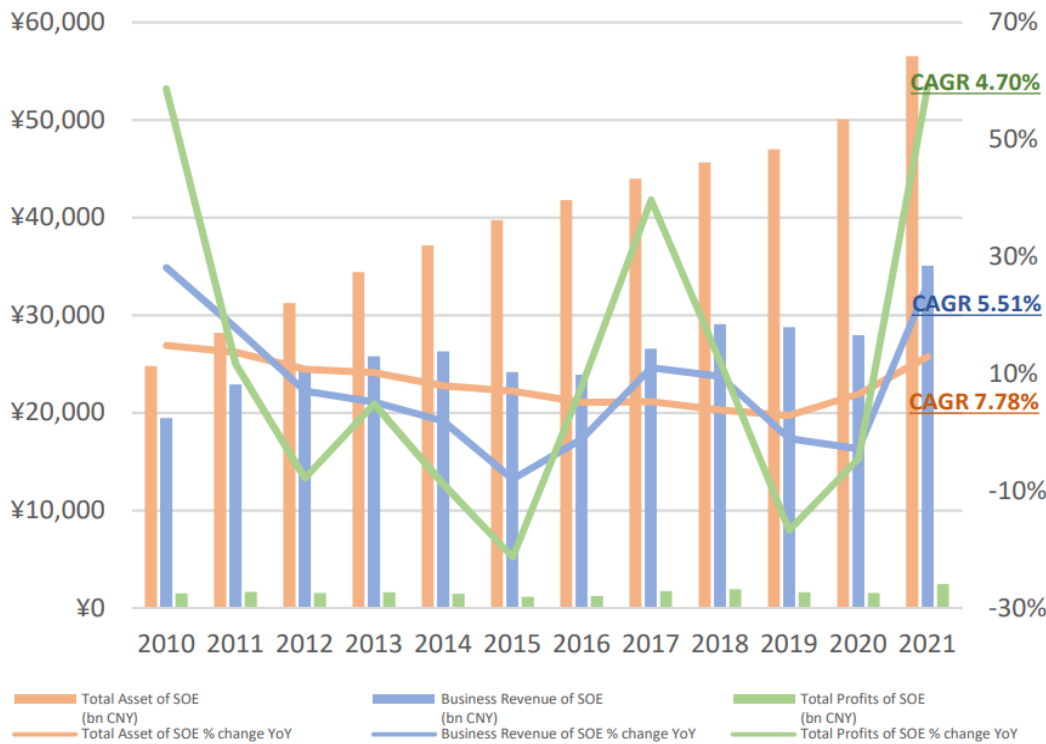


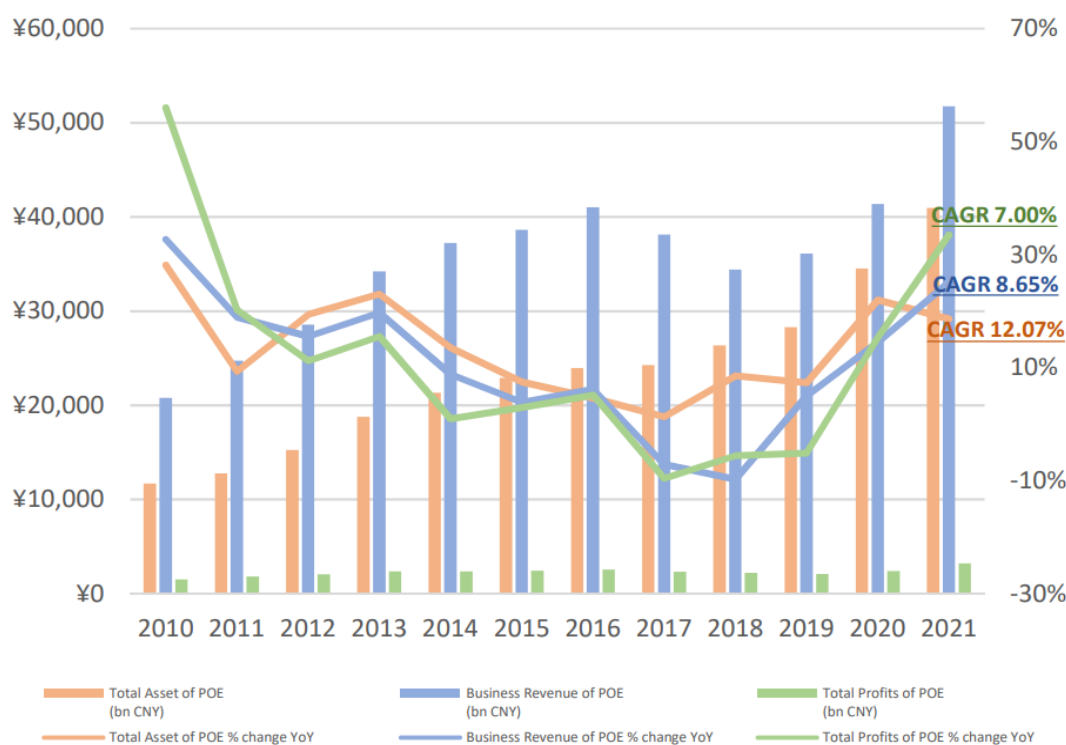
Figure 5.5.2 Assets, revenue and profit of privately owned enterprises

³⁸² European Union Chamber of Commerce in China (2021), *European Business in China Position Paper 2021/2022*, p. 22, available at: [https://www.europeanchamber.com.cn/en/publications-archive/964/European Business in China Position Paper 2021 2022](https://www.europeanchamber.com.cn/en/publications-archive/964/European-Business-in-China-Position-Paper-2021-2022) (accessed on 6 February 2023).

³⁸³ Ip, G., (2021, September 22)), *Evergrande’s Struggles Reflect China’s Efforts to Rein in Multiyear Debt Boom*, The Wall Street Journal, available at: https://www.wsj.com/articles/evergrandes-struggles-reflect-chinas-efforts-to-rein-in-multiyear-debt-boom-11632319200?st=s3orjaijmusmz9h&reflink=desktopwebshare_permalink (accessed on 6 February 2023).

³⁸⁴ China Statistical Yearbook by the National Bureau of Statistics, available at: <http://www.stats.gov.cn/tjsj/ndsj/> (accessed on 6 February 2023).

³⁸⁵ The convergence trend is less apparent when profitability is assessed as a function of assets held.



In addition to SOEs in the traditional sense, attention also needs to be paid to a special form of government-dominated legal entities that have been gaining considerable prominence since approximately 2014, namely the so called GGFs (see for more details Chapter 6). GGFs complement and sometimes overlap with the role of SOEs. Their purpose is to raise money from public and private sources and to make investments consistent with government priorities. GGFs have a mixed record in achieving the proclaimed goals - in particular leveraging private capital – and they display signs of redundancy, inefficiency and poor management³⁸⁶. However, already in view of the sheer size of the government agencies' contributions to the GGFs, they represent an important tool to channel support to strategic industries or other priority projects chosen by the government authorities³⁸⁷. For example, as the government pushed for more innovation in 'core technologies', the volume of investments made by GGFs into the semiconductor sector increased by more than 800% (by USD 7.4 billion in absolute terms) between 2018 and 2020³⁸⁸. Consequently, similarly to the role played by SOEs (see Section 5.3 below), GGFs strengthen the government control over resource allocation, sometimes as a

³⁸⁶ *Ibid.*, p. 14-17; Noble, L., *Deep China*, p. 6-7.

³⁸⁷ See Sun, Y., *China Technology Funds Battle to Hit Profit Targets*, available at: <https://www.ft.com/content/5f6d7ffb-575e-4532-9a4b-1658317d84a2> (accessed on 1 March 2022).

³⁸⁸ During the same period, the number of registered companies in the sector increased by 52%. Arteburn, J. (2021). *Party Capital - a Blueprint for National Security Due Diligence on China*. C4ADS. p. 12. and fn. 36, available at: <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/6143354ace0d611bdf38f459/1631794523711/Party+Capital+Report.pdf> (accessed on 3 December 2021).

direct extension of the SOE policies, for instance when SOEs themselves participate in and/or manage the GGFs³⁸⁹ or when GGFs invest in SOEs³⁹⁰.

The sections below examines in more detail the legal and institutional framework in which Chinese SOEs operate and how the Chinese government uses within that framework SOEs as a tool pursuing the government's industrial policy agenda.

5.3. ROLE OF SOES IN THE CHINESE ECONOMY – BASIC LEGAL AND INSTITUTIONAL FRAMEWORK

The general legal framework in which SOEs operate is set by Article 7 of the Constitution which stipulates that: *“the State-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The State ensures the consolidation and growth of the State-owned economy.”* The Constitution therefore ascribes a particular role to the state-owned sector, i.e. to be the leading force of the economy as opposed to e.g. the principle of ownership neutrality in the EU Treaties (see also Chapter 2).

These basic constitutional principles are reiterated and elaborated on by the relevant secondary legislation³⁹¹, in particular by the Company Law³⁹² and the Law on the State-Owned Assets of Enterprises (*‘SOE Law’*)³⁹³. According to Article 1 of the Company Law, one of the central objectives of the legislation is to *“maintain the social and economic order and promote the development of the socialist market economy”*. Article 1 of the SOE Law develops this principle further. It stipulates that the main purpose of the law consists of *“safeguarding the basic economic system of China, consolidating and developing the state-owned economy, strengthening the protection of state-owned assets, giving play to the leading role of the state-owned economy in the national economy, and promoting the development of the socialist market economy.”* The authorities primarily responsible for implementing this are the national and local

³⁸⁹ See, for example, “the China Structural Reform Fund being managed by the state-owned China Chengtong Holdings Group Ltd. The structural adjustment fund has become an important driving force for the reform of state-owned enterprises” (original text in Chinese), available at: <http://www.sasac.gov.cn/n2588025/n2588139/c7895224/content.html> (accessed on 6 February 2023) or “The shareholding of the China Central Enterprises' Innovation and Investment Guidance Fund consisting almost entirely of state-owned enterprises”, available at: <http://www.sasac.gov.cn/n4470048/n4470081/n4470083/n4470087/c4539619/content.html> (accessed on 8 June 2021).

³⁹⁰ Luong, N., Arnold, Z., Murphy, B., *Understanding Chinese Government Guidance Funds*, p. 22; Noble, L., *Deep China*, p. 6, 10, 14.

³⁹¹ According to Article 16 of the Constitution, available at: <http://en.npc.gov.cn.cdurl.cn/constitution.html> (accessed on 6 February 2023), *‘State-owned enterprises have decision-making power with regard to their operation within the limits prescribed by law.’*

³⁹² Company Law of the PRC, revised for the fourth time on 26 October 2018 in accordance with the Decision of the 6th Session of the Standing Committee of the 13th National People's Congress of the PRC on Amending the Company Law of the PRC, promulgated on 26 October 2018, available at: <https://www.bizchinalaw.com/archives/33734> (accessed on 6 February 2023).

³⁹³ Law of the PRC on the State-Owned Assets of Enterprises (Adopted at the 5th session of the Standing Committee of the 11th National People's Congress of the PRC on 28 October 2008 and promulgated on the same date), available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=7195&CGid> (accessed on 6 February 2023).

SASACs that “shall perform the contributor's functions for state-invested enterprises on behalf of and upon the authorization of the corresponding people's government”³⁹⁴.

The idea of consolidation and strengthening of the state-owned sector is emphasized even more in Article 7 of the SOE Law that mandates the State to:

[...] take measures to promote the centralisation of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the control force and influence of the state-owned economy.

This clarification of the top-down relation of the State to the state-owned sectors is mirrored by Article 36 of the SOE Law that stipulates that “a state-invested enterprise”³⁹⁵ making investment shall comply with the national industrial policies [...]”. The mechanisms through which the State exerts control over SOEs are analysed in more detail in Section 5.4 below.

The current setup formally entered into force in 2003 by means of a Decree of the State Council that promulgated the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, adopted at the Eighth Executive Meeting of the State Council on 13 May 2003 (*‘SASAC Regulation’*)³⁹⁶. The overall objective of the SASAC Regulation, as provided for in its Article 1, is wider than just preserving the interest of the State as an investor. Article 1 specifies that the SASAC Regulation serves the main purpose to “establish a State-owned assets supervision and management system that suits the needs of socialist market economy, better run State-owned enterprises, push forward the strategic adjustment to the layout and structure of the State economy”³⁹⁷, develop and expand the State economy [...]”. Articles 5, 6 and 12 mirror the two-layer (central and provincial) system of state-owned asset supervision and administration authorities, namely SASAC and local SASACs, that is also provided for in Article 11 of the SOE Law.

Furthermore, additional provisions of the SASAC Regulation confirm that the mission of the SASACs is to pursue industrial policy and other public policy objectives³⁹⁸. Main SASAC obligations, laid down in Article 14, include the obligation of SASAC to shape the economic/competitive structure of selected sectors, which does not necessarily sit well with Article 7, which provides for a separation of government functions of social and public

³⁹⁴ Article 11 of the SOE Law.

³⁹⁵ As explained above in Section 5.2, the term ‘state-invested enterprise’ refers to a wholly state-owned enterprise or company with the State being the sole investor, or a company in which the State has a stake, whether controlling or non-controlling – see Article 5 of the SOE Law.

³⁹⁶ Decree of the State Council of the PRC No. 378 of 27 May 2003 (last amended 2019), available at: <http://en.pkulaw.cn/display.aspx?cgid=02b98fb0efda657abdfb&lib=law> (accessed on 6 February 2023).

³⁹⁷ Article 2 of the SASAC Regulation limits its applicability to the supervision and management of State-owned assets of State-owned enterprises, State-owned holding enterprises and enterprises with State-owned equity. Concerning the supervision and management of State-owned assets of financial institutions - which are outside the scope of the SASAC Regulation – see Chapter 6.

³⁹⁸ Mattlin, M. (2007). *The Chinese government's new approach to ownership and financial control of strategic state-owned enterprises*. Helsinki: Bank of Finland, Institute for Economies in Transition, p. 10. See also Article 31 of the SASAC Regulation.

administration from the functions of investor on all levels of administration authorities. Article 14 specifies that one of SASAC's tasks is to *“maintain and improve the controlling power and competitive power of the State economy in areas which have a vital bearing on the lifeline of the national economy and State security, and improve the overall quality of the State economy.”* The remainder of the responsibilities and obligations assigned to SASAC, including the responsibility to *“undertake other tasks assigned thereto by the government at the corresponding level”*³⁹⁹, ideally position SASAC to abide by and pursue a wide range of government policies via SOEs. SASAC has thus been actively participating in – and sometimes setting (see below in Section 5.4) - the recent SOE reform agenda. Against this backdrop, the stipulation in Article 7 looks like an outlier.

In 2017, the State Council further specified the role of SASAC in the Notice on Forwarding the Plan of the State-owned Assets Supervision and Administration Commission of the State Council on Promoting the Transformation of Functions by Primarily Focusing on Capital Management (*‘SASAC Notice’*)⁴⁰⁰. The SASAC Notice calls for improving the regulation of planning and investment and states in this connection that⁴⁰¹:

[i]t is essential to follow national strategies and major decision-making, enforce national industrial policies and the overall requirements on the development of key industries, adjust and optimize the layout of State-owned capital, step up efforts of planning and guidance with regard to investment by central enterprises [...].

With regard to the operation of state-owned capital, the SASAC Notice provides that it is vital to *“promote the optimal allocation of State-owned capital by centering around the missions of serving national strategic objectives”* and to *“encourage SOEs to pursue long-term benefits, and push State-owned capital to gravitate towards important sectors and key fields concerning national security, national economic lifeline and people's livelihood, key infrastructure, forward-looking strategic industries and enterprises with core competitive edges”*⁴⁰².

In addition, some SOEs, notably in the sectors of financial services and postal services, are subject not only to the supervision by SASAC, but also by other institutions⁴⁰³ such as the MOF⁴⁰⁴.

The laws described above set up a system in which the SOEs, rather than acting according to commercial considerations, have essentially to implement national industrial policies. This typically translates into more specific goals and actions, such as acquiring foreign assets as part

³⁹⁹ Article 13(6) of the SASAC Regulation.

⁴⁰⁰ Notice on Forwarding the Plan of the State-owned Assets Supervision and Administration Commission of the State Council on Promoting the Transformation of Functions by Primarily Focusing on Capital Management, General Office of the State Council, Guo Ban Fa [2017] No. 38, promulgated on 27 April 2017.

⁴⁰¹ SASAC Notice, Point 2(1).

⁴⁰² *Ibid.*

⁴⁰³ For an overview of various bodies involved in governing SOEs, see also Rosen, D.H., Leutert, W., Shan, G. (2018), p. 14.

⁴⁰⁴ OECD (2017), *OECD Economic Surveys: China 2017*. OECD Publishing, Paris, p. 85, available at: https://www.oecd-ilibrary.org/docserver/eco_surveys-chn-2017-en.pdf?expires=1637854393&id=id&accname=oid031827&checksum=FF4E290ADBE7AC2A6E4B8A6B8004FE75 (accessed on 6 February 2023).

of the going global strategy or cooperation with privately-owned companies in order to create ‘national teams’ of industrial champions⁴⁰⁵. Indeed, collaboration between SOEs and private companies to implement industrial plans and other government policies is an important dynamic that extends the influence of the state-owned economy.

5.4. ROLE OF SOES IN THE CHINESE ECONOMY – TRANSLATING LEGAL FRAMEWORK INTO INDUSTRIAL POLICIES

The role which SOEs are supposed to play in the Chinese economy and, more widely, in society has been the subject of decades-long discussions. They centred essentially around the question of how much SOEs should adhere to market principles in their activities and to what extent they should continue performing other roles, such as social tasks attributed to them in the past, including for instance housing, childcare or education of their employees. The 3rd Plenum Decision (see Section 2.2.4) adopted on 12 November 2013 was a major milestone in these discussions about SOE reform. It set the overall reform agenda as follows: “*perfect and develop the socialist system with Chinese characteristics, and to modernize the system and ability to govern the country. We must pay more attention to the systemic, integrated, and coordinated nature of reform*”. At the same time, the government's main role should be “*to maintain macro-economic stability, strengthen and optimize public services, guarantee fair competition, strengthen market's regulatory control, safeguard market order, promote a sustainable development, promote common prosperity, and make up for market malfunctions.*”

In addition, section 2 of the 3rd Plenum Decision titled ‘*Uphold and Perfect the Basic Economic System*’ showed a clear preference for the State directed economic model by proclaiming that:

the basic economic system of keeping public ownership as the mainstay of the economy and allowing diverse forms of ownership to develop side by side is an important pillar of socialist system with Chinese characteristics, as well as the foundation of socialist market economic structure. [...] We must steadfastly consolidate and develop the public sector of the economy, uphold the public sector as the key player, develop state-owned economy's dominant role, and constantly enhance state-owned economy's vigour, control, and influence.

Moreover, the 3rd Plenum Decision declared that:

state-owned capital investment and operation should serve the state strategic goals, and should be geared more to the important industries and crucial sectors vital to state security and the lifeline of national economy, primarily providing public services, developing the important forward-looking strategic industries, protecting the ecological environment, supporting scientific and technological progress, and protecting state security.

Therefore, despite references “*to properly handl[ing] the relationship between the government and the market*” the thrust of the 3rd Plenum Decision was geared towards emphasizing the need

⁴⁰⁵ See for example: https://m.thepaper.cn/baijiahao_11648359 (accessed on 8 June 2021) or Grünberg, N. (2021) which describes the current system in China as “*a hybrid economy that blends market capitalism with macro-economic development plans based on objectives outlined by the center, and private and public economic actors working with or alongside each other in various constellations*”.

to develop the dominant role of the state-owned economy with powerful SOEs where the State is heavily involved in the operational decisions. This thrust became even more apparent at the implementation stage when the SOE reform agenda outlined by the 3rd Plenum Decision was broken down into a number of initiatives⁴⁰⁶ distributed among various authorities⁴⁰⁷. The Guiding Opinions of the CPC Central Committee and the State Council on Deepening the Reform of State-owned Enterprises (*‘Guiding Opinions’*)⁴⁰⁸ are particularly relevant in this implementation context. They first recalled that “*the direction of socialist market economic reform shall be adhered to*” and that it was “*important to follow the rules and laws of market economy and enterprise development, make unwavering efforts to separate government from business, government from capital, and ownership from the right to business operations*”⁴⁰⁹. They also distinguished between two types of SOEs: those engaged in activities of a public welfare nature and commercial SOEs⁴¹⁰. However, the aforementioned principles do not sit well with major parts of the text. Indeed, it transpired that the Guiding Opinions sought to reinforce the role of state ownership and to use such ownership for strategic economic goals decoupled from market rules⁴¹¹. According to Point 2(5) of the Guiding Opinions:

Commercial SOEs whose core business belongs to major industries and key fields concerning national security or national economic lifeline, or that are mainly responsible for major special project tasks shall maintain the position of State-owned capital as the controlling shareholder [...]. Special business segments shall be effectively separated from competitive business segments, and be independently run and accounted for. The assessment of such SOEs shall not only cover their business performance indicators and the preservation and appreciation of the value of their State-owned assets, but also focus on aspects such as their efforts to serve national strategies, safeguard national security and the operation of the national economy, develop cutting-edge strategic industries and complete special tasks.

In the same vein, Point 4(14) of the Guiding Opinions stipulates that:

it is paramount to [...] optimize the key investment directions and fields for State-owned capital by closely centering around the missions of serving national

⁴⁰⁶ The entire 3rd Plenum Decision reforms entailed more than 300 initiatives of which 34 related to SOEs. SOE reforms were also announced in virtually all provinces. See Naughton, B. (2016), *State Enterprise Reform: Missing In Action*, China Economic Quarterly June 2016, Gavekal Dragonomics, p. 19. See further Mizuho Securities Asia Ltd. (2015). *Mizuho Economic Research report of 29 May 2015*, p. 4.

⁴⁰⁷ SASAC, Ministry of Finance, NDRC etc.

⁴⁰⁸ Guiding Opinions of the CPC Central Committee and the State Council on Deepening the Reform of State-owned Enterprises, Zhong Fa (2015) No.22, Adopted on 24 August 2015, available at: <http://www.lawinfochina.com/display.aspx?id=26805&lib=law&EncodingName=big5> (accessed on 6 February 2023).

⁴⁰⁹ See Guiding Opinions, point 1(2).

⁴¹⁰ *Ibid.*, points 2(4)-2(6).

⁴¹¹ See in that respect also the 2006 Notice of the General Office of the State Council on Forwarding the Guiding Opinions of the SASAC about Promoting the Adjustment of State-owned Capital and the Reorganisation of State-owned Enterprises (Guo Ban Fa [2006] No. 97, 5 December 2006) which declared among its main objectives the goal to “*further promote state-owned capital to concentrate on major industries and key fields relating to national security and national economic lifelines (hereinafter referred to as major industries and key fields), and accelerate the formation of a batch of predominant enterprises with independent intellectual property rights, famous brands and strong international competitiveness*”.

strategies⁴¹², and enforcing State industrial policies and the general requirements of adjusting the layout of key industries, and push State-owned capital to gravitate towards important sectors and key fields concerning national security, national economic lifeline and people's livelihood, key infrastructure, forward-looking strategic industries and enterprises with core competitive edges.

Moreover, the Guiding Opinions left no doubt about the strong role to be attributed to the CCP in the operation of SOEs. Point 7(24) stipulates that:

It is critical to unify the efforts to strengthen Party leadership with those to improve corporate governance, include the overall requirements on Party building into the articles of association of SOEs, [...], allow members of a SOE's Party organization leadership [...] to be included in the board of directors, the board of supervisors or the management through statutory procedures, and allow members of a SOE's board of directors, board of supervisors and management who are Party members [...] to be included in the SOE's Party organization leadership. In principle, a SOE shall set the position of the chairman of the board of directors separately from the position of the general manager, and its Party secretary and chairman of the board of directors shall generally be served by the same person.

The pursuit of non-market goals becomes even more apparent from a second set of Guiding Opinions, titled Guiding Opinions on the Functional Definition and Classification of State-owned Enterprises (*'Classification GO'*)⁴¹³. First, the Classification GO confirmed the basic division of SOEs as referred to in the Guiding Opinions, namely the division between SOEs engaged in activities of a public welfare nature and commercial⁴¹⁴ SOEs⁴¹⁵. Second, the Classification GO also reiterated the subdivision of commercial SOEs into those active in sectors of sufficient competition and those whose core business belongs to major industries and key fields concerning national security or national economic lifeline, or that are mainly responsible for major special project tasks⁴¹⁶. For those two subgroups of commercial SOEs, the Classification GO envisaged a radically different approach with respect to development, regulation and responsibilities of these two types of commercial SOEs.

On the one hand, SOEs in competitive sectors were to be “*supported and encouraged to develop industries with competitive edges, optimize the investment directions of State-owned capital, promote the transfer of State-owned property rights, promptly dispose of inefficient, ineffective and non-performing assets, and sharpen their market competitiveness*” and they were supposed to “*ensure the business operation autonomy of the management, and actively promote the system of professional managers*”. Also, the appraisal of commercial SOEs was supposed to

⁴¹² See further Art. 5 of the Measures for the Supervision and Administration of Investment by Central Enterprises (Order [2017] No. 34, issued 7 January 2017), according to which “*the investment of central enterprises shall serve the national development strategy [...]*”.

⁴¹³ Guiding Opinions on the Functional Definition and Classification of State-owned Enterprises, adopted on 29 December 2015 by SASAC, MOF and NDRC.

⁴¹⁴ I.e. for-profit.

⁴¹⁵ See Classification GO, point 1.

⁴¹⁶ See Guiding Opinions, point 2(5) – see also above – and Classification GO, point 2.

“focus on their operating performance indicators, their preservation and appreciation of the value of State-owned assets and their market competitiveness.”

By contrast, SOEs in strategic sectors were to *“play an even bigger role in serving national macro-economic control, safeguarding national security and national economic operation, accomplishing special tasks and other aspects”* and SASACs were *“required to [...] guide such enterprises to highlight their primary business and better serve major strategies and macro-control policies of the State”*. As for appraisal of SOEs in strategic areas, according to the Classification GO:

it is imperative to reasonably determine the weight given to operating performance indicators and the indicators of the preservation and appreciation of the value of State-owned assets during their appraisal and strengthen appraisal in such aspects as their efforts to serve national strategies, safeguard national security and national economic operation, develop forward-looking strategic industries and accomplish special tasks.

The Guiding Opinions of the General Office of the State Council on Promoting the Restructuring and Reorganization of Central Enterprises (*‘2016 Guiding Opinions’*), issued in July 2016⁴¹⁷, further complement the language of the Classification GO. The 2016 Guiding Opinions emphasize the importance of the general requirement to *“uphold the dominant position of public ownership, play the leading role of the State-owned economic sector”*⁴¹⁸. They also list a number of guiding principles, the first one of which is the principle of serving national strategies. Hence, according to the 2016 Guiding Opinions, *“during the restructuring and reorganization of central enterprises, it is imperative to serve national development goals, implement national development strategies, enforce national industrial policies, strengthen the regulation of State-owned assets by focusing on capital management, and constantly promote the optimal allocation of State-owned capital”*⁴¹⁹. Based on these requirements and principles, the 2016 Guiding Opinions laid down the main objective, according to which by 2020, SOEs should have a more accurate strategic position, more logical general structure, and significantly improved efficiency in capital allocation; a group of innovative and competitive SOEs should have become world-class multinationals⁴²⁰.

The above shows that despite some language which might seem at first sight to indicate certain *‘market oriented’* intentions, the Chinese government had the clear intention to maintain a direct control over the SOEs even in the competitive sectors and to make them play a leading role at home and abroad. The State would provide resources for such developments. The developments

⁴¹⁷ Guiding Opinions of the General Office of the State Council on Promoting the Restructuring and Reorganization of Central Enterprises, Guo Ban Fa [2016] No. 56, promulgated on 17 July 2016. See further State Council issues guideline on reorganization of SOEs (2016), available at: http://english.gov.cn/policies/latest_releases/2016/07/26/content_281475402145108.htm and https://www.gov.cn/zhengce/content/2016-07/26/content_5095050.htm (accessed on 6 February 2023), as well as OECD (2017), *OECD Economic Surveys: China 2017*, OECD Publishing, Paris, p. 34.

⁴¹⁸ See 2016 Guiding Opinions, point 1(1).

⁴¹⁹ *Ibid.*, point 1(2).

⁴²⁰ *Ibid.*, point 2.

in recent years confirm and amplify that the strategic, security-related, social and other objectives prevail over commercial considerations⁴²¹.

This is pointedly summarized in the Three-year Action Plan on SOE Reforms 2020-2022 (*‘Three-year Plan’*), adopted on 30 June 2020 by the Central Committee for Comprehensive and Deep Reform. While the full text of the Three-year Plan has not been published, its main points, as discussed in the press and explained by the central SASAC in its special report to the NPC in October 2020⁴²², are the following: (i) to improve modern enterprises system with Chinese characteristics and develop scientific and effective corporate management mechanism; (ii) to push for optimization and restructuring of state-owned asset and focus on the main business of SOEs; (iii) to push forward mixed ownership reform of SOEs; (iv) to stimulate the vitality of SOEs and improve market-oriented operational system; (v) to develop a state-owned asset regulatory system focusing on the management of state capital; (vi) to encourage SOEs to participate in fair market competition; (vii) to implement a series of special actions of SOE reform; (viii) to strengthen the leadership of the CCP in SOEs. This all-encompassing language which ranges from continued commitment to building a system with Chinese characteristics under an even stronger CCP leadership to references to fair competition and market-oriented management must be interpreted in line with the deliberations of President Xi, published in parallel in November 2020⁴²³:

SOEs are an important material and political foundation for socialism with Chinese characteristics, and are an important pillar and force for the Party to govern and rejuvenate the country. They must be stronger, better, and larger. Of course, state-owned enterprises must also be reformed and optimized, but they cannot be denied or weakened.

Echoing this, Hao Peng, Party Secretary of the CPC Committee and Chairman of SASAC, specified further in his essay published in the CCP journal Qiushi in January 2021 that SOEs are real and political key fundamentals of socialism with Chinese characteristics, key pillars and reliable forces for the CCP to effectively govern and renew the country, as well as key

⁴²¹ See, for example, Leutert, W., and Eaton, S. (2021), *Deepening Not Departure: Xi Jinping's Governance of China's State-owned Economy*, The China Quarterly, 248(S1), 200-221. doi: 10.1017/S0305741021000795, p. 200-202. See also Ip, G. (2021), *Evergrande's Struggles Reflect China's Efforts to Rein in Multiyear Debt Boom*, The Wall Street Journal, available at: https://www.wsj.com/articles/evergrandes-struggles-reflect-chinas-efforts-to-rein-in-multiyear-debt-boom-11632319200?st=s3orjaijmusmz9h&reflink=desktopwebshare_permalink (accessed on 6 February 2023).

⁴²² Special Report of the State Council on the Management of State Assets of Enterprises under the Supervision of the State Assets Supervision and Administration Commission in 2019 (original text in Chinese), available at: <http://www.npc.gov.cn/npc/c30834/202010/92861cc1660044d0b4c1511083bab902.shtml> (accessed on 6 February 2023). For more details about the content of the Three-year Plan, available at: <http://www.gov.cn/xinwen/2020zccfh/35/wzsl.html> (accessed on 6 February 2023) as well as https://www.chinadaily.com.cn/business/full_coverage/2020soereform (accessed on 16 October 2023).

⁴²³ See <https://interpret.csis.org/translations/major-issues-concerning-chinas-strategies-for-mid-to-long-term-economic-and-social-development/> (accessed on 4 March 2022).

components of the national governance system under the CCP's leadership⁴²⁴. Moreover, he emphasized in the abovementioned special report to the NPC on the SOEs that:

[...] the scale and strength increased significantly. By the end of 2019, the total assets and owner's equity of SOEs increased by 1.8 times and 1.6 times, respectively, compared with those at the end of 2012. [...] The adjustments on the key fields of pillar industries and the layout of strategic emerging industries were further strengthened. State-owned capital was further concentrated to pillar industries and key fields related to national security, lifelines of the national economy, and people's livelihood, and to forward-looking strategic industries. [...]. With the 14th FYP ahead of us, we will follow the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era; strengthen our consciousness of the need to maintain political integrity, think in big-picture terms, follow the leadership core and keep in alignment with the central Party leadership; stay confident in the path, theory, system, and culture of socialism with Chinese characteristics; [...] adhere to and strengthen overall Party leadership for SOEs; continue and improve our basic economic system and continue to orient our economic reform towards the socialist market economy [...]. We need to increase efforts to improve quality and performance and stabilize growth, and give better play to the supporting role of SOEs in the national economy. We will guide enterprises to overcome difficulties and strive for the annual targets, spare no efforts to achieve sound operations and development, actively expand effective investment, enhance the in-depth collaboration on industry chains and supply chains with private enterprises and SMEs, and proactively prevent and defuse risks of various types, so as to realize the sustained rapid growth of performance of most central SOEs and the positive growth of overall performance of central SOEs and make significant contributions to stabilizing the economy.

The 14th FYP, passed by the NPC in March 2021 (see Chapter 4), is fully in line with the above with respect to the SOE sector⁴²⁵:

Centered on the strategy of serving the country, we will persist in both advancing and retreating, both taking action and being inactive, accelerate the layout optimization, structural adjustment, and strategic reorganization of the state-owned sector, enhance the competitiveness, innovation, control, influence, and anti-risk capabilities of the state-owned sector, and strengthen and optimize state-owned capital and SOEs. We will give full play to the strategic supporting role of the state-owned sector, encourage the state-owned sector to further focus on functions such as strategic security, industry leadership, the national economy and the people's livelihoods, and public services, adjust and revitalize inventory assets, optimize the

⁴²⁴ See Thoroughly implement the three-year action for the reform of state-owned enterprises and promote the high-quality development of state-owned assets and state-owned enterprises (2021), (original text in Chinese), available at: http://www.qstheory.cn/dukan/qs/2021-01/16/c_1126986076.htm (accessed on 8 February 2023).

⁴²⁵ See the 14th FYP, Article XIX, Section 1, available at: <https://live-cset-georgetown.pantheonsite.io/publication/china-14th-five-year-plan/> (accessed on 8 February 2023).

allocation of incremental capital, concentrate on important industries that are related to national security and the lifelines of the national economy, concentrate on important industries related to the national economy and the people's livelihoods, such as those involved in the provision of public services, emergency capacity building, and public welfare, and concentrate on forward-looking strategic emerging industries.

Thus, the recent developments provide a confirmation that despite the permanent process of reforming the Chinese SOE sector, a market-oriented transformation of SOEs based on concepts such as competitive neutrality has actually been removed from the agenda of the Chinese authorities. These recent policy documents do not even refer to market-oriented reforms anymore as one of policy goals which should possibly be balanced with other objectives. Instead, any partial adjustments aimed for instance at improving the financial health of SOEs⁴²⁶ or increasing the participation of private capital in SOEs⁴²⁷ are embedded in the narrative of strengthening the Party leadership. Under this overarching goal, SOEs remain – and are explicitly referred to as such – part of a wider strategy of creating strong industrial entities which will undertake a national mission of innovation in strategic (technological) areas⁴²⁸.

In addition, a state-owned sector which represents a sufficiently important portion of the overall economy can be employed by the Chinese authorities not only to advance government industrial policies directly but also for other related tasks on the Chinese government's political agenda. Exercising economic pressure by SOEs on market players which have fallen out of favour with the Chinese government – such as discontinuing business operations with certain foreign banks – represents a typical example of this use of the state-owned sector. Such actions by SOEs which are clearly not based on market considerations but instead follow a political logic are only conceivable in a system with robust government control over SOEs which, at the same time, possess sufficient economic power to economically damage entities allegedly acting in contravention of the political line set by the government⁴²⁹.

Another example of how SOEs pursue and implement various government goals can be observed in the Xinjiang province. As Party Secretary of the CPC Committee and SASAC Chairman Hao Peng stated: *“during the Thirteenth Five Years Plan period, state-owned central enterprises have continuously increased their counterpart assistance to Xinjiang, industrial cooperation has continued to deepen, and assistance has been continuously increased, making*

⁴²⁶ See *The General Office of the CPC Central Committee and the General Office of the State Council issued the Guiding Opinions on Strengthening the Asset-Liabilities Constraint of State-Owned Enterprises* (original text in Chinese), available at http://www.gov.cn/zhengce/2018-09/13/content_5321717.htm (accessed on 8 February 2023).

⁴²⁷ For example, promotion of mixed ownership was one of the objectives laid down in the Guiding Opinions. See further the Opinions of the State Council on State-owned Enterprise Developing Mixed Ownership Economy of 23 September 2015, Guo Fa [2015] No. 54, as well as SASAC's Operational Guidelines for Mixed-ownership Reform among Central SOEs of 31 October 2019, Guo Zi Chan Quan [2019] No. 653.

⁴²⁸ Such as Strategic Emerging Industries (see Section 5.2 and footnote 372 above).

⁴²⁹ See: *How Beijing humbled Britain's mighty HSBC* (2021), available at: <https://www.reuters.com/article/us-hsbc-china-politics-specialreport-idUSKCN2E410S> (accessed on 8 February 2023). See also Grünberg, N., *Party-state capitalism* (referenced in Chapter 2).

positive contributions to Xinjiang's social stability, long-term stability, and economic and social development”⁴³⁰. During that period, central SOEs invested in 32 000 projects, 9 322 of which were major infrastructure projects, amounting to RMB 767,05 billion of total investments⁴³¹. Following such recognition, SASAC outlined further tasks expected from central SOEs in relation to Xinjiang. These include promoting industrial assistance to Xinjiang and cultivating and expanding industries with distinctive advantages, stabilizing employment, promoting rural revitalization, strengthening joint ventures (‘JVs’) and cooperation between SOEs and Xinjiang Production and Construction Corps, etc. Several SOEs made pledges in that regard (PetroChina, Sinopec, China Telecom Group, China Guoxin etc.), with Sinopec specifying that it planned to invest RMB 80 to 100 billion in the Xinjiang industry during the 14th FYP period, while China Mobile planned to invest more than RMB 27 billion in free donations, network construction, and low-interest loans during the same period⁴³².

The Chinese government’s use of SOEs during the COVID-19 pandemic is another illustration of China’s distortive policies in relation to SOEs. To alleviate financing constraints of SOEs during the pandemic, the central government and regional governments set up rescue funds totalling around RMB 210 billion⁴³³. After the central SASAC set up a credit guarantee fund of RMB 100 billion in July 2020, local SASACs followed – Hebei, Yunnan, and Henan provinces established their own funds of RMB 30 billion each, while Tianjin set up a RMB 20 billion fund⁴³⁴. However, the purpose of the funds was not only to raise the market confidence in SOEs, but also to serve the Government’s parallel purpose of advancing its economic goals and public policies by these funds, with their use being steered by local SASACs. As local SASACs were setting up their funds, Central SASAC released a ‘Guiding Opinion on Strengthening the Debt Risk Management and Control of Local SOEs’⁴³⁵. Point 6 of the opinion emphasizes that: “*all local SASACs should strengthen the management and control of the use of debt financing funds for local state-owned enterprises and urge enterprises to timely and efficiently invest the funds raised in key areas and important industries such as strategic security, industry leadership, national economy and people’s livelihood and public services.*” Thus, just like the Chinese government continues to consolidate unprofitable SOEs through mergers (see Section 5.5.1), it is feared that credit guarantee funds could further exacerbate the risk of extending the lives of

⁴³⁰ Liu, L. (2021), *State-owned Assets Supervision and Administration Commission: Increase policy support for Xinjiang* (original text in Chinese), China Securities Journal, available at: https://www.cs.com.cn/xwzx/hg/202109/t20210913_6203592.html?mc_cid=b95f3c429e&mc_eid=523ec61747 (accessed on 8 February 2023).

⁴³¹ Ibidem.

⁴³² Ibidem.

⁴³³ Doi, N. (2021), *China Backs State-owned Enterprises with \$32bn in Rescue Funds*, Nikkei Asia, available at: <https://asia.nikkei.com/Business/Markets/China-debt-crunch/China-backs-state-owned-enterprises-with-32bn-in-rescue-funds> (accessed on 8 February 2023).

⁴³⁴ Wang, L., *State-owned Assets Supervision and Administration Commissions in many places have set up credit stability funds to strive to resolve the debt risks of state-owned enterprises* (original text in Chinese) S&P Global 2021, available at: https://www.spgchinaratings.cn/research/articles/2021-06-28_bulletin_soe-credit-funds_cn_28jun2021_cn (accessed on 6 January 2023).

⁴³⁵ Notice on the issuance of the Guiding Opinion on Strengthening the Debt Risk Management and Control of Local SOEs, State-owned Assets Supervision and Administration Commission (2021) No. 18 (original text in Chinese), available at: <http://www.sasac.gov.cn/n2588035/n16549643/n16549900/n16550118/c17761913/content.html> (accessed on 8 February 2023).

unprofitable enterprises ('zombie companies')⁴³⁶. In other words, the text of this Guiding Opinion shows that the rescue funds are not simply meant to extend a lifeline to SOEs in financial distress but come with the additional mandate for SASAC(s) to ensure that the funds are used in areas previously identified by the government as priorities.

All these recent developments and examples illustrate that as the SOE reforms have been morphing and feeding into a variety of government industrial policies over the years - such as various FYPs (see e.g. Chapters 4, 14, 15 and 16), Made in China 2025 (see Section 4.2.3), the supply-side structural reform ('SSSR'), the dual circulation (see Chapter 8.2) etc.⁴³⁷, the overriding government objective for SOEs has been for them to become a crucial factor in the upcoming quest for self-reliance and self-sufficiency. This is confirmed by the explicit references in recent political statements and policy documents to the strategic supporting role of SOEs, to the SOE sector growing bigger, stronger and optimized, as well as the SOE sector following the Party leadership (see Section 5.5 below). The role of the private enterprises is to remain subordinate to the state sector, their development being supported by the Government especially when *"they can participate in the implementation of major national strategies and be encourage[d] [...] to actively fulfil their social responsibilities and participate in social welfare and charitable activities"*⁴³⁸.

5.5. GOVERNMENT CONTROL OVER SOEs

Given the strategic importance the Chinese authorities attach to the state-owned sector, the government has great interest in maintaining effective control over the conduct of SOEs. That control is essentially exercised through two channels: first, the Chinese government reshapes the corporate structure of the sector; and second, it has control over the management and personnel of individual SOEs.

5.5.1. GOVERNMENT CONTROL OVER SOEs' CORPORATE STRUCTURE – FEWER BUT BIGGER SOEs

The government directly shapes the structure of the various sectors in order to achieve its strategic economic goals. Some key sectors are traditionally kept under full state control simply by means of regulatory prohibition for non-state companies to enter. SASAC's 2015 provisional list of SOEs in sectors where absolute state control should be maintained featured the following enterprises: China North Industries Group; China Grain Reserves; China National Petroleum; Sinopec Group; China National Offshore Oil; China Telecom Group; China Mobile Group; and China United Network Communications Group⁴³⁹.

⁴³⁶ Xin, Y. (2021), *Many provinces have set up credit stability funds to resolve the debt risks of state-owned enterprises, and the actual effect remains to be seen* (original text in Chinese), Jiemian 2021, available at: https://www.jiemian.com/article/6302879.html?mc_cid=4d676e08e8&mc_eid=523ec61747 (accessed on 8 February 2023).

⁴³⁷ See further Naughton, B., *State Enterprise Reform: Missing In Action*, China Economic Quarterly June 2016, Gavekal Dragonomics, p. 20-21.

⁴³⁸ See the 14th FYP, Article XIX, Section 5.

⁴³⁹ See Mizuho Securities Asia Ltd. (2015), *Mizuho Economic Research report of 5 June 2015*, p. 4.

Moreover, according to the State Council in 2016: “China will speed up the regrouping of central State-owned enterprises to further reform and develop them”⁴⁴⁰. As pointed out by a SASAC source, “to judge the regrouping of central SOEs, one must have a global and national strategic view on whether it will increase the international competitiveness of Chinese enterprises, safeguard the security of national industries and people’s livelihoods, and protect the environment for the development of small and medium-sized enterprises.” In other words, the mergers/consolidation initiative aims to regroup the central SOEs “to 80 pro-innovation and international-competitive ‘national enterprises’”⁴⁴¹. Corresponding government regulations have already been in place over a longer period: the 2010 Opinions of the State Council on Promoting Corporate Merger and Restructuring⁴⁴² were followed in 2013 by the Guiding Opinions on Accelerating the Promotion of Mergers and Reorganizations of Enterprises in Key Industries (‘Mergers GO’)⁴⁴³ and in 2014 by the Opinions of the State Council on Further Optimizing the Market Environment for the Merger and Restructuring of Enterprises, all of which promote mergers of SOEs⁴⁴⁴.

In line with the abovementioned statements by the State Council and SASAC, the Mergers GO stipulate that ⁴⁴⁵ :

Through promoting enterprises' mergers and reorganisation, [the aims and tasks are]

-to raise the industry concentration level,

-to foster scaling up,

-to intensify operations,

-to raise market competitiveness,

-to foster a number of large enterprise groups that are competitive at international level,

-to foster the industry's structural optimisation and upgrading:(...)

-to speed up the strategic adjustment of the state-owned economy's arrangements and structures,

⁴⁴⁰ China to further regroup central State-owned enterprises (2016), available at: http://english.gov.cn/policies/policy_watch/2016/08/23/content_281475423704259.htm (accessed on 8 February 2023). See also European Union Chamber of Commerce in China (2017), *China Manufacturing 2025, putting industrial policy ahead of market forces*, p. 19, available at: http://www.europeanchamber.com.cn/en/publications-archive/473/China_Manufacturing_2025_Putting_Industrial_Policy_Ahead_of_Market_Force (accessed on 10 October 2017).

⁴⁴¹ *Ibid.*

⁴⁴² Opinions of the State Council on Promoting Corporate Merger and Restructuring, Guo Fa [2010] No. 27, issued on 28 August 2010, available at: <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=137472> (accessed on 8 February 2013).

⁴⁴³ Gong Xin Bu Lian Chan Ye (2013) No. 16, Guiding Opinions on Accelerating the Merger and Reorganization of Enterprises in Key Industries (original text in Chinese), available at: http://www.gov.cn/zwggk/2013-01/22/content_2317600.htm, (accessed on 8 February 2023). The Mergers GO spell out the official policy to undertake industrial concentrations of domestically-invested companies in selected sectors, such as automotive, steel, cement, shipbuilding, electrolytic aluminium, rare earths, electronic information, pharmaceuticals or agriculture industries.

⁴⁴⁴ See Zhong Fa (2014), Opinions of the State Council on Further Optimizing the Market Environment for Enterprise Mergers and Reorganizations No. 14, Promulgated on 7 March 2014, available at: http://www.gov.cn/zhengce/content/2014-03/24/content_8721.htm (accessed on 13 February 2023).

⁴⁴⁵ See Main Objectives and Key Tasks of the Mergers GO, Chapter 2 (emphasis added).

-to foster the development of the non-public economy and of SMEs,
-to improve the economic fundamental system allowing the development of the
public ownership economy as a pillar together with the development of the
diversified ownership economy. (emphasis added)

The consolidation plans resulted in a growing number of SOE restructurings⁴⁴⁶, including a series of SOE mega-mergers, for instance between the railway vehicle manufacturers China North Locomotive & Rolling Stock Industry and China South Locomotive & Rolling Stock in 2014⁴⁴⁷, between the shipping groups COSCO and China Shipping in 2015⁴⁴⁸, between the mining conglomerates China Metallurgical Group Corporation and China Minmetals Corporation (*‘China Minmetals’*) in 2015⁴⁴⁹, between the steel producers Baosteel Group Corp. and Wuhan Iron & Steel Group Corp. in 2016⁴⁵⁰, between the textile equipment maker China Hi-Tech Group Corp. and China National Machinery Industry Corp in 2017⁴⁵¹, between the coal miner Shenhua Group Corp. and the energy utility Guodian Group Corp. in 2017⁴⁵², between the shipbuilding groups China State Shipbuilding Corporation and China Shipbuilding Industry Company in 2019⁴⁵³ and between the chemical groups Sinochem and ChemChina in 2021⁴⁵⁴. Streamlining the structure of existing SOEs into large industrial groups - with sometimes hundreds of subsidiaries and operations covering entire industrial chains from raw materials extractions to end user products and services⁴⁵⁵ - facilitates in turn the state's goal of

⁴⁴⁶ The restructuring process and the corporatisation of SOEs mentioned in Section 5.5.1 are taking place in parallel and complement each other.

⁴⁴⁷ See Zhong, N., (2014), *Two Railway Giants Announce Merger*, China Daily, available at: http://www.chinadaily.com.cn/business/2014-12/31/content_19206058.htm (accessed on 10 February 2023). See also Mizuho Securities Asia Ltd (2015), *Mizuho Economic Research report of 5 June 2015*.

⁴⁴⁸ See Chiu, J. and Paris, C. (2015). *China Approves Merger of Cosco, China Shipping*. The Wall Street Journal, available at: <http://www.wsj.com/articles/china-approves-merger-of-cosco-china-shipping-1449834748> (accessed on 10 February 2023). See also European Union Chamber of Commerce in China (2017), *China Manufacturing 2025, putting industrial policy ahead of market forces*, p. 19.

⁴⁴⁹ See for example Hornby, L. (2015). *Beijing orchestrates mining merger between Minmetals and MCC*, Financial Times; available at: <https://www.ft.com/content/6df65a0a-9d99-11e5-8ce1-f6219b685d74> (accessed on 10 February 2023).

⁴⁵⁰ See Wu, Y. and Yang, Z. (2016), *Big merger forms No 2 steel giant*, China Daily, available at: http://usa.chinadaily.com.cn/business/2016-12/02/content_27545506.htm (accessed on 10 February 2023).

⁴⁵¹ See Feng, C. (2017). *Machinery Giants Merge as Industry Reform Plow Ahead*. Caixin Global; available at: <http://www.caixinglobal.com/2017-07-03/101109351.html> (accessed on 10 February 2023).

⁴⁵² See O'Connor, S. (2018). *SOE Megamergers Signal New Direction in China's Economic Policy*. U.S.-China Economic and Security Review Commission, available at: <https://www.uscc.gov/sites/default/files/Research/SOE%20Megamergers.pdf> (accessed on 10 February 2023).

⁴⁵³ See for example: <https://www.maritime-executive.com/article/csic-cssc-re-merger-completed> (accessed on 13 February 2023).

⁴⁵⁴ See *Government clears merger of SinoChem and ChemChina*, available at: <https://www.chemistryworld.com/news/government-clears-merger-of-sinochem-and-chemchina/4013530.article> (accessed on 10 February 2023). Other SOE mergers have been seen e.g. in the energy, food and agriculture or construction sectors.

⁴⁵⁵ The Shenhua Group active in coal mining, electricity generation, new energy, coal-to-chemicals production, railway transport, port handling, and shipping represents an example (see at: www.csec.com/zgshwwEn/gsjj/gsjjList.shtml (accessed on 10 February 2023)), the COSCO group which describes its operations as “upstream and downstream links along the industry chain, such as shipping, terminals, logistics, shipping finance, ship repair and shipbuilding” being another one (see at: <https://en.coscoshipping.com/col/col6918/index.html> (accessed on 10 February 2023)).

SEI “*exerting control and implementing development policies through the networks organized around the core companies*”⁴⁵⁶. With SOEs thus serving as important levers in the Chinese government’s steering of the economy, most recently exemplified by their role in stabilising the economy during the 2020 coronavirus pandemic, it can be expected that, instead of shutting down unproductive SOEs in the face of private sector competition, the practice of SOE megamergers will continue⁴⁵⁷. It is worthwhile noting that the State Council emphasized already in 2016 the fact that “*the regrouping is not a simple reduction of the number of central SOEs as their assets expanded seven times during the past 13 years*”⁴⁵⁸ and that it also explicitly articulated its intention to “*fortify and strengthen a group of central SOEs*”⁴⁵⁹. The creation of the China Mineral Resources Group in 2022⁴⁶⁰ represents another example of how the policy to consolidate and strengthen SOEs continues. The group was set up with a registered capital of approximately EUR 3 billion and its tasks are to engage in exploration of mineral resources, ore mining, the import and export of minerals, as well as supply chain management services, investment activities and asset management. The purchasing needs of state-owned companies such as the China Baowu Steel Group, Ansteel, China Minmetals and Shougang Group would be included in the purview of the China Mineral Resources Group, giving China a greater bargaining power in iron ore pricing worldwide.

However, the government intervention into reshaping the corporate landscape goes much further than merely consolidating central SOEs. Chinese industrial policies grow ever more complex, encompassing new sectors, such as the SEIs (see Sections 2.3.2, 4.2.1 and 5.2), as well as new objectives, such as technological independence and global competitiveness (see Section 4.2.5). Such new areas of industrial policies pose additional challenges – for example, attracting the necessary expertise from the private sector to SOEs may be impossible⁴⁶¹ – in response to which the government goes well beyond the comparatively simple and common tool of mergers shaping the SOE sector. Additional tools include the abovementioned GGFs (see Chapter 6 for more details) and the promotion of ‘*national teams*’ between state-owned and private companies. The latter approach seems more pragmatic and may be characterized by the broad government slogan ‘*market-driven and government-steered*’⁴⁶². Nevertheless, the ongoing streamlining of the central SOEs, clearly confirms that creating a limited number of state-controlled entities which can serve the national industrial strategies in pillar industries

⁴⁵⁶ Lin, L. and Milhaupt, C. (2013). *We are the (National) Champions: Understanding the Mechanisms of State Capitalism in China?* Stanford Law Review Vol. 65:697, p. 730.

⁴⁵⁷ European Union Chamber of Commerce in China (2021), *European Business in China Position Paper 2021/2022*, p. 22.

⁴⁵⁸ See State Council website. (2016). *China to further regroup central State-owned enterprises*; available at: http://english.gov.cn/policies/policy_watch/2016/08/23/content_281475423704259.htm (accessed on 10 February 2023).

⁴⁵⁹ See 2016 Guiding Opinions, point 3(1).

⁴⁶⁰ See Launch ceremony for China Mineral Resources Group held in Beijing, available at: <https://www.globaltimes.cn/page/202207/1271377.shtml> (accessed on 10 February 2023).

⁴⁶¹ European Union Chamber of Commerce in China (2021). *European Business in China Position Paper 2021/2022*, p. 93.

⁴⁶² See Naughton, B., *The Rise of China’s Industrial Policy 1978 – 2020* (2021), p. 100, available at: https://dusselpeters.com/CECHIMEX/Naughton2021_Industrial_Policy_in_China_CECHIMEX.pdf, (accessed on 10 February 2023).

remains a time-tested mechanism by which the Government can exercise its control over the industry.

5.5.2. GOVERNMENT CONTROL OVER SOEs THROUGH PERSONNEL MANAGEMENT AND CCP PRESENCE

A second channel of Chinese government's control over SOEs is the persisting influence over appointments of key management personnel, as well as the ever-stronger presence of the Communist party organizations in SOEs.

Formally, SASAC and local SASACs are competent to control the composition of SOEs' management. This follows from Articles 12 and 22 of the SOE Law as well as Article 13 of the SASAC Regulation. Article 12 of the SOE Law specifies that *“a body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law.”* Article 22 of the SOE Law spells out the role of such bodies in relation to senior staff of SOEs:

A body performing the contributor's functions shall, according to laws, administrative regulations and enterprise bylaws, appoint or remove, or suggest the appointment or removal of the following personnel of a state-invested enterprise: (1) Appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise; (2) Appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company [...].

According to Article 13 of the SASAC Regulation, one of SASAC's main responsibilities is to *“appoint or remove the responsible persons of the invested enterprises and evaluate their performance in accordance with the statutory procedures, and grant rewards or impose punishments based on the evaluation results”*⁴⁶³. The fact that SASAC appoints and removes managers of SOEs is a sign of significant State influence considering the scale of SOEs and the dominant role of the state-owned economy in China.

The State's influence is further strengthened by the way the CCP is involved in the appointment process. Indeed, the State Council Guiding Opinions on SOE Corporate Governance (*‘Corporate Governance GO’*) from April 2017⁴⁶⁴ contain a direct mandate for the Party to set the procedures and recommend candidates for SOE managers formally appointed by the boards of directors⁴⁶⁵. At the same time, *“the secretary of the Party group (Party committee) and the chairman of the board of directors shall in general be the same person and further work shall be done for the full-time deputy secretary to join the board of directors”*⁴⁶⁶. The Corporate Governance GO therefore effectively conferred on the Party the power to exercise significant

⁴⁶³ See SASAC Regulation, Article 13(4).

⁴⁶⁴ Guiding Opinions of the General Office of the State Council on Further Improving the Corporate Governance Structure of State-owned Enterprises (promulgated on 24 April 2017; Guo Ban Fa [2017] No. 36).

⁴⁶⁵ Corporate Governance GO, Article II.5.(3).

⁴⁶⁶ *Ibid.*

influence within the SOE's central decision-making body, as well as to nominate the SOE's management. This is what the Corporate Governance GO described as: “*inherent combination of the principle of cadre management by the Party with the selection and appointment of managers by the board of directors*” or “*leadership system of bi-directional entry and cross holding of posts*”⁴⁶⁷.

The SASAC Notice summarises the system of controlling the SOEs' personnel as follows⁴⁶⁸:

The principle of Party governance over cadres shall always be combined with market-oriented mechanisms. It is necessary to safeguard the Party's leadership over the personnel work of cadres and its right to manage important cadres, and strictly adhere to the criteria of loyalty to the Party, boldness in innovation, competency in corporate governance and enterprise development and upright and clean characters in selecting and appointing SOE leaders. The Party organizations of SOEs shall tighten control in terms of determining criteria, standardizing procedures, participating in assessment, recommending candidates, etc., manage managerial members in accordance with the laws of the market, establish a scientific and reasonable appraisal and evaluation system, and set a clear orientation of positive incentives for SOE leaders.

As for supervision by SASAC over SOE leaders after they are appointed, the Classification GO provides for the following with respect to commercial SOEs⁴⁶⁹:

The regulation of their State-owned assets shall be strengthened by primarily focusing on capital regulation, with emphasis being placed on effectively managing the layout of State-owned capital and making efforts to raise the return, standardize the operation, and safeguard the security of State-owned capital. It is imperative to establish and improve supervision institutions and mechanisms, disclose information pursuant to laws and regulations, strictly pursue accountability, and prevent the loss of State-owned assets during reform and development. Specifically, commercial SOEs whose primary business belongs to industries and fields of sufficient competition shall focus on strengthening regulation at the group company level, effectively enforce and safeguard the lawful exercise of the rights to make material decisions, select and appoint personnel, distribute remunerations, etc. by the board of directors, ensure the business operation autonomy of the management, and actively promote the system of professional managers.

However, with regard to commercial SOEs whose primary business belongs to major industries and key fields concerning national security or national economic lifeline, or that are mainly responsible for major special project tasks⁴⁷⁰:

It is required to focus efforts on strengthening the regulation of the layout of State-owned capital, and guide such enterprises to highlight their primary business and better serve major strategies and macro-control policies of the State.

⁴⁶⁷ Ibid.

⁴⁶⁸ See SASAC Notice, Point 2(5).

⁴⁶⁹ Classification GO, Section 2(3).

⁴⁷⁰ Ibid.

In practice, concerning the central SOEs – all of which are complex multi-layered structures of numerous legal entities, typically with a SASAC wholly-owned group company at the top of that structure – the CCP Central Organisation Department⁴⁷¹ appoints top executives of the group companies for the ‘*important backbone state-owned enterprises*’. The top management of the remaining central SOEs, as well as of local SOEs, is nominated by SASAC in coordination with the local governments⁴⁷² (see also Section 3.3)⁴⁷³. Effectively, this system results in government officials (usually being CCP members at the same time – see Section 3.2) being appointed SOE managers and/or board members and, conversely, SOE managers returning back to take up government functions⁴⁷⁴. Naturally, the more prominent an SOE, the more senior CCP members tend to be appointed - approximately 10% of the alternate members of the CCP Central Committee serve as executives in the largest central SOEs, such as Sinopec or ICBC⁴⁷⁵. Such organisational set-up not only ensures effective control of government agencies over SOEs, it also solidifies and reinforces the manifold informal but important ties between the State and its enterprises. In addition, such environment is conducive to corruption by individuals holding managerial positions in SOEs – President Xi’s anticorruption campaign⁴⁷⁶ and the government’s attempts to put in place at least some additional controlling mechanisms⁴⁷⁷ to curb such undesirable behaviour being a proof.

In addition to controlling SOEs through appointing the management personnel, the CCP’s general claim to leadership, as well as its organizations in individual enterprises (see Section 3.4.1), represent a further channel which state authorities employ to exercise their influence over the activities of SOEs. President Xi Jinping stated in October 2016 at a meeting in which both senior government officials and SOE executives participated that “*Party leadership and*

⁴⁷¹ The party organ entrusted with management of elite cadres.

⁴⁷² Rosen, D.H., Leutert, W., Shan G. (2018), p. 15.

⁴⁷³ See SASAC announcement about personnel changes in central SOEs (original text in Chinese), available at: <http://www.sasac.gov.cn/n2588035/n2588325/index.html> (accessed on 10 February 2023).

⁴⁷⁴ See Kratz, A. (2013). *Reforming China's State-owned Enterprises, China perspectives*, no. 2013/1. For instance, it has been reported that in 2012 among 183 upper-echelon employees (deputy-minister and above) in 19 Ministries and Commissions, 56 have had experience in managing an SOE. Specific examples of this system entail for instance consecutive top managerial position of one individual at the Chalco/Chinalco conglomerate and at SASAC (see Komesaroff, M. (2016). *Return of the Line Ministries*, China Economic Quarterly, Vol. 20 No. 2. Gavekal Dragonomics) or sequences of government posts and managerial positions in a number of energy SOEs held by close relatives of other high ranking government officials (see Hornby, L. (2017). *China's consolidation push turns to sprawling power sector*. Financial Times; available at: <https://www.ft.com/content/50614ed4-4c69-11e7-919a-1e14ce4af89b> (accessed on 16 June 2017). For further examples of rotation of cadres between SOEs see e.g. The Economist (2012). *State Capitalism is Not All the Same*, available at: <http://www.economist.com/node/21542924> (accessed on 10 February 2023).

⁴⁷⁵ See *How Dominant are Chinese Companies Globally?*, available at: <https://chinapower.csis.org/chinese-companies-global-500/> (accessed on 10 February 2023).

⁴⁷⁶ Leutert, W. (2016). *Challenges Ahead of China's Reform of State-Owned Enterprises*. Asia Policy No. 21, p. 93; Naughton, B. (2016). *State Enterprise Reform: Missing In Action*. China Economic Quarterly June 2016. Gavekal Dragonomics. Concerning the alleged ulterior motives of the anticorruption campaign, see for example Feng, E. (2021). *How China's Massive Corruption Crackdown Snares Entrepreneurs Across The Country*, available at: <https://www.npr.org/2021/03/04/947943087/how-chinas-massive-corruption-crackdown-snares-entrepreneurs-across-the-country> (accessed on 10 February 2023).

⁴⁷⁷ Leutert, W. (2016). *Challenges Ahead of China's Reform of State-Owned Enterprises*. Asia Policy No. 21, p. 93; available at: <https://www.brookings.edu/articles/challenges-ahead-in-chinas-reform-of-state-owned-enterprises/> (accessed on 10 February 2023).

building the role of the party are the root and soul for state-owned enterprises. [...] The Party's leadership in state-owned enterprises is a major political principle, and that principle must be insisted on. [...] The weakening, fading, blurring or marginalisation of Party leadership in state firms will no longer be tolerated"⁴⁷⁸. This was echoed in several documents issued by the CCP Central Committee in May 2021, namely, the Opinions on Strengthening Party Leadership in Improving Central SOEs' Corporate Governance⁴⁷⁹, and the Regulations on Organisational Work of the CCP⁴⁸⁰. Both documents invoke Xi Jinping's Thought on Socialism with Chinese Characteristics for a New Era and stress the need for strengthening the leadership role of the CCP.

The formal framework for the Party's role, within which further specific implementing actions can take place, is also stipulated in the existing legislation, such as Article 19 of the Company Law (according to which "[i]n a company, an organization of the Communist Party of China shall be established to carry out the activities of the party [...]. The company shall provide the necessary conditions for the activities of the party organization."), Article 33 of CCP Constitution (see Chapter 3), as well as Point 7(24) of the Guiding Opinions (see Section 5.3). Shortly after the publication of the Guiding Opinions, the requirement for SOEs to integrate the Party into their corporate governance was further elaborated in a document called Several Opinions on Adhering to Party Leadership and Strengthening Party Building in Deepening the Reform of SOEs, issued by the General Office of the CCP Central Committee⁴⁸¹.

The more detailed implementing provisions on the widely reported process of strengthening the party-building work in the state-owned sector⁴⁸² can be found in particular in the Corporate Governance GO. Article I.2.(2) lays down, among others, also the principle of the leadership by the Party:

[...] it is imperative to [...] unify the strengthening of the Party's leadership with the improvement of corporate governance, specify the legal status of the Party's organization of the State-owned enterprises in the corporate governance structure, bring into play the leadership core role and political core role of the Party's organization in the State-owned enterprises and ensure that the Party's organization determines the direction, manages the overall situation and guarantees the implementation.

⁴⁷⁸ Feng, E. (2016). *Xi Jinping Reminds China's State Companies of Who's the Boss*. New York Times; available at: https://www.nytimes.com/2016/10/14/world/asia/china-soe-state-owned-enterprises.html?_r=2 (accessed on 11 April 2017).

⁴⁷⁹ Full text of the Opinions has not been published as of writing of this report. However, the main elements are available at: www.gov.cn/zhengce/2021-05/30/content_5614000.htm (accessed on 10 February 2023).

⁴⁸⁰ *The Central Committee of the Communist Party of China issued the Regulations on the Organization and Work of the Communist Party of China* (original text in Chinese), promulgated on 22 May 2021, available at: http://www.gov.cn/zhengce/2021-06/02/content_5615053.htm (accessed on 10 February 2023).

⁴⁸¹ See: <http://theory.people.com.cn/n/2015/0921/c49150-27611630.html> (accessed on 10 February 2023).

⁴⁸² European Union Chamber of Commerce in China (2017). *China Manufacturing 2025, putting industrial policy ahead of market forces*, p. 19-20.; Hornby, L. (2016). *China rows back on state-sector reform*, Financial Times; available at: <https://www.ft.com/content/92e52600-31f7-11e6-ad39-3fee5ffe5b5b> (accessed on 23 March 2017); U.S.-China Economic and Security Review Commission (2016). *Annual report to Congress*, p. 92.

Subsequently, in Section II, the Corporate Governance GO call for standardization of subject rights and responsibilities with respect to SOE governance. Party organizations are considered to be one of the relevant SOE corporate governance subjects, along with the board of shareholders, board of directors, management, board of supervisors and the staff representative assembly. Article II.5.(1) stipulates: “*Sticking to Party's leadership and strengthening Party's construction are the unique advantages of State-owned enterprises.*” Moreover:

the legal status of the Party's organization in the corporate governance structure of the State-owned enterprises shall be specified, the overall requirement of the Party construction work shall be included in the articles of association of State-owned enterprises and rights, responsibilities and work method of Party organization in decision-making, execution and supervision shall be specified to make Party organization an integral part of corporate governance structure of enterprises. The role of Party organization as the leadership core and political core shall be brought into full play to [...] support the performance of duties by the board of directors, board of supervisors and the management in accordance with the law and guarantee the implementation of guidelines and policies of the Party and the State.

The SASAC notice contains very similar language:

*It is required to clarify and enforce the statutory status of Party organizations in the corporate governance structures of SOEs, include the overall requirements on Party building into the articles of association of companies, fine-tune the rules and procedures for Party organizations to participate in the decision-making of major issues, and enable Party organizations to play their role in an organized, institutionalized and concrete manner; and, properly handle the relationship between Party organizations and other governance parties, make clear the boundaries of power and responsibility, and achieve seamless convergence*⁴⁸³.

The ever stronger CCP presence in managing the SOEs' affairs envisaged by the Corporate Governance GO has typically been indeed formalized at the company level by referring to the leading role of the Party in the respective Articles of Association of various SOEs⁴⁸⁴, in line with SASAC's 2017 Notice on Matters Regarding Speeding Up the Incorporation of Overall Requirements for Central State-owned Enterprises' Party-Building Work into Articles of Association⁴⁸⁵ and with CSRC's (see Chapter 6) 2018 Code of Corporate Governance for Listed Firms⁴⁸⁶. Such changes would entail language on the “*organised, institutionalised and concrete*

⁴⁸³ See SASAC Notice, point 2(5).

⁴⁸⁴ Including enterprises like Sinopec or the China Railway Group, as well as state-owned banks (see Section 3.4).

⁴⁸⁵ See for example Blanchette, J. (2020). *From “China Inc.” to “CCP Inc.”: A New Paradigm for Chinese State Capitalism*, available at: <https://www.prcleader.org/blanchette> (accessed on 10 February 2023). See also: <http://www.sasac.gov.cn/n2588025/n4423279/n4517386/n9320196/c9321179/content.html> (accessed on 4 March 2022).

⁴⁸⁶ See Rosen, D.H., Leutert, W., Shan G. (2018), p. 24, as well as here: Announcement No. 29, Code of Governance for Listed Companies (original text in Chinese), available at: <http://www.csrc.gov.cn/csrc/c101864/c1024585/content.shtml> (accessed on 10 February 2023). To be noted that making Party committees part of the managerial / decision-making structure of companies has

way” in which CCP should play a role in an SOE, as well as on “*providing direction [and] managing the overall situation*”⁴⁸⁷.

In fact, the leading role of the CCP has in recent years been emphasized in virtually all SOE-related⁴⁸⁸ policy documents⁴⁸⁹, thereby being fully institutionalized⁴⁹⁰. What is more, the requirement to amend their articles of association to recognize the role of CCP organizations in corporate governance was made binding on all SOEs under a CCP Central Committee’s regulation from December 2019⁴⁹¹. The latest details on the leading role of the CCP were developed in the aforementioned Opinions on Strengthening Party Leadership in Improving Central SOEs’ Corporate Governance from May 2021. The opinions require the central SOEs to further unify the strengthening of the party’s leadership and improve corporate governance and accelerate the improvement of the modern enterprise system with Chinese characteristics. Moreover, these opinions put forward that the CCP committee (group) in central SOEs has a statutory position in the corporate governance structure and that it plays a leading role in the company’s direction, overall management, and implementation. They also make clear the scope of responsibility of the CCP committee (group) of central SOEs in discussing and deciding major issues as well as relevant requirements and procedures, and, most importantly, clarify the way the CCP committee (group) plays a role in the decision-making of the board of directors and executives.

China publicly acknowledges that articles of association of a vast number of companies have codified such position of the CCP within the corporate governance structure. An article published in the People’s Daily on 11 October 2021 states in plain terms that “*all central enterprises and more than 90 percent of provincial SOEs have included Party building requirements into their articles of association, so as to consolidate the legal status of the Party organization in the corporate governance structure*”⁴⁹². Moreover, SOEs throughout the country have consistently appointed CCP members to key corporate bodies: all central SOEs, more than 90% of provincial-level SOEs and 80% of municipal and county-level SOEs have

been taking place well beyond SOEs and has been affecting also privately owned companies or joint-ventures between SOEs and private entities. See Michael, M. (2017). *Exclusive: In China, the Party’s push for influence inside foreign firms stirs fears*. Reuters; available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 13 February 2023). See also Buckley, C., Bradsher, K. (2020). *China’s Communists to Private Business: You Heed Us, We’ll Help You*, The New York Times; available at: <https://www.nytimes.com/2020/09/17/business/china-communist-private-business.html> (accessed on 6 January 2022).

⁴⁸⁷ See Hughes, J. (2017). *China’s Communist party writes itself into Company Law*. Financial Times; available at: <https://www.ft.com/content/a4b28218-80db-11e7-94e2-c5b903247afd> (accessed on 18 August 2017).

⁴⁸⁸ For role of CCP in private enterprises, see also Chapter 3.3.2

⁴⁸⁹ Specifically for state-owned financial enterprises, see the Interim Measures for the Administration of Directors Representing State-owned Equity in Financial Institutions from December 2019 (original text in Chinese), available at: jrs.mof.gov.cn/zhengcefabu/202001/t20200114_3458879.htm, (accessed on 10 February 2023).

⁴⁹⁰ See Rosen, D.H.; Leutert, W.; Shan, G. (2018), p. 6, 23.

⁴⁹¹ Regulations on the Work of the Primary Organizations of the Communist Party of China in State-owned Enterprises (for Trial Implementation), Article 13 (original text in Chinese), available at: http://www.gov.cn/zhengce/2020-01/05/content_5466687.htm (accessed on 10 February 2023).

⁴⁹² See Liu, W., Meng, X. (2021). *Party building is implemented and development shows more advantages* (original text in Chinese), available at: http://paper.people.com.cn/rmrb/html/2021-10/11/nw.D110000renmrb_20211011_3-01.htm (accessed on 10 February 2023).

implemented the system under which their Party committee and board of directors share the same leader⁴⁹³. As a result, just as the policy documents described in the previous paragraph intended, “*it has become a firm routine in many SOEs to carry out the research and discussion on major operation and management matters among the members of Party organizations before decisions are made, so as to reflect the intention of the Party organization*”⁴⁹⁴. Therefore, the CCP has a strong and direct role in shaping corporate decisions of SOEs.

5.6. CHAPTER SUMMARY

In China, SOEs represent an important and comparatively large portion of the national economy (see Section 5.2). They will continue to do so for the foreseeable future. According to the relevant laws and policy documents, the state-owned economy is explicitly considered as a pillar of the Chinese socialist market economy. The IMF estimated in 2021 that Chinese SOEs accounted for some 39% of total industrial corporate assets and for about the same portion of corporate debt (see Section 5.2). These figures were likely underestimated, not least because they did not include JVs that SOEs held together with private companies. SOEs are increasing their presence in the service economy, and it remains constantly high in utilities, the finance sector, telecommunication, the transport industry and a broad range of manufacturing industries including steel and chemicals.

The existing legal framework is based on the principles of the socialist market economy in which the development and the consolidation of the state-owned economy feature among the central principles. The particular role of SOEs (*‘the leading force in the national economy’*) is anchored in the Constitution and the relevant constitutional principles are reiterated and elaborated in both primary and secondary legislation. It falls upon the State to ensure the consolidation and growth of the state-owned economy (see Section 5.5). Consequently, the applicable laws confer upon the government significant powers which allow it to effectively control SOEs, be it via dedicated supervision bodies – SASAC and local SASACs, or by directly participating in the operational decision-making of SOEs (see Section 5.5.2). In addition, the relevant legal framework also provides for an important role of the CCP (see Section 5.3).

Against this background, the Chinese government and Party have not shied away from exercising the powers available. In particular, the authorities have engaged in shaping the structure of the state-owned sector by policies of consolidation through mergers (see Section 5.5.1) which can pursue various purposes, such as to avoid the closure of facilities contributing to excess capacity by putting ailing companies under the wings of a stronger partner or to create national and even international champions. Chinese authorities have further continued controlling the behaviour of SOEs by means of nominating and dismissing its management, as well as by making the Party involved in SOEs’ decision-making (see Section 5.5.2). Moreover, the Chinese government has developed a number of novel instruments and policies which extend the reach of the state sector – and therefore of the state authorities – into the privately owned enterprises and serve the long-term goals of achieving technological independence and

⁴⁹³ *Ibid.*

⁴⁹⁴ *Ibid.*

strategic dominance (see Section 3.3.2 and Chapter 2). In any event, while the motivations of specific instances of supervision and guidance over SOEs may vary, the overall developments in China confirm that the goals of market-oriented reforms, which may have been present in the State authorities' considerations still around 2013 (see Section 5.3), gave way to the Government's determination to further develop the dominant role of the state-owned economy, in particular by selectively creating large SOEs, shielded from competition domestically and expanding internationally. Such SOEs are meant to serve the Government's strategic industrial policies rather than focus on their own economic performance (see Section 5.5). In other words, the management of SOEs does not appear to be conducted on an arm's length basis, contrary to normal practice in modern market-based economies.

Such an overall institutional setup and legal environment are conducive to business practices which have been amply documented with relation to Chinese SOEs, such as preferential access to finances (see Chapter 6), protection by market access restrictions (see Chapter 8), preferential access to land (see Chapter 9), energy (see Chapter 10), etc., and which result in distorting the effective allocation of resources.

6. FINANCIAL SYSTEM

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6.1. INTRODUCTION

The Chinese financial sector plays a fundamental role in the country's economic performance. Throughout the past decades of reform, China's financial system has undergone a transformation, moving from a ‘*monobank*’ system to a ‘*multi-layered*’ system with specialized roles⁴⁹⁵. Nevertheless, the Chinese financial system is still characterized by the central role played by the State, as well as by strong institutional and regulatory controls, which the State uses to implement a wide array of policies. The significant State presence and influence over the financial sector remained a constant, irrespective of what particular industrial policy the Chinese authorities were pursuing at any given moment, or where the Government’s priorities for the financial sector lied on the axis between stimulating rapid economic growth and reducing systemic financial risks.

6.2. OVERVIEW OF THE CHINESE FINANCIAL SYSTEM

6.2.1. HISTORICAL BACKGROUND

Before 1984, the People's Bank of China (‘*PBOC*’) – a department of the Chinese government under the State Council – served as the primary financial intermediary in China, and the private banking sector virtually did not exist. Since then, China has been trying to move towards a more commercially oriented financial system. This has been underpinned by reforms that included recapitalizing the banking system, creating new capital markets, introducing a prudential regulatory regime, reforming the joint-stock banks and the rural credit cooperatives, taking steps to reform interest rate and exchange rate policies and partially opening the financial system following China’s WTO accession, including a limited opening of the system for foreign banks since 2006. In the securities sector, key companies have been restructured, and a resolution mechanism and investor protection scheme set up⁴⁹⁶.

6.2.2. CURRENT INSTITUTIONAL SETUP OF THE CHINESE FINANCIAL SYSTEM

The present-day institutional setup of China’s financial sector is the result of periodic reforms against the background of the sector’s growing size and complexity, reflecting the regulatory and policy priorities of the Chinese authorities, not least in the wake of financial crises or

⁴⁹⁵ *Progress in China's Banking Sector Reform: Has Bank Behaviour Changed?*, IMF Working Paper WP/06/71 2006, IMF, 2006, p. 3.

⁴⁹⁶ *People's Republic of China: Financial System Stability Assessment*, Country Report No. 11/321, IMF, 2011, p. 19.

regulatory failures⁴⁹⁷. For example, China's financial sector's supervisory model was for a long period of time based on the central role of the PBOC⁴⁹⁸, with its primary role to carry out the monetary policy of the country and to control systemic risk, with three specialised agencies, namely the China Banking Regulatory Commission ('CBRC'), the China Insurance Regulatory Commission ('CIRC') and the China Securities Regulatory Commission ('CSRC')⁴⁹⁹ supervising the respective subsectors of banking, insurance and securities. This setup was overhauled in 2017-2018⁵⁰⁰, when CBRC and CIRC were merged into the China Banking and Insurance Regulatory Commission ('CBIRC') as the primary institution in charge of supervision for both the banking and insurance subsectors⁵⁰¹. Moreover, a new body headed by a vice-premier, the Financial Stability and Development Committee ('FSDC'), was established in 2017, with a broad array of responsibilities: to implement the decisions of the CCP Central Committee and the State Council in the financial sector; to review major plans for the reform and development of the financial sector; to make overall plans for the development and regulation of financial reform; to coordinate matters related to monetary policy and financial regulation; to coordinate major financial regulatory issues and related fiscal and industrial policies; to analyse and judge the international and domestic financial situations, to cope with international financial risks, to study systematic financial risk prevention and to maintain major financial stability policies⁵⁰².

As of writing of this Report, the central institutions supervising China's financial sector were undergoing further reforms. In May 2023, in the context of the organisational changes after the 20th CCP Congress, the National Financial Regulatory Administration ('NFRA')⁵⁰³, directly under the State Council, replaced the CBIRC, acquiring also additional competencies regarding protecting financial consumers and investors protection from the PBOC and CSRC in the

⁴⁹⁷ China implements the international Basel III standards on banking regulation and is therefore formally considered to be closely aligned with the international standards. The Regulatory Consistency Assessment Programme ('RCAP') published in September 2013 was instrumental for the EU decision on banking equivalence in December 2014. It should be noted, however, that the RCAP focuses on the domestic implementation of Pillar 1 minimum requirements and leaves out the assessment of Pillar 2 and Pillar 3 requirements, leaving space for the supervisor to accommodate industrial perspectives in its work at the expense of prudential considerations (consistency with disclosure requirements is not formally assessed).

⁴⁹⁸ The main functions of the PBOC can be consulted on its website available at: <http://www.pbc.gov.cn/english/130712/index.html> (accessed on 22 August 2023).

⁴⁹⁹ The main functions of the CSRC can be consulted on its website available at: http://www.csrc.gov.cn/csrc_en/c102023/common_zcncr.shtml (accessed on 22 August 2023).

⁵⁰⁰ For details concerning the motivations behind this institutional reform, see, for example, Chorzempa, M. and Véron, N., *Will China's new financial regulatory reform be enough to meet the challenges?*, Bruegel Policy Brief, 2023; available at: https://www.bruegel.org/sites/default/files/2023-06/will-china%E2%80%99s-new-financial-regulatory-reform-be-enough-to-meet-the-challenges%3F-%288901%29_3.pdf (accessed on 22 August 2023).

⁵⁰¹ The main functions of the CBIRC can be consulted on its website: <https://www.cbirc.gov.cn/en/view/pages/ItemList.html?itemPid=974&itemId=975&itemUrl=About/Mandates.html&itemTitle=Mandates&itemPTitle>About%20the%20CBIRC> (accessed on 12 January 2023).

⁵⁰² See *The Financial Stability and Development Committee was established*, 8 November 2017; available at: http://www.gov.cn/xinwen/2017-11/08/content_5238161.htm (accessed on 22 August 2023).

⁵⁰³ See the Plan for the Reform of Party and State Organs, issued on 17 March 2023; available at: <http://politics.people.com.cn/n1/2023/0317/c1001-32645833.html> (accessed on 22 August 2023).

process⁵⁰⁴. Establishing the NFRA has been generally seen in the context of the CCP asserting more direct control over the financial sector. Under the Party's tighter control, the financial industry would better serve the real economy and comply with the goals of China's industrial policies, not least by channelling funds to priority industries⁵⁰⁵. Further adjustments of the institutional structure included in 2023 the (re)establishment of the Central Financial Commission, essentially a successor of the FSDC⁵⁰⁶, with its tasks specified as follows⁵⁰⁷:

Strengthen centralized and unified leadership of the Party Central Committee over financial work, be responsible for the top-level design, overall coordination, overall promotion, and supervision and implementation of financial stability and development, study and deliberate major policies and major issues in the financial field, and serve as the decision-making and deliberation coordination body of the Party Central Committee.

In addition to establishing the Central Financial Commission, a separate body named Central Financial Work Commission was foreseen to “[u]niformly lead the work of the Party in the financial system, guide the political, ideological, organizational, work style, discipline, etc. of the Party in the financial system”⁵⁰⁸.

These changes were taking place in parallel with longer-term developments of eroding the PBOC's independence. Even though the PBOC never possessed the level of independence over monetary policy enjoyed by central banks in Western countries, it nevertheless traditionally functioned with a level of operational autonomy. However, in 2021, the PBOC underwent a tightening of CCP control, following a series of CCP disciplinary inspections of financial institutions⁵⁰⁹, including the PBOC itself. As a result, PBOC's autonomy was significantly reduced. The relevant CCP officials, on the other hand, were quoted as follows: “*In the past period, the foundation for comprehensive and strict governance of the Party in the financial*

⁵⁰⁴ See *China establishes national financial regulatory administration*, Xinhua, 18 May 2023; available at: https://english.www.gov.cn/news/202305/18/content_WS6465bd1ac6d03ffcca6ed27f.html (accessed on 22 August 2023); see further Chorzempa, M. and Véron, N., *Will China's new financial regulatory reform be enough to meet the challenges?*, as well as Wong, C. H. and Zhai, K., *China's Communist Party Overhaul Deepens Control Over Finance*, The Wall Street Journal, 16 March 2023; available at: <https://www.wsj.com/articles/chinas-communist-party-overhaul-deepens-control-over-finance-technology-6acdd43c> (accessed on 24 August 2023).

⁵⁰⁵ See, for example, He, L., *China names head of powerful new financial regulator as industry faces greater scrutiny*, CNN, 11 May 2023; available at: <https://edition.cnn.com/2023/05/11/economy/china-nfra-new-chief-intl-hnk/index.html> (accessed on 22 August 2023), as well as Wong, C. H. and Zhai, K., *China's Communist Party Overhaul Deepens Control Over Finance*, The Wall Street Journal, 2023.

⁵⁰⁶ See, for example, Cheng, E., *China revives ruling party control of financial oversight*, CNBC, 17 March 2023; available at: <https://www.cnbc.com/2023/03/17/china-revives-ruling-party-control-of-financial-oversight.html> (accessed on 22 August 2023).

⁵⁰⁷ See the Plan for the Reform of Party and State Organs, issued on 17 March 2023; available at: <http://politics.people.com.cn/n1/2023/0317/c1001-32645833.html> (accessed on 22 August 2023).

⁵⁰⁸ *Ibid.*

⁵⁰⁹ See, for example, *CPC launches disciplinary inspection of financial institutions*, Xinhua, 13 October 2021; available at: www.news.cn/english/2021-10/13/c_1310242528.htm (accessed on 22 August 2023).

sector was weak [...] and the tendency of financial ‘specialism’ and the central bank ‘exceptionalism’ was prominent”⁵¹⁰.

Apart from the above bodies, the influence of the State in the financial sector is channelled also through a number of further actors, playing various formal and informal roles:

- the NPC promulgates financial sector laws, while the State Council executes financial regulation and issues mandatory policy directives to all the financial regulatory and supervisory agencies;
- Central Huijin Investment Ltd. (‘Central Huijin’)⁵¹¹ exercises rights and obligations as an investor in major state-owned financial enterprises on behalf of the State. The Ministry of Finance (‘MOF’) owns directly, as well as through Central Huijin, significant participations in the most important commercial banks of China. It is therefore the biggest shareholder of the Chinese banking system (see also Section 6.3), enabling the state to exercise oversight of the sector;
- The State Administration of Foreign Exchange (‘SAFE’) is responsible for the supervision and management of the foreign exchange market⁵¹²;
- The National Council for Social Security Fund has a dual role as an institutional investor and a stakeholder in some of the largest commercial banks⁵¹³.

Each of the above actors have their standard roles – ranging from ensuring stability of the financial system, to protecting market integrity, to consumer protection - ascribed to them by the corresponding legislation. However, as pointed out by Bruegel in 2023, the “*fundamental challenges hobbling China’s financial system [...] are not linked to specific choices of supervisory architecture but rather to excessive CCP and state intervention, and the lack of supervisory independence resulting from China’s CCP-dominated governance system*”. Moreover: “*The high degree of state ownership and intervention in the financial sector is a defining feature of China’s financial system, including through the mechanisms associated with the involvement of the CCP. State and CCP channels of influence include ownership, personnel appointments and more, all of which complicates financial supervision. The party-state interferes in multiple ways in the operational management of financial firms, through detailed regulations but also direct nudging (or heavy-handed direction) of capital and credit-allocation decisions*”⁵¹⁴.

⁵¹⁰ See Wei, L., *Beijing Reins in China’s Central Bank*, The Wall Street Journal, 8 December 2021; available at: <https://www.wsj.com/articles/beijing-reins-in-chinas-central-bank-11638981078> (accessed on 24 August 2023).

⁵¹¹ See Central Huijin Investment Ltd. – Company profile; available at: http://www.huijin-inv.cn/huijineng/About_Us/index.shtml (accessed on 22 August 2023).

⁵¹² The main functions of the SAFE can be consulted on its website available at: <https://www.safe.gov.cn/en/MajorFunctions/index.html> (accessed on 22 August 2023).

⁵¹³ The main functions of the National Council for Social Security Fund can be consulted on its website available at: <http://www.ssf.gov.cn/portal/yw/webinfo/2021/09/1632812253754637.htm> (accessed on 22 August 2023).

⁵¹⁴ See Chorzempa, M. and Véron, N., *Will China’s new financial regulatory reform be enough to meet the challenges?*, Bruegel Policy Brief, 2023, p. 3 and p. 5; available at: https://www.bruegel.org/sites/default/files/2023-06/will-china%E2%80%99s-new-financial-regulatory-reform-be-enough-to-meet-the-challenges%3F--%288901%29_3.pdf (accessed on 22 August 2023).

Indeed, the CCP's control over the allocation of finances, as well as over the supervisory architecture of the financial sector represents a key feature of the present-day China. Various financial channels and tools have been created approximately between 2012 and 2022 which greatly enhanced the Party's ability to steer businesses. These channels - entailing revised SOE corporate governance (see Chapter 5), a range of special purpose funds (see Chapter 2), as well as controlling the money raising processes on capital markets – complement the traditionally existing State control over the banking sector (see Section 6.3) and provide ample flexibility to the State authorities to leverage the potential of the financial sector to achieve the desired economic and strategic outcomes⁵¹⁵.

Those outcomes and policies may focus on the financial sector itself - for instance when it comes to reducing vulnerabilities⁵¹⁶ in the system resulting from accumulated corporate debt and adjustments in the policies of implicit State guarantees⁵¹⁷ (see also Sections 6.7 and 5.4) – or at the economy at large – for instance with respect to developments in the equity and bond markets or concerning interest rates setting⁵¹⁸. However, the economic assessment of such policies is not within the remit of this chapter⁵¹⁹ which focuses on the formal institutional and legal framework, analysing primarily instances of State presence within the financial sector which may result in behaviours, both by economic operators and by State agencies, motivated by Government-mandated objectives rather than by market forces.

6.3. BANKING SECTOR

6.3.1. OVERVIEW

China's financial system remains dominated by the banking sector, despite significant developments in the funding of the banking sector over the years⁵²⁰. The importance of the banking sector in the allocation of financial resources is encapsulated in one figure: despite the rapid growth of nonbanking financing in China, in 2019, almost two thirds of all credit in the

⁵¹⁵ See Naughton, B. and Boland, B., *CCP Inc., The Reshaping of China's State Capitalist System*, A Report of the CSIS Freeman Chair in China Studies, CSIS, 2023.

⁵¹⁶ See *People's Republic of China: 2022 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for the People's Republic of China*, Country Report No. 2023/067, IMF, 2023, p. 20; available at: <https://www.imf.org/en/Publications/CR/Issues/2023/02/02/Peoples-Republic-of-China-2022-Article-IV-Consultation-Press-Release-Staff-Report-and-529067> (accessed on 22 August 2023).

⁵¹⁷ See for instance He, W., *Eroding the Implicit Guarantee*, Gavekal Dragonomics, 1 December 2020.

⁵¹⁸ See for instance Adams, N., Jacobs, D., Kenny, S., Russell, S., Sutton, M., *China's Evolving Financial System and Its Global Importance*, Reserve Bank of Australia, 2021, pp. 1-4, available at: <https://www.rba.gov.au/publications/bulletin/2021/sep/chinas-evolving-financial-system-and-its-global-importance.html> (accessed on 22 August 2023).

⁵¹⁹ See instead, for example, Apostolou, A., Al-Harshimi, A., Ricci, M., *Financial risks in China's corporate sector: real estate and beyond*, ECB, 2022 or *Consultation-Press Release; Staff Report; and Statement by the People's Republic of China: 2021 Article IV Executive Director for the People's Republic of China*, IMF, 2022; available at: <https://www.imf.org/en/Publications/CR/Issues/2022/01/26/Peoples-Republic-of-China-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-512248> (accessed on 22 August 2023).

⁵²⁰ See Wright, L. – *Grasping Shadows*, The Politics of China's Deleveraging Campaign, CSIS (2023), p. 21; available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-04/230410_Wright_Grasping_Shadows.pdf?VersionId=23lg65zaQB1bwAKPTSQWtCxDaABjds7E (accessed on 11 March 2024).

economy was provided by banks⁵²¹ and by 2021, that ratio decreased only negligibly⁵²². More specifically, according to the 2021 PBOC annual report⁵²³, RMB-denominated bank loans represented 63.6% of aggregate financing to the real economy in China⁵²⁴, compared to 22.4% for government bonds, 10.5% for corporate bonds and 3.9% for domestic equity financing by non-financial corporations⁵²⁵. The remaining portion of aggregate financing to the real economy were trust loans, banker's acceptances, designated loans, foreign currency loans, etc.

In terms of total assets, the banking sector has been consistently keeping its overwhelmingly leading position among financial institutions. The data on balance sheets of financial institutions at the end of 2021 – published by the PBOC – illustrates this leading position unambiguously⁵²⁶ (see Table 6.1 below).

Table 6.1

	<i>Outstanding value (trillion RMB)</i>	<i>Year-on-year growth (%)</i>
<i>Total assets</i>	381.95	8.1
Banking institutions	344.76	7.8
Securities institutions	12.3	21.2
Insurance institutions	24.89	6.8
<i>Total liabilities</i>	346.58	7.9
Banking institutions	315.28	7.6
Securities institutions	9.35	24.4
Insurance institutions	21.96	6.9
<i>Owners' equity</i>	35.37	10.5
Banking institutions	29.48	10.7

⁵²¹ Bisio, V., *China's Banking Sector Risks and Implications for the United States*, Staff Research Report of the US-China Economic and Security Review Commission, 27 May 2020, p. 4, available at: https://www.uscc.gov/sites/default/files/2020-05/Chinas_Banking_Sector_Risks_and_Implications_for_US.pdf (accessed on 22 August 2023).

⁵²² See He, Z. and Wei, W., *China's Financial System and Economy: A Review*, National Bureau of Economic Research ('NBER'), Working Paper 30324, August 2022; available at: https://www.nber.org/system/files/working_papers/w30324/w30324.pdf (accessed on 22 August 2023).

⁵²³ The most recent one available as of writing of this report.

⁵²⁴ 'Total social financing' is an indicator developed by the PBOC to measure the total funding of the real economy (defined as non-financial enterprises and households) by the financial system.

⁵²⁵ *Annual Report*, PBOC, 2021, p. 73.; available at: www.pbc.gov.cn/chubanwu/114566/115296/4833603/4847849/2023041110334773584.pdf (accessed on 22 August 2023).

⁵²⁶ The data is available at: <http://www.pbc.gov.cn/en/3688247/3688978/3709143/4509019/index.html> (accessed on 22 August 2023). See further Amstad, M., Sun, G., Xiong, W., *The Handbook of China's Financial System*, Princeton University Press, 2020.

Securities institutions	2.95	12.2
Insurance institutions	2.93	6.5

The banking sector is characterized by three predominant categories of state-owned and state-controlled banks, namely large state-owned commercial banks, joint-stock commercial banks, and State policy banks⁵²⁷. These three categories of banks are complemented by smaller city and rural commercial banks, often owned by local and provincial governments. In addition, ‘shadow banking’ still represents a sizeable portion of the sector.

6.3.1.1. STATE-OWNED COMMERCIAL BANKS

Large state-owned commercial banks were introduced in China in the late 1970s when four commercial banks were established or re-established so that the PBOC could concentrate on regulating the financial sector instead of functioning as a commercial actor. In 1979, after being established and subsequently abolished several times, today’s Agricultural Bank of China (‘ABC’) was created to handle government financing of grain procurement and rural development. In the same year, the Bank of China (‘BOC’) took over the foreign currency portfolio. In 1984, the Industrial and Commercial Bank of China (‘ICBC’) started to finance China’s SOEs. At the same time, the CCB, which had been part of the MOF, gained operational independence in order to provide loans to long-term state investment projects⁵²⁸. As of 2015, these four banks constituted the biggest players in the country's banking sector. Together with the Bank of Communications (‘BOCOM’), which was officially classified as state-owned commercial bank in 2007, the five banks represented almost 37% of the total Chinese financial market in 2018⁵²⁹. The official classification of Postal Savings Bank of China (‘PSBC’) as a state-owned commercial bank in 2018 extended the number of financial entities in this category to six⁵³⁰. By the end of 2022, ABC, BOC, ICBC and CCB lead the top 10 worldwide banks ranking by total assets, with PSBC and BOCOM taking the 14th and 20th place, respectively⁵³¹. In terms of total assets, the six large state-owned commercial banks accounted for more than 40% of the Chinese financial sector.

6.3.1.2. JOINT-STOCK COMMERCIAL BANKS

Joint-stock commercial banks are the second most important type of credit institution in the country. They have been established later (at the end of 2003) and the involvement of the state in them is more often indirect (e.g. through SOEs) than in the state-owned commercial banks

⁵²⁷ See He, Z. and Wei, W., *China’s Financial System and Economy: A Review*, NBER, Working Paper 30324, August 2022, p. 21; available at: https://www.nber.org/system/files/working_papers/w30324/w30324.pdf (accessed on 22 August 2023).

⁵²⁸ Shih, V.C., *Factions and Finance in China: Elite Conflict and Inflation*, Cambridge University Press, 2008, p. 31.

⁵²⁹ Amstad, M., Sun, G., Xiong, W., *The Handbook of China’s Financial System*, Princeton University Press, 2020, p. 13.

⁵³⁰ See *Big Six Chinese Banks All Launch Digital Renminbi Wallets, Trial Initiatives for CBDC Accelerate*, China Banking News, 28 March 2021; available at: <https://www.chinabankingnews.com/2021/03/28/big-six-chinese-banks-all-launch-digital-renminbi-wallets-as-trial-initiatives-accelerate/> (accessed on 22 August 2023).

⁵³¹ See for example at: <https://www.statista.com/statistics/434566/leading-banks-in-china-assets/> (accessed on 23 January 2023).

(“top 6”). Accounting for approximately 20% of the total assets of the Chinese banking sector in 2021⁵³², a number of joint-stock commercial banks, including China Minsheng Bank, China Everbright Bank, Ping An Bank, Huaxia Bank, China Guangfa Bank, Shanghai Pudong Development Bank, China CITIC Bank and Bank of Jiangsu are considered systematically important for the financial sector by the PBOC. The same applies to the city commercial banks like Bank of Shanghai, Bank of Beijing and Bank of Ningbo⁵³³. It should be noted that according to the IMF Financial System Stability Assessment report of 2020, low levels of common equity tier 1 capital persist as structural problem in small banks, thereby constraining their capacity to provide credit⁵³⁴.

6.3.1.3. STATE POLICY BANKS

State Policy banks are the third biggest player of the market with a proportion of ca. 9% of the total banking assets as of 2022⁵³⁵. The three State Policy banks, namely the China Development Bank (‘CDB’), the Agricultural Development Bank of China (‘ADB’) and the Export-Import Bank (‘EXIM’) were established in 1994 to take over the policy portfolios of the state-owned commercial banks. They explicitly serve the purpose of financing state projects and sustaining economic development in key sectors and areas.

6.3.1.4. FOREIGN-INVESTED BANKS

Foreign-invested banks, on the other hand, did not and still do not play a significant role in China’s banking sector⁵³⁶. This was partly due to limitations regarding ownership by foreign investors which were relaxed only in 2020 (see also Chapter 8), partly due to other persisting obstacles - such as the high number of state-owned potential customers, and the personal and political links between local banks and local customers preventing foreign players from gaining significant market share⁵³⁷ - or which were even newly introduced – such as the restrictions for foreign banks to raise money overseas and transfer it into China⁵³⁸. As a result, in the second half of 2020, the proportion of foreign banks’ assets to the total assets of banking financial institutions represented less than 1.5%. Among the foreign-invested banks, US and UK institutions have the largest footprint, with the market share of EU banks estimated at below 0.2%.

⁵³² See He, Z. and Wei, W., *China’s Financial System and Economy: A Review*, NBER, Working Paper 30324, August 2022, p. 23; available at: https://www.nber.org/system/files/working_papers/w30324/w30324.pdf (accessed on 22 August 2023).

⁵³³ See the PBOC list of China’s systematically important banks for 2022 available at: <http://www.pbc.gov.cn/en/3688110/3688172/4437084/4655510/index.html> (accessed on 22 August 2023).

⁵³⁴ *People’s Republic of China: Staff Report for the 2020 Article IV Consultation*, IMF, 2020, p. 22.

⁵³⁵ See, for example, *Policy Banks Industry in China – Market Research Report*, updated on 23 May 2022; available at: <https://www.ibisworld.com/china/market-research-reports/policy-banks-industry/> (accessed on 22 August 2023).

⁵³⁶ Foreign banks do, however, play a significant role in foreign currency clearing, trade finance, and serving foreign invested enterprises.

⁵³⁷ Elliott, D.J. and Yan, K., *The Chinese Financial System, An Introduction and Overview*, John L. Thornton China Center Monograph Series, Number 6, July 2013, p. 29; available at: <https://www.brookings.edu/wp-content/uploads/2016/06/chinese-financial-system-elliott-yan.pdf> (accessed on 24 August 2023).

⁵³⁸ See, for example, *China Puts Limits on Foreign Banks, Worrying Businesses*, The New York Times, 2 April 2021; available at: <https://www.nytimes.com/2021/04/02/business/china-foreign-banks.html> (accessed on 22 August 2023).

6.3.1.5. SHADOW BANKING

‘*Shadow banks*’ in China are financial firms that perform similar functions and assume similar risks as banks. However, they are not part of the formal banking sector. Definitions of the shadow banking sector vary, and can encompass any of the following instruments or institutions⁵³⁹:

- *Trust loans* are loans organised by trust companies, which are not considered banks. Trust companies combine elements of banks and asset managers. They can raise funds by issuing trust products, a form of securitized loan;
- *Entrusted loans* refer to loans made by non-financial firms to other firms (often within the same corporate group) that are channelled via the banking system for legal reasons, with banks indemnified from credit risk by the non-financial firm;
- *Banker's acceptances* are notes issued by banks promising a fixed payment in the future (usually a few months);
- *Financial leasing* involves all kinds of leasing that is not already on a bank or trust company balance sheet and not a short-term operating lease;
- *Microfinance companies, e-financing* (such as *crowdfunding*), *pawn shops, guarantee companies*, and other unofficial lenders. Some of these lenders are officially registered and regulated, others are operating informally, and sometimes even illegally;
- *Wealth management products* (‘*WMPs*’) are issued by brokers and banks, off the balance sheet and considered as a substitute for deposits. They are a form of collective investment where the funds raised are typically used to purchase assets such as bonds and equities on the secondary market rather than providing direct loans.

There is a range of estimates on the size of China's shadow banking system. The estimates depend on the definition of shadow banking, the significant differences in the estimates being obviously linked to the opaqueness of the shadow banking activities. Financial Times cite figures of 39% - 45% of shadow lending share for the third and fourth quarter of 2019⁵⁴⁰ and the IMF estimates that shadow banking represented some 16% of the GDP in 2021, down from 20.4% in 2020 and 22.4% in 2019⁵⁴¹. Overall, studies agree that its size has increased relatively rapidly in the last two decades⁵⁴².

Figure 6.1: Evolution of shadow banking against other financing (in trillion RMB)⁵⁴³

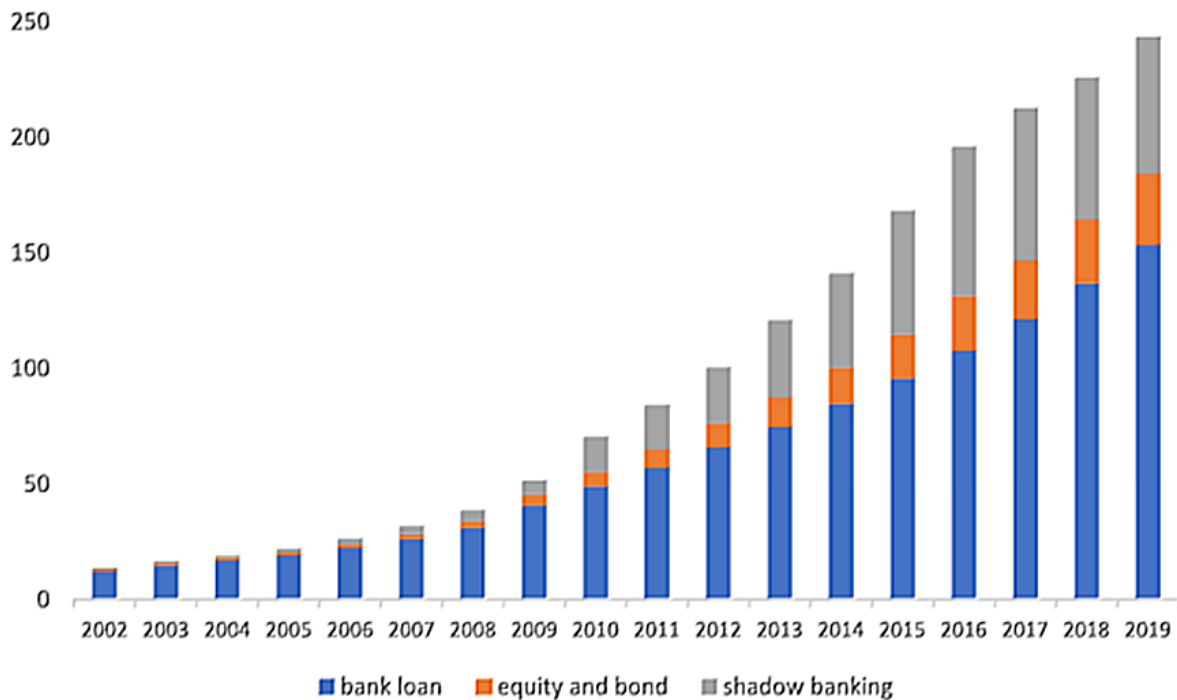
⁵³⁹ Elliott, D.J., Kroeber, A. and Qiao, Y., *Shadow banking in China: A primer*, Economic Studies at Brookings, The Brookings Institution, 2015, p. 7; available at: <https://www.brookings.edu/articles/shadow-banking-in-china-a-primer/> (accessed on 22 August 2023). See also Wright, L. – Grasping Shadows, p. 12.

⁵⁴⁰ Weinland, D., *China's shadow banking industry roars back*, Financial Times, 25 September 2019; available at: <https://www.ft.com/content/4c66b622-dea5-11e9-9743-db5a370481bc> (accessed on 22 August 2023).

⁵⁴¹ See *People's Republic of China: 2022 Article IV Consultation*, IMF, p. 46.

⁵⁴² See, for example, Figure 2 in Allen, F., Gu, X., *Shadow banking in China compared to other countries*, The Manchester School, June 2020, p. 4.; available at: <https://doi.org/10.1111/manc.12331> (accessed on 22 August 2023).

⁵⁴³ See *OECD Economic Surveys: China 2022*, OECD Publishing, 2022, Figure 1, p. 3.; available at: <https://www.oecd-ilibrary.org/docserver/b0e499cf-en.pdf> (accessed on 22 August 2023).



There are several reasons for the rise of shadow banking. First, the tight control by the State and state-owned actors of the financial system including the formal banking sector that extends also to the bond market (see Section 6.4.2). The general legal framework encourages lending in line with industrial policies, preferably to certain 'encouraged' sectors (see Section 2.3.2). Moreover, the restraints on access to the stock market make it difficult for firms that do not have government ties or do not fit in the State's visions and strategies to raise money on a stock exchange. Thus, the formal system is biased in favour of large and preferably state-owned entities. Smaller private players may face difficulties to raise capital which forces them to turn to unofficial forms of financing (see also Chapter 11).

Furthermore, banks were often restrained in the official system by caps on lending volumes, as well as by other capital and liquidity requirements⁵⁴⁴. While the 75% loans-to-deposits ratio was removed in 2015, other regulatory interventions – irrespective of whether in reaction to potentially destabilizing developments in certain sectors or politically motivated – followed in the more recent years: at the end of 2020, the PBOC capped real estate lending⁵⁴⁵, while in 2021, CBIRC has decided to impose limits on the amount of capital that commercial banks commit to joint lending with 'fintech' companies⁵⁴⁶. Such limits have generally not applied in

⁵⁴⁴ Elliott, D.J., Kroeber, A. and Qiao, Y., *Shadow banking in China: A primer*, Economic Studies at Brookings, The Brookings Institution, 2015, p. 5. See also *OECD Economic Surveys: China 2017*, OECD Publishing, 2017, p. 14; available at: https://www.oecd-ilibrary.org/docserver/eco_surveys-chn-2017-en.pdf (accessed on 24 August 2023).

⁵⁴⁵ See *China tightens regulation for loans to real estate sector*, Xinhua, 31 December 2020; available at: http://www.xinhuanet.com/english/2020-12/31/c_139633200.htm (accessed on 22 August 2023).

⁵⁴⁶ Riordan, P., *China tightens online lending rules in fresh blow to Jack Ma's Ant Group*, Financial Times, 21 February 2021; available at: <https://www.ft.com/content/bc95392c-80db-4065-addd-40319b7024d1> (accessed on 22 August 2023).

the shadow banking system which, therefore, adds needed flexibility to a rigid and distorted financial system while, at the same time, also increasing the risk of a debt crisis.

However, shadow banking also fuels the rise in corporate debt and, consequently, increases the risk of systemic instabilities, thereby requiring additional regulatory interventions⁵⁴⁷. Indeed, attempts to clamp down on shadow banking have represented a constant feature of Government financial policies. Most notably, as of 2016, in the context of the so-called ‘*deleveraging campaign*’⁵⁴⁸, Chinese authorities passed a number of regulations to increase the oversight of the banking system (in relation to banks and non-banks), notably with the aim to curtail shadow banking practices and, by extension, prevent the worst in terms of systemic risks. The deleveraging campaign entailed a series of monetary tightening measures, as well as introducing new regulatory policies over the course of 2017 and 2018, including the new asset management rules “*designed to curb shadow banking growth and limit banks’ [practices of] placing funds with third-party asset managers and [non-bank financial institutions]. The new rules banned any implicit or explicit guarantees on WMPs or asset management products, which had been the foundation of the rapid growth in shadow banking channels from 2012 to 2016. Asset management products were not permitted to invest, directly or indirectly, via either debt or equity into industries or sectors that were targeted by government regulations and explicit credit restrictions, such as lending to property developers and [local government financing vehicles].*”⁵⁴⁹ This regulatory effort resulted in some contraction in the most destabilizing shadow banking operations. However, recent expertise shows that the “*shadow banking sector has been able to avoid the newly introduced rules and continue growing*”⁵⁵⁰. According to the Financial Times, citing a China Beige Book International report, shadow financing picked up strongly in mid-2019, reaching lending shares unseen since at least 2013⁵⁵¹. This is because, after the tightening of two years earlier, 2019 saw a relaxation on shadow banking operations in a selective manner⁵⁵². As a result, a 2022 report by the European Central Bank summarized the state of the Chinese shadow banking sector as follows:

Although the rate of growth of shadow banking has slowed recently, the shadow banking sector remains particularly vulnerable to adverse shocks. Shadow banking [...] has expanded rapidly in recent years, reaching a share of about 60% of GDP [...]. Although macroprudential policies have curbed growth in the sector, levels remain near all-time highs, posing risks to the Chinese economy. China’s shadow banking sector is mainly concentrated on activities that are highly vulnerable to changes in investor sentiment. These activities include certain types of investment

⁵⁴⁷ See Section 4 in Apostolou, A., Al-Harshimi, A., Ricci, M., *Financial risks in China’s corporate sector: real estate and beyond*, ECB, 2022.

⁵⁴⁸ See Wright, L. – Grasping Shadows, p. 23 - 36.

⁵⁴⁹ *Ibid.*, p. 30.

⁵⁵⁰ Allen, F., Gu, X., *Shadow banking in China compared to other countries*, The Manchester School, June 2020, p. 4; available at: <https://doi.org/10.1111/manc.12331> (accessed on 22 August 2023).

⁵⁵¹ Weinland, D., *China’s shadow banking industry roars back*, Financial Times, 25 September 2019; available at: <https://www.ft.com/content/4c66b622-dea5-11e9-9743-db5a370481bc> (accessed on 22 August 2023).

⁵⁵² Bisio, V., *China’s Banking Sector Risks and Implications for the United States*, Staff Research Report of the US-China Economic and Security Review Commission, 27 May 2020, p.8.

vehicles, such as wealth management products whose value amounts to around 25% of GDP.

Similarly, as noted by OECD in 2022, while shadow banking has been reigned in, to some extent, “[t]hus far, no viable replacement of shadow banking has emerged” and shadow banking keeps representing a source of potential systemic risks to the financial system⁵⁵³.

In sum, shadow banking keeps constituting an important alternate source of finance for corporations, its importance being an indicator of the restraints and the tight control by the State of other parts of the financial system. At the same time, the shadow banking increases the risk of a systemic debt crisis, a reason for which it has been subject to various regulatory actions, in particular in the context of the deleveraging campaign initiated in 2016.

6.3.2. STATE CONTROL OVER THE BANKING SECTOR

6.3.2.1. CONTROL THROUGH PARTICIPATION

The State dominates the banking sector⁵⁵⁴ by maintaining controlling stakes in all state-owned commercial banks, as well as by being the majority shareholder in a number of joint-stock commercial banks, either through direct investment by Central Huijin or indirectly through other state-owned legal entities. The state policy banks are 100% state-owned. The below overview (Table 6.2) provides a more detailed breakdown of the State participation in the main banking entities.

Table 6.2: State participation in main banking entities

<i>Bank</i>	<i>State shareholding (%)</i>
<i>State-owned commercial banks</i> ⁵⁵⁵	
ICBC	66.1
CCB	59.2
ABC	85.2

⁵⁵³ See *OECD Economic Surveys: China 2022*, OECD Publishing, 2022, pp. 27, 29, 33-34; available at: <https://www.oecd-ilibrary.org/docserver/b0e499cf-en.pdf> (accessed on 22 August 2023).

⁵⁵⁴ See also Chorzempa, M. and Véron, N., *Will China's impending overhaul of its financial regulatory system make a difference?*, PIIE, March 2023, p. 2; available at: <https://www.piie.com/sites/default/files/2023-03/pb23-1.pdf> (accessed on 22 August 2023).

⁵⁵⁵ Information based on the respective 2021 annual reports: ICBC, Annual Report 2021; available at file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-31/7943541.PDF (accessed on 22 August 2023), ABC, Annual Report 2021; available at: <https://www.abchina.com/en/investor-relations/performance-reports/annual-reports/202204/P020220427580795705015.pdf> (accessed on 22 August 2023), BOC, Annual Report 2021; available at: <https://pic.bankofchina.com/bocappd/report/202203/P020220329651388848178.pdf> (accessed on 22 August 2023), CCB, Annual Report 2021; available at: www.ccb.com.cn/investor/20220329_1648566213/20220329225810029232.pdf (accessed on 22 August 2023), BOCOM, Annual Report 2021; available at: file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-26/7917572.PDF (accessed on 22 August 2023), PSBC, Annual Report 2021; available at: https://www.psbc.com/en/investor_relations/finance/financial_reports/202204/P02022042637107462724_1.pdf (accessed on 22 August 2023).

BOC	64.6
PSBC	71.2
BOCOM	40.3
<i>Joint-stock commercial banks</i> ⁵⁵⁶	
China Everbright Bank ⁵⁵⁷	82.89
China CITIC Bank ⁵⁵⁸	72.79
China Guangfa Bank ⁵⁵⁹	95.71
China Bohai Bank ⁵⁶⁰	50.55
Industrial Bank ⁵⁶¹	39.95
Shanghai Pudong Development Bank ⁵⁶²	53.1
China Merchants Bank ⁵⁶³	35.32
Huaxia Bank ⁵⁶⁴	72.89
China Zheshang Bank ⁵⁶⁵	16.5

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- ⁵⁵⁶ Approximate percentage of shares owned by the State and state-owned corporations, based on the respective 2021 annual reports.
- ⁵⁵⁷ See China Everbright Bank, 2021 Semi-Annual Report; available at: https://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletinDetail.php?stockid=601818&id=7512500 (accessed on 22 August 2023).
- ⁵⁵⁸ See China CITIC Bank, 2021 Annual Report; available at: https://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-25/7912624.PDF (accessed on 22 August 2023).
- ⁵⁵⁹ See China Guangfa Bank, Annual Report 2021; available at: <http://www.cgbchina.com.cn/subsite/202204/25545741/2021ar.pdf> (accessed on 22 August 2023).
- ⁵⁶⁰ See China Bohai Bank, Annual Report 2021; available at: www.cbhb.com.cn/bhbank/S101/attach/20210901001cn.pdf (accessed on 22 August 2023).
- ⁵⁶¹ See ICBC, Annual Report 2021; available at: file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2021/2021-8/2021-08-27/7488935.PDF (accessed on 22 August 2023).
- ⁵⁶² See Shanghai Pudong Development Bank, 2021 Semi-Annual Report; available at: https://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2021-08-28/600000_20210828_4_HEBMzsvE.pdf (accessed on 22 August 2023).
- ⁵⁶³ See China Merchants Bank, Annual Report 2022, p. 125; available at: https://pdf.dfcfw.com/pdf/H2_AN202303241584543269_1.pdf (accessed on 22 August 2023).
- ⁵⁶⁴ See Huaxia Bank, 2021 Annual Report, p. 102; available at: <https://www.hxb.com.cn/images/jrhx/tzzgx/xxpl/dqbg/2022/05/05/B362099429CC04D0C84E9B3045DF8B1F.pdf> (accessed on 22 August 2023).
- ⁵⁶⁵ See China Zheshang Bank, Annual Report 2022, p. 102; available at: http://www.czbank.com/cn/investor/financial_info/reports/202204251/202204256/202304/P020230412631634382714.pdf (accessed on 22 August 2023).

Hengfeng Bank ⁵⁶⁶	89.1
Ping An Bank ⁵⁶⁷	7.84% Indirect state-ownership via the Ping An Group
China Minsheng Bank ⁵⁶⁸	Less than 3%

6.3.2.2. CONTROL THROUGH BOARD COMPOSITION AND GOVERNMENTAL TIES

The control of the government over the largest banks does not only entail a mere holding of shares. According to the AoA of the state-owned commercial banks, the Government, in its capacity as the majority/controlling shareholder, has the power to appoint the most important positions within the management of the banks, such as the members of the Board of Directors and/or the Board of Supervisors. The same applies *mutatis mutandis* to the joint-stock commercial banks where the State holds stakes which allow it to decide on the composition of the management boards. These boards are usually responsible for taking decisions on the business strategy and the budget of the bank, taking investment decisions, deciding on senior management appointment or dismissals, and formulating the risk management system of the bank⁵⁶⁹. Senior managers of the state-owned commercial banks are usually members of the bank's Party committee⁵⁷⁰.

In addition, in 2017, the role of Party organisations in the business activities of state-owned banks has been strengthened. In line with the ongoing changes of the regulatory requirements pertaining to the SOE sector (see Section 5.4), more than 30 Hong Kong-listed state-owned enterprises, representing more than USD 1 trillion in market capitalisation, have adjusted their AoA to grant the Party a stronger role⁵⁷¹.

To provide some examples, ICBC's AoA now contains a dedicated chapter on the creation of a Party committee⁵⁷². According to this chapter, "*the chairman of the board of directors of the*

⁵⁶⁶ See Evergrowing Bank, Annual Report 2022, p. 70; at: <https://www.hfbank.com.cn/upload/attach/%E6%81%92%E4%B8%B0%E9%93%B6%E8%A1%8C%E8%82%A1%E4%BB%BD%E6%9C%89%E9%99%90%E5%85%AC%E5%8F%B82022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf> (accessed on 22 August 2023).

⁵⁶⁷ See Ping An Bank, Homepage – Investor Relations – Major Shareholders; available at: https://group.pingan.com/investor_relations/major_shareholders.html (accessed on 22 August 2023).

⁵⁶⁸ See China Minsheng Bank, Annual Report 2022; available at: <https://ir.cmbc.com.cn/media/mc3d2wm2/%E4%B8%AD%E5%9B%BD%E6%B0%91%E7%94%9F%E9%93%B6%E8%A1%8C2022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf>, p. 94 (accessed on 22 August 2023).

⁵⁶⁹ See for instance Article 160 of the AoA of the ABC or Article 138 of the AoA of the ICBC.

⁵⁷⁰ See *Research Report on the Corporate Governance Practices of China's Big Six Commercial Banks*, Deloitte, 2019, p. 10; available at: <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/int-markets/lu-2019-corporate-governance-practices-china-big-six-commercial-banks.pdf> (accessed on 22 August 2023). According to this report, describing in detail the so-called "double entry, cross offices" system, on average, more than 70% of the Party committee members of the Big Six Banks serve as senior management members.

⁵⁷¹ Hughes, J., *China's Communist party writes itself into Company Law*, Financial Times, 14 August 2017; available at: <https://www.ft.com/content/a4b28218-80db-11e7-94e2-c5b903247afd> (accessed on 22 August 2023).

⁵⁷² AoA of the ICBC, Chapter 6, Articles 52-53; available at: http://v.icbc.com.cn/userfiles/Resources/ICBCLTD/download/2017/gszc_en.pdf (accessed on 22 August 2023).

*Bank and the secretary of the Party Committee shall be the same person*⁵⁷³. Article 53 then lists the duties of the Party committee, including the monitoring of the practical implementation of Party and State decisions in the bank. The Party committee is also playing a role in the selection and evaluation of personnel, together with the board of directors. Finally, the Party committee is to be involved in the discussion of “*major operational and management issues and major issues concerning employee interests and put forth comments and suggestions*”⁵⁷⁴. Changes have also been made to the provisions concerning the board of directors, stating that the Party committee has to be consulted before material issues are decided upon⁵⁷⁵. There appears to be ample evidence that through this process Party organisations have become the ultimate decision-maker within banks⁵⁷⁶.

The AoA of the ABC contain identical language on establishing the Party committee in Article 58 and on the Committee’s involvement in the discussion of major issues in Article 161⁵⁷⁷; the same is true for the AoA of PSBC in Articles 52 and 188⁵⁷⁸.

Furthermore, the Board of Supervisors of the key state-owned financial institutions is appointed according to the Interim Regulation on the Board of Supervisors of Key State-owned Financial Institutions⁵⁷⁹. According to Articles 3 and 5 of the Interim Regulation, the Members of the Board of Supervisors of such financial institutions are dispatched by and accountable to the State Council. Key state-owned financial institutions are defined in Article 2 of the Interim Regulation according to which:

The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors. The list of State-owned financial institutions to which the State Council dispatches boards of supervisors shall be recommended by the administrative organ for boards of supervisors in State-owned financial institutions (hereinafter referred to as the administrative organ for boards of supervisors) and submitted to the State Council for determination.

⁵⁷³ *Ibid.*, Article 52.

⁵⁷⁴ *Ibid.*, Article 53 (3).

⁵⁷⁵ *Ibid.*, Article 144.

⁵⁷⁶ “In practice, proposals approved by the Party organisation after its research and discussion have rarely ever been vetoed by the board of directors. Both literature research and interviews indicate that the Party organization is the decision maker when it comes to major issues and it plays the most significant role in governance structure”. See *Research Report on the Corporate Governance Practices of China’s Big Six Commercial Banks*, Deloitte, 2019, p. 9; available at: <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/int-markets/lu-2019-corporate-governance-practices-china-big-six-commercial-banks.pdf> (accessed on 22 August 2023).

⁵⁷⁷ AoA of the ABC; available at: <https://www.abchina.com/en/investor-relations/corporate-announcements/announcements/201811/W020181126632885896610.pdf> (accessed on 22 August 2023).

⁵⁷⁸ AoA of the PSBC; available at: https://www.psbc.com/en/investor_relations/announcement/202012/P020201208621016895139.pdf (accessed on 22 August 2023).

⁵⁷⁹ Available at: <http://www.pbc.gov.cn/english/130733/3858822/index.html> (accessed on 22 August 2023).

The organisational setup of joint-stock commercial banks does not differ from the one of the state-owned commercial banks, thereby effectively allowing for Party control over all essential decision of the company. The AoA of China Everbright Bank serve as an example⁵⁸⁰. According to Article 52 “*the chairman of the board of directors of the Bank and the secretary of the Party Committee shall be the same person*” while Article 158 stipulates that “*prior to making decisions on material issues of the Bank, the Board of Directors shall hear the opinion from the Party Committee*”. Virtually identical language can be found for example in Articles 64 and 171 of the AoA of the China CITIC Bank⁵⁸¹.

In view of the above, Party bodies can exert influence over personnel and business decisions in banks (and other entities in the financial sector), playing not only an important role in the appointment and dismissal of major personnel but also directly participating in decision-making on major operational matters. The abovementioned “*double entry, cross offices*” system, which occurs between Party committee, board of directors, board of supervisors and senior management, extends beyond of the chairman of the board of directors serving as the secretary of the Party committee and entails additional overlaps between the banks’ management structures and the Party organisations, such as the chairman of the board of supervisors serving as the deputy secretary of the Party committee and the vice presidents of the banks serving as the Party committee members⁵⁸². This practice and the subordination of the banks’ decision-making to the Party’s control and review is directly based on the instructions of the CBIRC: “*We shall improve the leadership system of ‘double entry, cross offices’. Members of the Party joining the Boards of Directors, Boards of Supervisors and the senior management positions shall rigorously implement the decisions by the Party organisation*”⁵⁸³. More generally, one of overall aims of CBIRC’s Notice 40 of August 2020, is openly declared as to “*further strengthen the Party’s leadership in China’s banking and insurance sectors*”⁵⁸⁴.

The persisting and – in particular since 2017 – increasing influence of the CCP over management bodies and day-to-day operations of the main corporate entities within the banking sector perpetuates the historically known situation in which the highest executives of financial institutions all had political ranks similar to local and central government officials. For example, the political rank of the CEO of the BOC used to be the same level as that of the vice president

⁵⁸⁰ AoA of China Everbright Bank; available at: https://vpr.hkma.gov.hk/statics/assets/doc/100314/ma/ma01_eng.pdf (accessed on 22 August 2023).

⁵⁸¹ AoA of the China CITIC Bank; available at: https://www.citicbank.com/about/survey_1/regulation/202110/P020211012520900934734.pdf (accessed on 24 August 2023).

⁵⁸² See *Research Report on the Corporate Governance Practices of China’s Big Six Commercial Banks*, Deloitte, 2019, p. 9; available at: <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/int-markets/lu-2019-corporate-governance-practices-china-big-six-commercial-banks.pdf> (accessed on 22 August 2023).

⁵⁸³ See *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*, Notice No 40, CBIRC, 28 August 2020. <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 24 August 2023).

⁵⁸⁴ *Ibid.*

of the PBOC or a vice governor of a province⁵⁸⁵. Similarly, a 2015 analysis of the individual profile of the members of the board of directors of the top 10 banks revealed that most of the board of director's seats were assigned to professionals who are connected to the governmental apparatus⁵⁸⁶. They had either worked for governmental institutions, had political roles in cities or regions of China (i.e. mayor), or were members of the CCP. Research, conducted in 2023, of the members of the board of directors of the BOC and ICBC banks upheld the same conclusions⁵⁸⁷.

6.3.3. LEGAL FRAMEWORK REGULATING THE BANKING SECTOR

In addition to the ownership and institutional control and influence of the State over the banks described above, Chinese financial institutions are also operating in a legal environment that directs them to align themselves with the country's industrial policy objectives when making financial decisions. This section provides a brief overview of the main legal instruments (for further details see also Chapter 2).

6.3.3.1. BANKING LAW

The objective of the Law of the PRC on Commercial Banks (*'Banking Law'*)⁵⁸⁸ is defined in its Article 1 as regulating the behaviour and interests of the banks, the interests of depositors and clients, the quality of the banks' assets, their supervision, as well as promoting the development of the socialist market economy.

In line with the last objective, Article 34 states that: "*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*"⁵⁸⁹. Thus, the Banking Law directs banks to promote a lending strategy which supports the industrial policies of the State.

The room for manoeuvre of the banks is further constrained by Article 38, which determines that the range of interest rates which a commercial bank may charge in the course of its business can only fluctuate between the lower and upper limits set by the PBOC⁵⁹⁰. In the past, the PBOC indeed set minimum and maximum interest rates for loans and deposits via executive regulatory acts. Since October 2015, the PBOC has removed these limits⁵⁹¹. However, Article 38 of the

⁵⁸⁵ Elliott, D.J. and Yan, K., *The Chinese Financial System, An Introduction and Overview*, John L. Thornton China Center Monograph Series, Number 6, July 2013, p. 11; available at: <https://www.brookings.edu/wp-content/uploads/2016/06/chinese-financial-system-elliott-yan.pdf> (accessed on 24 August 2023).

⁵⁸⁶ The analysis has been restricted to the 20 major Chinese Banks mentioned in the Section 3.1.

⁵⁸⁷ Directors and Board of Directors of BOC; available at: https://www.bankofchina.com/en/investor/ir6/201504/t20150402_4830133.html (accessed on 12 October 2023); Board of Directors of ICBC; available at: <https://www.icbc-ltd.com/icbcltd/corporate%20governance/board%20of%20directors/board%20of%20directors/> (accessed on 12 October 2023).

⁵⁸⁸ Law of the PRC on Commercial Banks, Order No. 34 of the President of the PRC, as amended.

⁵⁸⁹ *Ibid.*, Article 34.

⁵⁹⁰ *Ibid.*, Article 38.

⁵⁹¹ With other types of regulatory guidance on limits for deposit and loan rates remaining in place. See, for example Cao, L., *Cutting Deposit Rates Has Become Mission Critical for Chinese Banks*, The Wall Street Journal, 17 May 2023; available at: <https://www.wsj.com/articles/cutting-deposit-rates-has-become-mission-critical-for-chinese-banks-a17759ef> (accessed on 24 August 2023).

Banking Law, which is the legal basis for the PBOC's regulatory acts, has not been adapted accordingly, so that such limits may again be imposed at any time by the PBOC. Furthermore, the PBOC requires commercial banks to express their loan prime rates quotations as a function of the monetary tools controlled by the PBOC⁵⁹² (see also Section 11.3).

Consequently, the PBOC and the State Council maintain a high degree of control over the operations of commercial banks, both with respect to selection of sectors to which credit will be primarily available (Article 34 of the Banking law), as well as regarding to the cost of financing (Article 38 of the Banking law).

The provisions of Articles 34 and 38 are somewhat softened by Article 7 concerning the examination of the creditworthiness of the borrower, and Article 4 relating to the bank's autonomy, and the fact that "*commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual*"⁵⁹³. However, this formulation does not shield banks from their duty to apply public policy considerations as set out in Article 34 of the Banking Law.

In October 2020, the PBOC published for consultation a draft amendment of the Banking Law, which concerns the risk tolerance levels, corporate governance, consumer rights protection, personal information handling, takeovers, capital adequacy, as well as bankruptcy procedures. Notably, the draft specifies conditions under which the State Council may opt to take over a bank the normal operations of which might be impeded⁵⁹⁴. As of writing of this Report, the legislative process has not been finalised⁵⁹⁵.

6.3.3.2. RULES ON LOANS AND SUPPORT

In 1996, the PBOC promulgated the General Rules on Loans⁵⁹⁶, the main purpose of which was to regulate the activities connected with loans, to protect the legitimate rights and interests of both parties to borrowing and lending, to ensure the safety of credit and loan assets, to improve the overall results from loan utilization, and to promote steady socio-economic development⁵⁹⁷.

Article 7 of the General Rules on Loans states that: '*Special-purpose loan means a loan which is made by a fully-State-owned commercial bank with approval and authorization of the State Council and with necessary remedies having been taken in advance for any possible loan loss*'⁵⁹⁸. Additionally, Article 15 establishes that interest on loans may be subsidized when in

⁵⁹² For a wider context of the interest rates policies, see Adams, N., Jacobs, D., Kenny, S., Russell, S., Sutton, M., *China's Evolving Financial System and Its Global Importance*, Reserve Bank of Australia, 2021, pp. 5-6.

⁵⁹³ Law of the PRC on Commercial Banks, Order No. 34 of the President of the PRC, as amended, Article 4.

⁵⁹⁴ See *Chinese Central Bank Overhauls Commercial Banking Law*, China Banking News, 19 October 2020; at: <https://www.chinabankingnews.com/2020/10/19/chinese-central-bank-overhauls-commercial-banking-law/> (accessed on 24 August 2023).

⁵⁹⁵ See *About the Amendment to the Banking Law*, NPC, 26 April 2022; available at: www.npc.gov.cn/npc/c30834/202204/2986d7f635ff4fe69c57e774b914faa1.shtml (accessed on 24 August 2023).

⁵⁹⁶ The General Rules on Loans promulgated by the PBOC on 28 June 1996.

⁵⁹⁷ Chapter 1, Article 1 of the General Rules on Loans promulgated by the PBOC on 28 June 1996.

⁵⁹⁸ *Ibid.*, Chapter 2, Article 7. Special loans referred to in Article 7 had been eliminated in 1999 based on a Circular on Improving the Administration of Special Loans, but the Circular itself was annulled in 2007, leaving Article 7 in effect.

accordance with the State's policy to promote the growth of certain industries and economic areas⁵⁹⁹.

The Government also intervenes into the lending operations of financial entities by designating industrial sectors which should benefit from privileged access to credit. In 2005, the State Council issued its Decision No. 40⁶⁰⁰ (see Chapter 4). Article 17 thereof provides that investment projects in the ‘*Encouraged*’ category shall benefit from specific privileges and incentives, inter alia, from financial support. By contrast, Articles 18 and 19 provide that the relevant authorities can prevent financial institutions from supplying loans to ‘*Restricted*’ and ‘*Prohibited*’ projects. In this respect, Decision No. 40 echoes in part Article 34 of the Banking Law by mandating that financial institutions should take into account industrial state policies when providing loans.

The prominent role of State policy considerations (instead of purely commercial ones) which the State imposes upon the commercial banks in shaping their lending strategies is also clearly visible in the MOF’s Notice on the Commercial banks performance evaluation method issued on 15 December 2020. According to the notice’s provisions, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities “*serve the national development objectives and the real economy*”, and in particular how they “*serve strategic and emerging industries*”. Article 4 of the notice stipulates that “*the performance evaluation of commercial banks shall provide a strong and effective guarantee that national macro-policies will be implemented*”⁶⁰¹.

In sum, the lending policies of banking institutions are shaped to serve policy purposes and in which the banks’ performance is – at least to some degree – superseded by compliance with the requirements to support the Government’s industrial policies. This legal framework described above complements those industrial policies and ensures that whenever the Government identifies economic priorities, projects of national interests, specific industrial programs etc., requisite funds are channelled as a priority to these projects via the banks.

The industrial policy of little giants (see Section 2.3.2) provides but one of many possible examples which can demonstrate how the industrial and lending policies are intertwined. As mentioned in Section 2.3.2., the Guiding Opinions regulating the little giants initiative require the following with respect to financing: “*Involve various types of government guidance funds and encourage social capital to contribute to the establishment of high-quality enterprise incubator funds. Duly use existing funding channels to support the high-quality development of 'specialized and specific' small and medium-sized enterprises.*” As aptly concluded by independent sources⁶⁰²: “*It is likely that these firms can list on public markets and attract funding. But it is not because of the judgment of investors that these firms are viable or*

⁵⁹⁹ *Ibid.*, Chapter 3, Article 15.

⁶⁰⁰ Decision of the State Council Regarding Promulgating the Implementation of Interim Provisions on the Promotion of Industrial Restructuring, 2 December 2005, Guo Fa [2005] No.40.

⁶⁰¹ See the Notice on the Commercial banks performance evaluation method, issued on 15 December 2020 by MOF; at: http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (accessed on 24 August 2023).

⁶⁰² See Naughton, B. and Boland, B., *CCP Inc., The Reshaping of China’s State Capitalist System*, A Report of the CSIS Freeman Chair in China Studies, CSIS, 2023, p. 19.

especially productive, but rather because they are known to have policymakers' imprimatur. It may be an astute short-run move to buy these stocks, but the purchaser will be looking to dump the shares once the policy-led bubble has peaked. The quality of the information coming from the stock market can only decline.”

The systematic instrumentalization of the Chinese banking sector for the purposes of pursuing industrial policies is well documented also in the Commission's recent trade defence practice, such as in Regulation 2021/328⁶⁰³. In the corresponding investigation, the Commission established the Government's ownership and/or control, including control over the composition of management bodies, of all relevant banking institutions⁶⁰⁴ in the categories described above in Sections 6.3.1.1, 6.3.1.2 and 6.3.1.3. Subsequently, having reviewed the relevant regulatory documents, including the Banking Law, the General Rules on Loans and the Decision No. 40 (see Section 4.2.9, the Commission concluded that “*financial institutions in the PRC operate in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions*”⁶⁰⁵.

6.4. SECURITIES SECTOR

6.4.1. GENERAL LEGAL FRAMEWORK

The Securities Law of the PRC⁶⁰⁶ (*'Securities Law'*), regulates the issuance and trading of securities on Chinese exchange markets. According to Article 2 of the Securities Law, it applies “*to the issuance and transaction of stocks, corporate bonds, depository receipts and other securities lawfully recognized by the State Council within the territory of the People's Republic of China*”. Following its 2019 revision, the Securities Law provides a comprehensive legal framework, regulating the essential aspects of securities markets, such as the registration of new securities for initial public offerings, disclosure requirements, trading, investor protection, sanctions, or the extent of responsibility of the CSRC. The 2020 revision also resulted in the elimination of the explicit obligation of bond issuers to comply with the industrial policies of the State⁶⁰⁷, as well as in the encouragement by the State for listings of corporate stocks complying with such industrial policies⁶⁰⁸. Nevertheless, Article 1 of the Securities Law, in setting out the law's overall purpose, claims allegiance to the concept of socialist market

⁶⁰³ Commission Implementing Regulation (EU) 2021/328 of 24 February 2021 imposing a definitive countervailing duty on imports of continuous filament glass fibre products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, OJ L 65, 25.02.2021, p. 1.

⁶⁰⁴ See *Ibid.*, recitals 71-72. That is XIM Bank, CDB, CCB, ICBC, BOCOM, China Everbright Bank, Postal Savings Bank, China Merchants Bank, Shanghai Pudong Development Bank, China Industrial Bank, Shenyang Rural Commercial Bank, Bank of Shanghai, Ningbo Bank, China CITIC Bank, China Guangfa Bank, China Bohai Bank, Huaxia Bank, Hankou Bank, Hubei Bank, Huishang Bank, Dongying Bank, Bank of Tianjin, Bank of Kunlun, Shanghai Rural Commercial Bank, China Industrial International Trust Limited, Daye Trust Co., Ltd., Sinotruk Finance Co., Ltd.

⁶⁰⁵ *Ibid.*, Recitals 74-75.

⁶⁰⁶ Available at: <http://www.npc.gov.cn/englishnpc/c23934/202109/9886ca6f805e4663a9a725d6f72066dd.shtml> (accessed on 24 August 2023).

⁶⁰⁷ Under previous Article 16(4) of the Securities Law.

⁶⁰⁸ Under previous Article 51 of the Securities Law.

economy (see Chapter 2), thereby confirming that the securities market continues to represent a tool for advancing the political and economic agenda pertaining to that doctrine:

This Law is enacted in order to standardize the issuance and transaction of securities, protect the legitimate rights and interests of investors, maintain the socioeconomic order and public interests of society and promote the development of the socialist market economy.

Another noteworthy provision of the 2020 amendment of the Securities Law is Article 177 which stipulates that:

Overseas securities regulatory bodies may not directly conduct investigation and evidence collection activities within the territory of the People's Republic of China. In the absence of consent of the securities regulatory authority under the State Council and relevant competent departments under the State Council, no entity or individual may provide documents and material relating to securities business activities overseas without prior authorization.

This Article, demonstrating the tight control which Chinese authorities intend to maintain over the functioning of the securities markets in China, should be seen in conjunction with one of the broader aims of the Securities Law's revision. As reported by CCP-backed media, the revision specifically targets overseas activity insofar as: “any issue or trading of securities beyond China's borders that disrupts China's domestic market order or encroaches on the legitimate rights and interests of domestic investors shall be handled and investigated for liability”⁶⁰⁹.

More generally, the legal framework for the bond and the stock market, as established under the Securities Law, follows a logic that is similar to the legislation relating to bank loans, that is that bond and stock markets are eventually used for channelling capital to priority projects in line with the State's priorities. The more specific modalities of the State presence and interference on the securities markets are further developed in Sections 6.4.2 and 6.4.3 below.

6.4.2. BOND MARKET

6.4.2.1. STRUCTURE AND STATE PRESENCE ON THE BOND MARKET

The Chinese bond market has been growing rapidly and is, as of writing of this Report, the second largest globally. As of mid-2020, the Chinese onshore bond market was estimated worth USD 15.5 trillion - equivalent to the bond markets in the UK, France and Germany combined – and reaching some USD 17 trillion in 2021⁶¹⁰. The largest segment of the bond market – some 55% – was represented by central government bonds, local government bonds and policy banks

⁶⁰⁹ See *New Securities Law takes effect, targets overseas activity*, Global Times, 1 March 2020; available at: <https://www.globaltimes.cn/content/1181185.shtml> (accessed on 24 August 2023).

⁶¹⁰ See *China Insights – Market structure*, The China Bond Team, 20 April 2021; available at: <https://www.eurizonsljcapital.com/china-market-structure/> (accessed on 24 August 2023).

bonds⁶¹¹. Approximately one third of the market⁶¹² was represented by credit bonds, i.e. mainly bonds issued by SOEs, privately owned corporations and financial institutions.

Table 6.3: Composition of the onshore bond market (2021)⁶¹³:

Type of Bonds	%
Central Government and equivalent	16.83
Local Government	22.77
Policy Banks	15.84
Credit	34.65
Others	9.90

The significant proportion of bonds with limited credit risk issued by governments and policy banks represents a feature which distinguishes the Chinese bond market from its western counterparts dominated by corporate bonds. In other words, as is the case for the banking sector, government-related players play a major role in the Chinese bond market. Moreover, despite some regulatory developments improving their access to liquidity⁶¹⁴, privately owned companies still have constrained access to the onshore bond market, with most of the corporate bonds being issued by SOEs (in 2021, SOE bonds represented 92% of the outstanding corporate bonds value)⁶¹⁵. The self-financing ability of the private sector therefore remains limited, as remains the overall importance of the bond markets within the Chinese financial system. The below 2022 chart prepared by the IMF demonstrates this in visual terms.

Figure 6.2: Contribution to Total Social Financing Stock Growth (in %, year-on-year)⁶¹⁶

⁶¹¹ 9 Things to know about China's Bond Market, Allianz Global Investors, 15 October 2021, p. 2; available at: <https://ch.allianzgi.com/-/media/allianzgi/globalagi/china-microsite/9-things-to-know/9-things-to-know-about-chinas-bond-markets.pdf> (accessed on 24 August 2023).

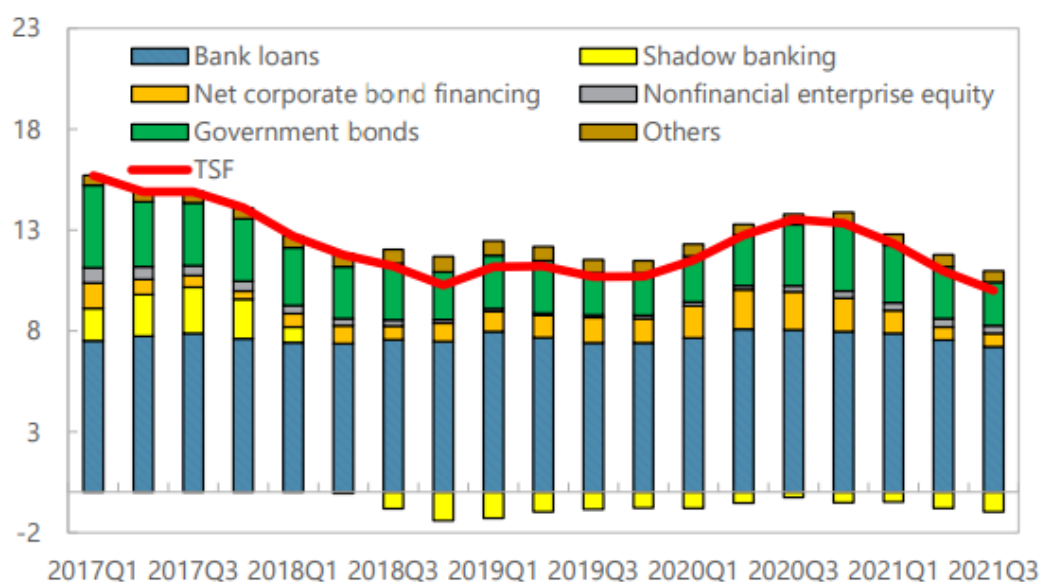
⁶¹² The Internationalization of the China Corporate Bond Market, International Capital Market Association (ICMA), Zurich, 2021, p. 7; available at: <https://www.icmagroup.org/assets/documents/About-ICMA/APAC/The-Internationalization-of-the-China-Corporate-Bond-Market-January-2021-140121.pdf> (accessed on 24 August 2023).

⁶¹³ See *China Insights – Market structure*, The China Bond Team, 20 April 2021; available at: <https://www.eurizonsljcapital.com/china-market-structure/> (accessed on 24 August 2023). The available figures shows that the structure of the Chinese bond market has largely remained unchanged since 2018. See in this connection Shen, W., *Conceptualizing the Regulatory Thicket: China's Financial Markets after the Global Financial Crisis*, Routledge, London, New York, 2021, p. 79. Original source is WIND and Golden Credit Rating.

⁶¹⁴ See for example the 2021 Guiding Opinions on Promoting the High-quality Development of the Reform and Opening Up of the Corporate Credit Bond Market; available at: www.gov.cn/xinwen/2021-08/18/content_5631977.htm (accessed on 24 August 2023). See further *China Bond Monitor: SOE credit differentiation will intensify*, Moody's Investor Service, 20 May 2021, p. 4.

⁶¹⁵ *Ibid.*, p. 3. Based on WIND data.

⁶¹⁶ See *Consultation-Press Release; Staff Report; and Statement by the People's Republic of China: 2021 Article IV Executive Director for the People's Republic of China*, IMF, 2022, p. 53; available at: <https://www.imf.org/en/Publications/CR/Issues/2022/01/26/Peoples-Republic-of-China-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-512248> (accessed on 22 August 2023).



In this connection, the IMF highlights the importance of the government bond issuances to maintain liquidity in an environment of tighter credit conditions and corresponding sluggish corporate bond issuance in 2021-2022⁶¹⁷. Moreover, the investors' structure remains heavily dominated by banks, which are also the underwriters of most bonds - central government bonds, PBOC notes, policy bank bonds and bank subordinated debt⁶¹⁸. Banks are also the largest holders of corporate bonds, followed by fund institutions⁶¹⁹. Since there is a significant overlap between the creditors providing capital on the bond market and those providing capital in the form of loans, bonds are to a certain extent just another means to provide corporate loans.

In addition, international investors held less than 3% of the Chinese bond market in 2021. As the chart below illustrates, the very limited, even if growing presence of international investors in the Chinese bond market, confirms the lack of integration of the Chinese financial system into the global structures⁶²⁰.

Figure 6.3: Foreign ownership of Chinese bonds (as of January 2021)⁶²¹

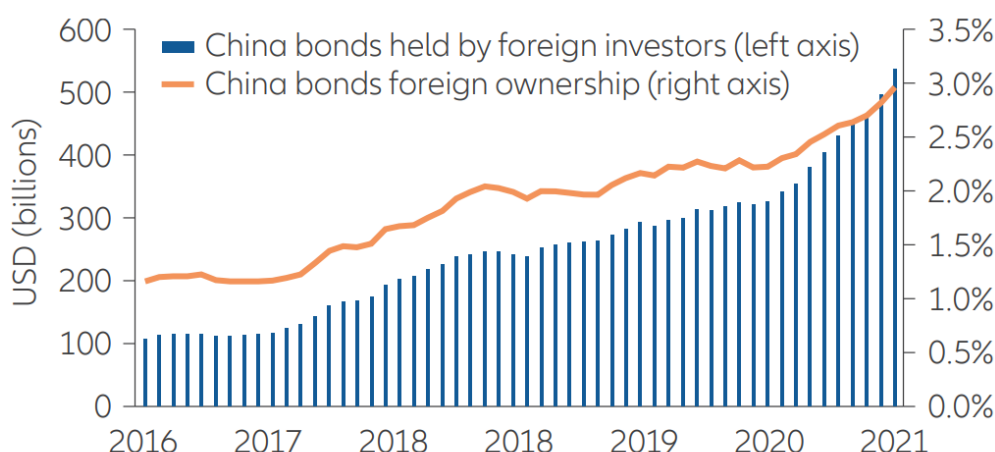
⁶¹⁷ Ibid.

⁶¹⁸ Shen, W., *Conceptualizing the Regulatory Thicket: China's Financial Markets after the Global Financial Crisis*, Routledge, London, New York, 2021, p. 74.

⁶¹⁹ Amstad, M., and He, Zh., *Chinese Bond Market and Interbank Market*, NBER, Working Paper 25549, February 2019, p. 10; available at: https://www.nber.org/system/files/working_papers/w25549/w25549.pdf (accessed on 24 August 2023).

⁶²⁰ China has been taking certain measures to increase the access of international investors to the onshore bond market, such as Bond Connect; available at: <https://www.chinabondconnect.com/en/About-Us/Company-Introduction.html> (accessed on 24 August 2023).

⁶²¹ *9 Things to know about China's Bond Market*, Allianz Global Investors, 15 October 2021, p. 3; available at: <https://ch.allianzgi.com/-/media/allianzgi/globalagi/china-microsite/9-things-to-know/9-things-to-know-about-chinas-bond-markets.pdf> (accessed on 24 August 2023). Original source: CEIC, Wind, Citi Research.



Furthermore, the market is still highly fragmented. It is dominated by the interbank market, sub-markets lack connectivity, featuring different trading systems, bond types and participants. The regulatory framework is also complex, featuring numerous regulatory authorities' (MOF, PBOC, NDRC, NFRA, CSRC, NAFMII⁶²²) responsibility for various components of the bond market (initial issuance, trading, custody), depending also on the type of bond in question⁶²³. It can also be noted that, while the Chinese corporate bond market has been on the rise in recent years, the increase seen in 2020 was linked notably to new State regulation on the issuance of special crisis-shielding bonds in support of SMEs, which at the same time involved regulatory pressure on State-owned banks to buy these bonds⁶²⁴.

6.4.2.2. CREDIT RATINGS AND PRICING OF CREDIT RISK ON THE BOND MARKET

Not only is China's bond market dominated by the State, as described in Section 6.4.2 above, the credit risk linked to the bonds issued is determined on a distorted basis. According to two studies published in 2016, China had close to a dozen domestic credit rating agencies, and in total, 60% of all rated corporate bonds in China had been rated by a state-owned ratings agency⁶²⁵. In addition, according to one of these studies, one of the largest domestic credit rating agencies in China, Dagong Global Credit Rating, was judged 'private' from the standpoint of

⁶²² NAFMII (National Association of Financial Market Institutional Investors) is a self-regulatory organization under the supervision of the PBOC. Its members include infrastructure institutions, financial intermediaries (lead underwriters, underwriters, credit rating agencies, guarantee companies), non-financial intermediaries (accounting firms, law firms, and asset appraisal companies), investor members, issuers, and others; available at: <https://www.nafmii.org.cn/englishnew/aboutus/aboutnafmii/> (accessed on 24 August 2023).

⁶²³ See, for example, Livingston, M., Poon, W.P.H. and Zhou, L., *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, Journal of Banking & Finance, Volume 87, February 2018, pp. 216-232; available at: <https://doi.org/10.1016/j.jbankfin.2017.09.020> (accessed on 24 August 2023).

⁶²⁴ *The Internationalization of the China Corporate Bond Market*, ICMA, Zurich, 2021, p. 8; available at: <https://www.icmagroup.org/assets/documents/About-ICMA/APAC/The-Internationalization-of-the-China-Corporate-Bond-Market-January-2021-140121.pdf> (accessed on 24 August 2023).

⁶²⁵ Lin, L.W. and Milhaupt, C.J., *Bonded to the State: A Network Perspective on China's Corporate Debt Market*, Columbia Law and Economics Working Paper No.543, p. 20; available at: https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1206&context=fac_pubs (accessed on 24 August 2023); Livingston, M., Poon, W.P.H. and Zhou, L., *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, Journal of Banking & Finance, Volume 87, February 2018, pp. 216-232; available at: <https://doi.org/10.1016/j.jbankfin.2017.09.020> (accessed on 24 August 2023).

equity ownership but had its origins in the Government and was led by a politically well-connected controlling shareholder whose business model was closely aligned with the policy objectives of the Government⁶²⁶. In 2019, further to a ruling concerning the lack of due diligence and conflicts of interest, the company was ultimately taken over by an SOE – the China Reform Holdings⁶²⁷. Notably, in 2019, among the nine domestic rating agencies that remained, five were at least partly state-owned⁶²⁸. Foreign rating agencies, such as Standard and Poor's and Fitch are present on the Chinese market, after obtaining licenses to rate bonds traded in the interbank market. While, as of the beginning of 2021, their local subsidiaries had issued some ratings in relation to the local market, the latter remained aligned with the domestic rating pattern described in the next paragraph⁶²⁹.

In general, the Chinese credit ratings are heavily skewed towards the highest end of the rating scale. By the end of 2020, 96% of Chinese bonds were rated 'AA' or better, with 38% of credit bonds carrying an 'AAA' rating⁶³⁰, while, for example, less than 10% of firms enjoy such top-notch ratings in the US market⁶³¹ (see also Figure 6.4 below). Consequently, the information on credit risk estimation of the underlying asset that can be derived from a rating by Chinese credit rating is not directly comparable to the ratings in other markets, such as the EU or the US. Market operators may still be able to discern informational content in the ratings provided by Chinese rating agencies and efficiently react on that basis⁶³², taking into account that the majority of "*variations in Chinese bond ratings can be explained by [...] commonly used financial ratios and market-based variables, such as an issuer's market capitalization, interest coverage ratio and total debt ratio*"⁶³³. Nevertheless, despite a correlation between the bond ratings and the corresponding bond yields, the fundamentals of the Chinese bond ratings do not correspond to those by international credit rating agencies in various respects: (i) Chinese credit rating agencies have very broad rating scales and tend to pool bonds with significantly different

⁶²⁶ Lin, L.W. and Milhaupt, C.J., *Bonded to the State: A Network Perspective on China's Corporate Debt Market*, Columbia Law and Economics Working Paper No.543, p. 20; available at: https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1206&context=fac_pubs (accessed on 24 August 2023).

⁶²⁷ See Hornby, L., *China's Dagong rating agency taken over by state-owned investor*, Financial Times, 19 April 2019; available at: <https://www.ft.com/content/7079c7aa-6265-11e9-b285-3acd5d43599e> (accessed on 24 August 2023).

⁶²⁸ See Jaquet, K., *Understanding China's Bond Ratings*, The Diplomat, 27 June 2019; available at: <https://thediplomat.com/2019/06/understanding-chinas-bond-ratings/> (accessed on 24 August 2023).

⁶²⁹ *The Internationalization of the China Corporate Bond Market*, ICMA, Zurich, 2021, p. 18; available at: <https://www.icmagroup.org/assets/documents/About-ICMA/APAC/The-Internationalization-of-the-China-Corporate-Bond-Market-January-2021-140121.pdf> (accessed on 24 August 2023).

⁶³⁰ *Ibid.* See further *9 Things to know about China's Bond Market*, Allianz Global Investors, 15 October 2021, p. 3; available at: <https://ch.allianzgi.com/-/media/allianzgi/globalagi/china-microsite/9-things-to-know/9-things-to-know-about-chinas-bond-markets.pdf> (accessed on 24 August 2023).

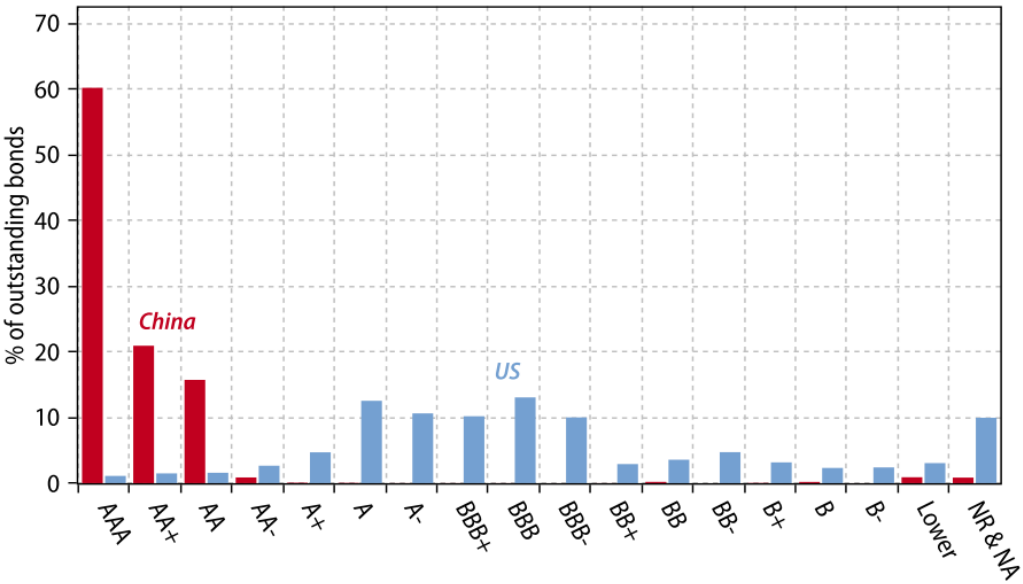
⁶³¹ Livingston, M., Poon, W.P.H. and Zhou, L., *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, Journal of Banking & Finance, Volume 87, February 2018, pp. 216-232; available at: <https://doi.org/10.1016/j.jbankfin.2017.09.020> (accessed on 24 August 2023).

⁶³² See Poon, W.P.H.; Chan, K.C. – An empirical examination of the informational content of credit ratings in China (2008), Journal of Business Research; available at: <https://www.sciencedirect.com/science/article/pii/S0148296307002561> (accessed on 12 March 2024)

⁶³³ See Livingstone, M.; Poon, W.P.H.; Zhou, L. – Are Chinese credit ratings relevant? A study of the Chinese bond and credit rating industry, p. 216-217; (2018), Journal of Banking and Finance; available at: <https://www.sciencedirect.com/science/article/pii/S0378426617302352> (accessed on 12 March 2024).

default risks into a single rating category, with one-notch difference in Chinese ratings likely to be equivalent to a one-letter (or three-notch) difference in international ratings, (ii) yields on non-SOE bonds are typically higher than bonds issued by SOEs, the perceived implicit government guarantee of the SOE being the likely cause, (iii) rating standards appear to vary significantly among Chinese credit rating agencies⁶³⁴.

Figure 6.4: Share of corporate bond by rating, China vs US, as of March 2021⁶³⁵



These characteristics of the Chinese credit rating system can be attributed to several factors. First, the relatively high number of rating agencies allow borrowers to choose whichever rating agency can give them a higher rating. This, in combination with the requirement for bonds to be rated before issuance, resulted in *"vicious cycle in which only high-rated bonds can be sold, and only high credit ratings are given. As a result, credit ratings have little real meaning"*⁶³⁶. Even if China has nominally taken a number of steps to correct the deficiencies in the credit-rating market⁶³⁷, the OECD pointed out in 2023 that *"[d]eficiencies in the credit-rating market, including inflated ratings and weak warning systems hinder the healthy development of the bond market"*⁶³⁸.

Second, the strong State presence on the Chinese bond market has historically led to a situation where bond defaults have hardly existed. The market has been largely confined to the largest

⁶³⁴ Ibid., p. 217, 226, 230-1.

⁶³⁵ See Zhang, X., *Time to Fix Credit Ratings*, Gavekal Dragonomics, 17 March 2021, p. 2.

⁶³⁶ Ibid., p. 1.

⁶³⁷ In February 2021, the CSRC finalised amendments to the administrative rules of credit rating business in the securities market and for issuance and trading of corporate bonds, which removed the requirement of mandatory credit rating for issuing public corporate bonds, with only issuer rating required. In March 2021, the PBOC issued on 28 March 2021 a draft decision promoting high-quality and healthy development of credit ratings in the bond market, according to which credit rating agencies could be held accountable as independent third parties. Regulations seeking to restrict access of high-risk issuers to the corporate bond market were also published in 2021. See *OECD Economic Surveys: China 2022*, OECD Publishing, 2022, pp. 34-35; available at: <https://www.oecd-ilibrary.org/docserver/b0e499cf-en.pdf> (accessed on 22 August 2023).

⁶³⁸ Ibid., p. 34.

and most politically connected firms, for which default risk has long been considered to be essentially non-existent⁶³⁹, with important implications for functioning of the market: "[s]ince the highest-rated firms have an implicit sovereign guarantee, it is difficult for firms without one to achieve the same rating. The existence of implicit guarantees for SOEs therefore has the effect of systematically pushing down the ratings private firms can achieve, which in turn limits their access to the bond market"⁶⁴⁰. In fact, the first default on bonds only occurred in 2014 (see also Section 6.7). Since then, bond defaults remained occasional until 2018, when their numbers slightly increased, notably due to the tightening of rules on non-standard financing. A specialised survey indicated notably that the market "tend to remain static, and a credit can easily go straight from AA status to default." In the same survey, interviewees acknowledged that credit ratings in China were not internationally comparable as "a critical development in the internationalization of the [Chinese] onshore market will be the introduction of internationally comparable credit ratings"⁶⁴¹.

In 2019, another study confirmed the paradoxical decoupling of the Chinese domestic ratings from the dynamics of companies' real financial condition: "Since the first default in 2014 until 2018, there were about ten times more upgrades than downgrades [...]. Of the 2,784 bond issuers 918 received rating upgrades, only 129 were downgraded and the vast majority of 1737 remained the same rating level over the past four years until end of 2018"⁶⁴².

In 2020, the defaulting bond values further went up, this time with several SOE bonds defaulting. It is to be noted here that these companies were mostly local SOEs in what appeared as fiscally troubled localities. However, importantly, the three bonds to default in the end of 2020 (Huachen Automotive, Yongcheng Coal and Electricity, Tsinghua Unigroup) were rated 'AAA'. Further high-profile defaults followed in 2021 and 2022, in particular in the property sector (the companies Sunac China Holdings, Evergrande, Sinic Holdings, China Properties Group, Fantasia, Kaisa can be mentioned as examples⁶⁴³).

These defaults prompted regulatory action - in particular the abolishment of the requirement for corporate bonds to obtain a credit rating - but they also highlighted the ongoing structural problems related to risk assessment of corporate debt in China, notably (i) a drive by the credit agencies to expand their market share rather than to provide a realistic rating of the bond issuer,

⁶³⁹ Lin, L.W. and Milhaupt, C.J., *Bonded to the State: A Network Perspective on China's Corporate Debt Market*, Columbia Law and Economics Working Paper No.543, p. 35; available at: https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1206&context=fac_pubs (accessed on 24 August 2023).

⁶⁴⁰ See Zhang, X., *Time to Fix Credit Ratings*, Gavekal Dragonomics, 17 March 2021, p. 3.

⁶⁴¹ *The Internationalization of the China Corporate Bond Market*, ICMA, Zurich, 2021, p. 18; available at: <https://www.icmagroup.org/assets/documents/About-ICMA/APAC/The-Internationalization-of-the-China-Corporate-Bond-Market-January-2021-140121.pdf> (accessed on 24 August 2023).

⁶⁴² Amstad, M., and He, Zh., *Chinese Bond Market and Interbank Market*, NBER, Working Paper 25549, February 2019, p. 30; available at: https://www.nber.org/system/files/working_papers/w25549/w25549.pdf (accessed on 24 August 2023).

⁶⁴³ See for instance Evergrande, Kaisa cut by Fitch to default after missed payment deadlines, Reuters, 9 December 2021 available at: <https://www.reuters.com/business/chinas-kaisha-kicks-off-12-bltn-debt-restructuring-after-missing-pay-date-source-2021-12-09/> (accessed on 25 August 2023) or China Properties defaults on notes worth \$226 million, Reuters, 15 October 2021; available at: <https://www.reuters.com/article/china-properties-bonds-idUSL4N2RB335> (accessed on 25 August 2023).

leading to inflated ratings, (ii) a regulatory environment discouraging credit rating agencies from downgrading bonds and therefore resulting in poor early warning capabilities ahead of defaults, (iii) persistent assumption of an implicit government guarantee⁶⁴⁴ originating in the high share of SOEs among bond issuers and past government interventions⁶⁴⁵. According to a 2021 report: *"Recent SOE defaults expose a deeper issue: price and other critical signals failing to reflect market realities, despite the decades-old official mantra of 'market-oriented reform [...] Validating SOEs' credentials, state support, explicit or tacit, distorts market signals. Beijing's ever more muscular state capitalism is at the root of market disillusion over SOE creditworthiness"*⁶⁴⁶. This sentiment was shared by the IMF which noted in 2022: *"After a series of defaults by local SOEs, the government has focused on improving supervision. However, limited progress has been made in core reform areas such as removing implicit guarantees or tightening budget constraints of SOEs"*⁶⁴⁷.

In sum, the Chinese credit rating system cannot be considered as being driven by market forces, with significant adjustments necessary in terms of market conduct by credit rating agencies, as well as regulatory steps by the Chinese authorities. Without such changes, the credibility of the Chinese credit rating regime will remain limited, failing to provide accurate information (and protection) to investors and potentially contributing to market imbalances, rather than preventing them.

6.4.3. STOCK MARKET

As of 2021, China was the country with the second largest stock market capitalisation, after the US⁶⁴⁸. There are two main stock exchanges in China, the Shanghai Stock Exchange ('SHSE') and Shenzhen Stock Exchange ('SZSE'), which were both established in 1990. Some other stock markets have been established to complement the two main exchanges. For example, an electronically operated market for SMEs was opened in 2001, and a 'third-tier market' was established to deal primarily with de-listing firms and other Over-the-counter transactions ('OTC transactions'). In 2009, a growth enterprise market ('GEM') was established for companies from hi-tech, electronic and pharmaceutical industries⁶⁴⁹ and in 2019 the Shanghai Stock Exchange Science and Technology Innovation Board ('STAR')⁶⁵⁰ began operations. The

⁶⁴⁴ See He, W., *Eroding the Implicit Guarantee*, Gavekal Dragonomics, 1 December 2020.

⁶⁴⁵ See for instance *Credit ratings in China: pushing a narrative built in wonderland*, Asia Power Watch, 16 June 2022; available at: <https://asiapowerwatch.com/credit-ratings-in-china-pushing-a-narrative-built-in-wonderland/> (accessed on 25 August 2023).

⁶⁴⁶ *The myth of SOE creditworthiness*, China Policy, 18 June 2021; available at: <https://mailchi.mp/policycn/cpsignal-2753776?e=523ec61747> (accessed on 25 August 2023).

⁶⁴⁷ See *Consultation-Press Release; Staff Report; and Statement by the People's Republic of China: 2021 Article IV Executive Director for the People's Republic of China*, IMF, 2022, p. 35; available at: <https://www.imf.org/en/Publications/CR/Issues/2022/01/26/Peoples-Republic-of-China-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-512248> (accessed on 22 August 2023).

⁶⁴⁸ See for instance *Stock market capitalization, 2020 Country rankings*; available at: https://www.theglobaleconomy.com/rankings/stock_market_capitalization_dollars/ (accessed on 25 August 2023).

⁶⁴⁹ Allen, F., Qian, Q.J., Zhang, C. and Zhao, M., *China's financial system: opportunities and challenges*, NBER, Working paper 17828, February 2012, p. 25; available at: https://www.nber.org/system/files/working_papers/w17828/w17828.pdf (accessed on 24 August 2023).

⁶⁵⁰ See Overview of the STAR; available at: <http://star.sse.com.cn/en/gettingstarted/overview/> (accessed on 25 August 2023).

scale and importance of these stock markets are not comparable to the banking sector, although they have grown rapidly in recent years, and many sources cite SHSE as the 3rd largest stock exchange globally in terms of market capitalisation⁶⁵¹ as of writing of this Report.

Another major stock exchange trading China-based company is located in Hong Kong. The Hong Kong Stock Exchange ('HKSE') is trading a considerable volume of so-called H-shares, which are shares of Chinese firms which have gained permission to sell stock in Hong Kong to attract foreign capital. The following types of shares also exist on the Chinese stock markets: A-shares (issued in RMB) are traded by Chinese investors and are difficult to purchase for foreign investors⁶⁵², whereas B-shares, quoted in foreign currencies, may be purchased by foreign investors. In addition, SOEs listed on a Chinese stock exchange also have so-called government or G-shares, typically with restrictions on their tradability (see below).

In fact, many companies on the stock exchange are SOEs. As of June 2022, nine out of the top ten firms listed on the SHSE accounting for more than one fifth of total market capitalization are SOEs (see Table 6.4):

Table 6.4: Top 10 listed companies in SHSE⁶⁵³

No	Name	Total market value (billion yuan)	Ownership
1	Kweichow Moutai	2 763	SOE
2	Industrial and Commercial Bank of China	1 399	SOE
3	China Merchants Bank	1 164	SOE
4	Agricultural Bank of China	1 069	SOE
5	Ping An China	761	SOE
6	PetroChina	791	SOE
7	Bank of China	659	SOE
8	China Life Insurance	740	SOE
9	China Yangtze Power	529	SOE
10	Haitian Flavouring & Food	483	private

The picture is different with regard to the SZSE, where most of the top 10 listed companies feature private majority stakes, except for the second largest company (Wuliangye)⁶⁵⁴. SZSE is however more technology-oriented and has a lower capitalisation than SHSE.

⁶⁵¹ See also the Overview of SHSE; available at: <http://english.sse.com.cn/aboutsse/overview/> (accessed on 25 August 2023).

⁶⁵² While foreign investors are able to invest in A-shares, a 20% limit per month exists on the repatriation of related funds to foreign countries.

⁶⁵³ Based on the SHSE data.

⁶⁵⁴ Based on the Shenzhen Stock Exchange data.

The capital structure of these SOEs originally included tradable and non-tradable shares. In 2005, CSRC initiated a plan to fully float non-tradable shares which were largely owned by the Government, and practically all the shares have become tradable during the 2010s⁶⁵⁵. However, the State still retains a firm hold on many listed companies by directly or indirectly holding shares.

In more general terms, China's stock exchanges do not have their origin in selling shares in private companies, and there is still an overall lack of private listings⁶⁵⁶. Furthermore, in addition to many of the firms listed on the stock exchanges being state-owned, and to restrictions on a majority of the shares issued (since they are either non-tradable or not accessible to foreign investors), the access to the Chinese stock market is heavily regulated by the State. In contrast to other countries, initial public offerings ('IPOs') do not simply need to be registered; they need to be approved by CSRC (see Articles 11-13 of the Securities Law). The administrative control over the IPO procedure is thus high. Before 1999, share offerings were subject to a quota system. Although explicit quotas do not apply anymore, and have been replaced by an approval system, CSRC still applies implicit quotas for different districts and different industries⁶⁵⁷. Indeed, the CSRC is acknowledged to be using its approval prerogative to give preference to specific industries or areas, and in this manner to steer the allocation of capital in line with the State interest, as the approval process concerns also shares numbers and the capital raised in an IPO⁶⁵⁸.

Intervention of the CSRC goes also as far as regulating the IPO pricing by setting binding IPO Price-to-Earnings (P/E) ratios, despite the lack of express rules on that matter. This limitation has been considered as preventing efficient pricing and leading to undervaluation of initial stock prices (and hence many speculative movements). One consequence of this is disincentivising long-run investments in IPO stocks, and thus also the lack of motivation to assess the companies' real fundamentals. This, together with the long timeframes to obtain the CSRC's approval, has rendered raising capital through the stock market in China particularly complex and costly⁶⁵⁹. While sub-markets such as STAR (within SHSE), and ChiNext (within SZSE) have adopted recently a registration-based system with regard to IPOs (with no P/E requirement notably), the latter approach still constitutes largely a pilot endeavour.

⁶⁵⁵ Administrative Measure of Share Segmentation Reform of Listed Companies, CSRC, 4 September 2005, Zheng Jian Fa [2005] No. 86. See also *Dividend pay-out policies in the pre and post-split share structure reform in China*, 19 May 2021, p. 12; available at: <https://www.tandfonline.com/doi/epdf/10.1080/23322039.2021.1923620> (accessed on 25 August 2023).

⁶⁵⁶ Shen, W., *Conceptualizing the Regulatory Thicket: China's Financial Markets after the Global Financial Crisis*, Routledge, London, New York, 2021, p. 85.

⁶⁵⁷ Elliott, D.J. and Yan, K., *The Chinese Financial System, An Introduction and Overview*, John L. Thornton China Center Monograph Series, Number 6, July 2013, p. 24; available at: <https://www.brookings.edu/wp-content/uploads/2016/06/chinese-financial-system-elliott-yan.pdf> (accessed on 24 August 2023).

⁶⁵⁸ Qian, Y., Ritter, J.R., Shao, X., *Initial Public Offerings Chinese Style*, January 2023, p. 6; available at: <https://site.warrington.ufl.edu/ritter/files/IPO-Chinese-style.pdf> (accessed on 25 August 2023).

⁶⁵⁹ *Ibid.*, pp. 8, 31.

What is more, developments occurring in 2021 suggest that the State has definitely kept its controlling prerogatives over IPOs and has in fact been tightening certain rules⁶⁶⁰. Not only did authorities halt the would-be largest ever IPO (Ant Group) for reasons which appeared to be beyond economic considerations⁶⁶¹, but media also reported of specific guidelines⁶⁶² for regulating the STAR market in a way that would give preference to companies active in hardware production while denying the possibility to go public to ‘fintech’ companies in another attempt to channel capital into industries that are key for the State.

One further precondition for an efficient securities market is the existence of reasonable protections for investors. The formal legal system of investor rights, i.e. the investors’ rights to vote, to sell shares (thus facilitating a change in control) and to start legal proceedings in China appears at first sight in many respects similar to shareholders’ rights in western systems.

However, voting rights are restricted by the fact that in the majority of cases, block holders own controlling stakes. In SOEs, the controller is typically State affiliated; in the listed firms that are not SOEs, the controller is an individual, family or affiliated groups of investors⁶⁶³. In the case of listed SOEs, which play a major role in the Chinese stock exchange, the relationship between the State as controlling shareholder and the minority shareholders renders corporate governance means, as well as recourse and enforcement ineffective⁶⁶⁴.

As for the right to sue, Chinese courts have been authorized to treat claims of director wrongdoing in so-called ‘derivative’ lawsuits⁶⁶⁵ since a 2006 amendment of the Company Law (see Article 151 of the Company Law). However, for relatively small investors, the costs of such a lawsuit would be prohibitive, unless there was a mechanism to allow these costs to be shared among all other shares. Yet neither the statutory law nor judicial innovation allows such cost sharing. Thus, the few derivative cases that are found in modern Chinese law tend to be cases involving JVs, where the plaintiff necessarily owns a large proportionate share of the firm. Thus, despite the fact that formally Chinese law has adopted the investor initiated derivative suit, courts are not in fact a realistic source of constraint on management misbehaviour in Chinese listed companies (see also Section 3.2.2)⁶⁶⁶.

⁶⁶⁰ See for example McMorrow, R. and Yu, S., China to tighten rules for tech companies seeking foreign funding (2021), Financial Times; available at: <https://www.ft.com/content/7689489c-cdad-4596-a7c6-0774ed68bf5a> (accessed on 29 August 2023).

⁶⁶¹ See Wei, L., *China Blocked Jack Ma’s Ant IPO After Investigation Revealed Likely Beneficiaries*, 16 February 2021, The Wall Street Journal; available at: <https://www.wsj.com/articles/china-blocked-jack-mas-ant-ipo-after-an-investigation-revealed-who-stood-to-gain-11613491292> (accessed on 29 August 2023).

⁶⁶² See Decision on Amending the Guidelines for the Evaluation of Science and Technology Innovation Attributes, No. 48, CSRC, 30 December 2022; available at: <http://www.csrc.gov.cn/csrc/c101954/c6940776/content.shtml> (accessed on 29 August 2023).

⁶⁶³ Allen, W.T., Shen, H., *Assessing China’s top-down securities markets*, NBER, Working Paper 16713, January 2011, p. 27; available at: https://www.nber.org/system/files/working_papers/w16713/w16713.pdf (accessed on 29 August 2023).

⁶⁶⁴ Shen, W., *Conceptualizing the Regulatory Thicket: China’s Financial Markets after the Global Financial Crisis*, Routledge, London, New York, 2021, p. 86.

⁶⁶⁵ That is a suit brought by a shareholder in the name and for the benefit of the corporation itself.

⁶⁶⁶ Allen, W.T., Shen, H., *Assessing China’s top-down securities markets*, NBER, Working Paper 16713, January 2011, p. 34; available at: https://www.nber.org/system/files/working_papers/w16713/w16713.pdf (accessed on 29 August 2023).

This general weakness of shareholder rights discourages fundamental investment strategies. Since they cannot influence business choices, dividend levels, or investment decisions, shareholders rely less on the underlying firm value and focus more on speculative aspects of the stock price. Indeed, the Chinese stock market is at times rather speculative in nature and thus characterized by periods of relatively high volatility. In the recent past, there have been several periods of rapid expansion, followed by sudden crashes: e.g. before the financial crisis of 2008, between 2014 and 2015, as well as during the COVID-19 pandemic or 2020-2022 in the course of which the Chinese stock markets showed a complex pattern of short- and long-term volatilities as functions of the disease developments and public health measures responses, in combination with the financial stimulus provided by the Chinese authorities⁶⁶⁷. These volatilities illustrate that the market has difficulties in pricing securities adequately.

As a result, Chinese stock markets have until today not been effective in allocating resources in the economy. It is currently widely acknowledged by market experts that there is no correlation between economic fundamentals or profitability and the performance of the Chinese stock market. Rather, the latter constitutes a reflection and is a result of the particular nature of the whole Chinese economy⁶⁶⁸. This is clearly demonstrated when analysing the Hang Seng China A-H Premium Index. This index tracks the average price difference between A-shares and H-shares for the largest and most liquid China enterprises with both A-share and H-share listings. As these shares have the same voting and cash flow rights, they should follow each other closely⁶⁶⁹. Instead, the historical index shows substantial premiums for Chinese-traded A-shares in comparison with identical shares on the HKSE (see Figure 6.5 below). Even though a number of factors, such as the information asymmetry, demand differential or the risk preferences of different pools of investors⁶⁷⁰, may contribute to the persistent A-share premium, the degree of differential raises the question of what can be considered a good indication of the fundamental value of the shares or the firms listed on the stock exchange.

Figure 6.5: Evolution of premiums for shares traded on Chinese stock exchanges in comparison with identical shares traded on the HKSE (2018-2023)⁶⁷¹

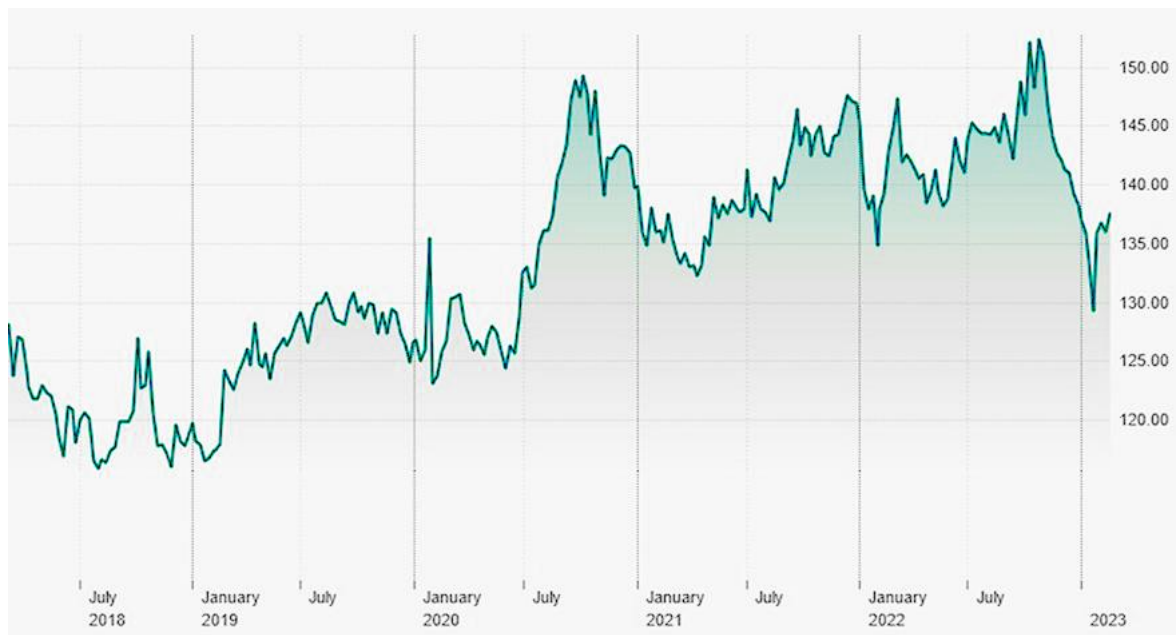
⁶⁶⁷ See for instance Jin, C., *Impact of the COVID-19 Pandemic on China's Stock Market Volatility, During and After the Outbreak: Evidence From an ARDL Approach*, Front Public Health, 18 May 2022; available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9159152/> (accessed on 29 August 2023). See further Feng, R., *China's Covid Easing Fuels Stock – Market Hopes – and Fans Fears*, The Wall Street Journal, 6 December 2022; available at: <https://www.wsj.com/articles/chinas-covid-easing-fuels-stock-market-hopesand-fans-fears-11670322335> (accessed on 29 August 2023).

⁶⁶⁸ See notably Pettis, M., *Fundamentals simply do not matter in China's stock markets*, Financial Times, 13 January 2020; available at: <https://www.ft.com/content/2362a9a0-3479-11ea-a6d3-9a26f8c3cba4> (accessed on 29 August 2023). See also Shen, W., *Conceptualizing the Regulatory Thicket: China's Financial Markets after the Global Financial Crisis*, Routledge, London, New York, 2021, pp. 84-85.

⁶⁶⁹ Allen, W.T., Shen, H., *Assessing China's top-down securities markets*, NBER, Working Paper 16713, January 2011, p. 10; available at: https://www.nber.org/system/files/working_papers/w16713/w16713.pdf (accessed on 29 August 2023).

⁶⁷⁰ See Wei, Z.; Haifeng, L.; Shuang, C. – Does the Shanghai-Hong Kong stock connect policy reduce China's A-H share price premium?, *Applied Economic Letters* (2022); available at: <https://www.tandfonline.com/doi/abs/10.1080/13504851.2021.1937489> (accessed on 12 March 2024).

⁶⁷¹ Available at: <https://markets.ft.com/data/indices/tearsheet/summary?s=HSCAHPi:HKG> (accessed on 29 August 2023).



In the above chart, 100 means that a Chinese A-share equals 100% of a Hong Kong H-share. Any figure below 100 means that the shares were traded at lower prices in mainland China than in Hong Kong; any figure above 100 means that the shares were traded at higher prices in mainland China than in Hong Kong. One can therefore see that prices in mainland China were usually higher for the same shares.

6.5. INVESTMENT FUNDS, GOVERNMENT GUIDANCE FUNDS

6.5.1. INTRODUCTION

China's private equity market has grown significantly, from around 3 500 private equity funds in existence in 2010 with total assets of around RMB 900 billion (of which 70% was funded from overseas)⁶⁷², to more than 31 549 private equity funds in 2022 with a total investment scale exceeding RMB 10 trillion⁶⁷³.

Around 2014⁶⁷⁴, the Government started to enter the private equity market by establishing targeted investment funds, the GGFs (see Chapter 5). Their purpose is to raise money from public and private sources and to make investments consistent with government priorities, whether related to industry policies – such as to channel investment to SEIs with the idea of technological upgrading and development – or motivated more by administrative and fiscal discipline – such as to clean up local governments' finances⁶⁷⁵. GGFs exist at all levels of government - central, provincial and local. Every government agency that sets up a GGF also determines its initial parameters, such as the allocated capital and the fundraising target. By

⁶⁷² Elliott, D.J. and Yan, K., *The Chinese Financial System, An Introduction and Overview*, John L. Thornton China Center Monograph Series, Number 6, July 2013, p. 30; available at: <https://www.brookings.edu/wp-content/uploads/2016/06/chinese-financial-system-elliott-yan.pdf> (accessed on 24 August 2023).

⁶⁷³ See Zhu, S., *Private equity investment in China growing despite challenges*, SHINE News, 12 December 2022; available at: <https://www.shine.cn/biz/economy/2212123935/> (accessed on 29 August 2023).

⁶⁷⁴ *Ibid.*, p. 5.

⁶⁷⁵ See Noble, L., *Paying for Industrial Policy*, Gavekal Dragonomics, 4 December 2018, p. 5-6.

mid-2018, 1 171 GGFs had a fund-raising target of RMB 5.85 trillion⁶⁷⁶. By 2021, China had set up more than 1 800 GGFs with a target size of RMB 10.18 trillion⁶⁷⁷. In most cases, these targets have not been met as only 480 GGF had reached their target size. The fundraising gap of the remaining GGF is estimated at RMB 6 trillion. These funds are concentrated in the Eastern and Northern parts of the country⁶⁷⁸. GGFs have been used in a number of sectors, essentially in the IT, biotechnology, machine manufacturing and electronics and optoelectronics⁶⁷⁹, coinciding with China's industry policy priorities.

6.5.2. GENERAL LEGAL FRAMEWORK

The functioning of the GGFs is governed by a number of legal instruments, among which the following (central level government) regulations provide an overview of the essential regulatory tools and their development over time:

- The 2008 Guiding Opinions of the NDRC, MOF and MOFCOM on the standardized establishment and operations of venture capital guidance funds, approved by the State Council, set out the nature of the funds. Their stated purpose is *“to give full play to the leverage amplification effect of fiscal funds, increase the supply of venture capital, and overcome the market failure of allocating venture capital purely through the market. In particular, by encouraging venture capital enterprises to invest in early-stage enterprises such as seed stage and start-up stage, [they] will make up for the shortcomings of general venture capital.”* Following the principle of *“government guidance, market operations, scientific decision-making, risk prevention”*, the GGFs are, according to the guiding opinions, to guide private capital towards sectors and enterprises so as to *“effectively combine government policy intentions with the operation of venture capital enterprises according to market principles”*⁶⁸⁰.
- The 2015 MOF's Interim management measures applicable to government investment funds reiterated the *“government guidance, market operations, scientific decision-making, risk prevention”* principle and provided more details on the final objectives pursued, explicitly setting out that the funds shall *“support industry transformation, upgrade and development. [...They] shall support the industrialisation of major key technologies, guide social capital to increase investments, effectively solve the problems of large investments and high risks in industry development, achieve the industrial transformations, upgrades and major progress,*

⁶⁷⁶ See *The government guidance funds*, Economic Daily, 13 August 2018, available at: <http://static.jingjiribao.cn/static/jjrbrss/8/723676152401602050/139145.html> (accessed on 29 August 2023).

⁶⁷⁷ See Yifan Wei, Yuen Yuen Ang, Nan Jia, *The Promise and Pitfalls of Government Guidance Funds*, Forthcoming at The China Quarterly, 17 September 2022; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4200771 (accessed on 29 August 2023).

⁶⁷⁸ See 2022 Special Research Report on Government Guidance Fund; available at: <https://finance.sina.com.cn/tech/roll/2023-01-18/doc-imyaqraq5633107.shtml> (accessed on 29 August 2023).

⁶⁷⁹ See *Government Guidance Funds, development and impact*, SHSE report, March 2019, p. 16; available at: <http://www.sse.com.cn/aboutus/research/report/c/4743535.pdf> (accessed on 29 August 2023).

⁶⁸⁰ See Sections I and III of the Guiding Opinion on the standardized establishment and operations of venture capital guidance funds, 18 October 2008; available at: <http://www.mofcom.gov.cn/aarticle/b/g/200812/20081205924175.html> (accessed on 29 August 2023).

and promote the economic structural adjustment and optimization of resource allocations so as to implement the national industry policies”⁶⁸¹.

- The 2015 MOF’s Guiding Opinion on injections of fiscal funds into governmental investment funds to support the industry development specified that “*venture capital guidance funds can be used to emerging industries to strengthen the integration of capital, technology and market*”⁶⁸².
- The growing role of governmental investment funds was further enshrined in the 13th FYP for the science and innovation development, namely as part of the strategy concerning business creation and innovation. Some of the GGFs were explicitly expected to help China reach its 2020 development targets⁶⁸³.
- The Made in China 2025 strategy (see Chapter 4) explicitly mentions guidance investment funds as a tool to strengthen four industrial basic capacities, i.e. key components, advanced basic techniques, key materials and basic industrial technologies⁶⁸⁴.
- The 2018 State Council Implementing Opinion on Fostering the Pilot Reform of State-owned Capital Investment Enterprises and State-owned Capital Operation Enterprises confirmed that state-owned capital investment and operations enterprises⁶⁸⁵ are expected to “*focus on priority industries, key sectors, [...] focus on the structural adjustment of the state-owned economy, [...] better serve the national strategic needs [...] foster state-owned back-bone enterprises having innovation capacity and international competitiveness*”⁶⁸⁶.
- In October 2019, the NDRC, PBOC, MOF, CBIRC, CSRC and SAFE issued a notice applicable to GGFs, notably requiring that their “*investments comply with national macro-management policies such as industry and investment policies*”⁶⁸⁷.
- Finally, the 14th FYP foresees a further strengthening of GGFs⁶⁸⁸.

6.5.3. NATURE AND MARKET IMPACT OF THE GGFs

As the language of the abovementioned legal instruments implies, GGFs seem intent to reconcile two contradictory policy objectives: support market-based operations on the one hand, and governmental policy guidance on the other. Several analytical reports have, however, shown that the policy guidance largely outweighs the market-based operation principle. For instance, the SHSE Capital Market Research institute concluded that “*currently, the*

⁶⁸¹ See Article 7 of the Interim management measures applicable to government investment funds, MOF, 2015; available at: http://www.gov.cn/gongbao/content/2016/content_5051233.htm (accessed on 29 August 2023).

⁶⁸² See Section II.2 of the Guiding Opinion on injections of fiscal funds into governmental investment funds to support the industry development, MOF, 2015; available at: <http://czt.sc.gov.cn/scczt/c102406/2017/12/29/1b80263ba2a141739cd73bc62cbb8977.shtml> (accessed on 29 August 2023).

⁶⁸³ See Section XIX.2 of the 13th FYP for the science and innovation development; available at: http://www.gov.cn/gongbao/content/2016/content_5103134.htm (accessed on 29 August 2023).

⁶⁸⁴ See Made in China 2025 strategy; available at: https://www.gov.cn/zhengce/zhengceku/2015-05/19/content_9784.htm (accessed on 29 August 2023).

⁶⁸⁵ GGFs qualify as state-owned capital operations.

⁶⁸⁶ See Implementing Opinion on Fostering the Pilot Reform of State-owned Capital Investment Enterprises and State-owned Capital Operation Enterprises, 14 July 2018, Guo Fa [2018] No. 23; available at: http://www.gov.cn/zhengce/content/2018-07/30/content_5310497.htm (accessed on 29 August 2023).

⁶⁸⁷ Available at: http://www.gov.cn/xinwen/2019-10/26/content_5445159.htm (accessed on 29 August 2023)

⁶⁸⁸ See Section II.5.3 of the 14th FYP.

*government guidance funds still lack an effective performance evaluation system. Government guidance fund itself [is] non-profit-seeking, and the evaluation of the government guidance fund cannot be based solely on the return of funds and other profits*⁶⁸⁹. It also pointed out that in breach of existing legal requirements⁶⁹⁰, some local governments maintain an implicit guarantee on the funds they set up⁶⁹¹. Similarly, and indeed already in 2016, the China National Audit Office pointed out that the “*market-orientation of sampled governmental funds is falling short of expectations*”⁶⁹².

Irrespective of whether the lack of market orientation can be considered the main reason, GGFs have a mixed record in achieving their proclaimed goals - in particular leveraging private capital – and they display signs of redundancy, inefficiency and poor management⁶⁹³. However, already in view of the sheer size of the government agencies’ contributions to the GGFs, these funds represent an important tool to channel support to strategic industries or other priority projects chosen by the government authorities⁶⁹⁴ and they are distortionary⁶⁹⁵. For example, as the Government pushed for more innovation in ‘*core technologies*’, the volume of investments made by GGFs into the semiconductor sector increased by more than 800% (by USD 7.4 billion in absolute terms) between 2018 and 2020⁶⁹⁶. More generally, it has been observed that GGFs “*typically make equity investments in unlisted companies and start-ups in targeted sectors [which makes] getting a full picture of their total investment volumes, including what the funds are buying and at what price [...] difficult*”⁶⁹⁷. In any event, in view of such large size of investment flows relative to market size⁶⁹⁸, GGFs strengthen the government control over resource allocation similarly to the role played by SOEs (see Section 5.4), sometimes as a direct

⁶⁸⁹ See *Government Guidance Funds, development and impact*, SHSE report, March 2019, p. 8; available at: <http://www.sse.com.cn/aboutus/research/report/c/4743535.pdf> (accessed 29 August 2023).

⁶⁹⁰ See *The Anniversary of Hidden Debt Document No. 27*, 17 August 2019; available at: <https://m.21jingji.com/article/20190817/5568ce8242d30032e203b30fd030b2e8.html> (accessed 14 April 2023).

⁶⁹¹ *Government Guidance Funds, development and impact*, SHSE report, March 2019, p. 23; available at: <http://www.sse.com.cn/aboutus/research/report/c/4743535.pdf> (accessed 29 August 2023).

⁶⁹² See Report on Central Budget Implementation and Other Fiscal Revenues and Expenditures in 2016, 23 June 2017; available at: <http://www.audit.gov.cn/n5/n26/c96986/content.html> (accessed on 29 August 2023).

⁶⁹³ See Luong, N., Arnold, Z., Murphy, B., *Understanding Chinese Government Guidance Funds*, CSET, March 2021, pp. 14-17; available at: <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf> (accessed 29 August 2023); Noble, L., *Paying for Industrial Policy*, Gavekal Dragonomics, 4 December 2018, p. 6-7.

⁶⁹⁴ See Sun, Y., *China Technology Funds Battle to Hit Profit Targets*, Financial times, 9 June 2021; available at: <https://www.ft.com/content/5f6d7ffb-575e-4532-9a4b-1658317d84a2> (accessed on 29 August 2023).

⁶⁹⁵ See DiPippo, G., Mazzocco, I., Kennedy, S., p. 17.

⁶⁹⁶ During the same period, the number of registered companies in the sector increased by 52%. Arterburn, J., *Party Capital - a Blueprint for National Security Due Diligence on China*, C4ADS, 2021, p. 12. and fn. 36; available at: <https://c4ads.org/wp-content/uploads/2022/03/PartyCapitalReport.pdf> (accessed on 3 December 2021).

⁶⁹⁷ See DiPippo, G., Mazzocco, I., Kennedy, S., p. 17.

⁶⁹⁸ *Ibid.*

extension of the SOE policies, for instance when SOEs themselves participate in and/or manage the GGFs⁶⁹⁹ or when GGFs invest in SOEs⁷⁰⁰.

6.6. EXPORT CREDIT INSURANCE MARKET

The China Export & Credit Insurance Corporation (commonly known as Sinosure) is an SOE specializing in export credit insurance, in particular to cover the export of high-value added goods from China. It has a quasi-monopoly in export credit insurance⁷⁰¹. Another state-owned enterprise, PICC, was granted a license to underwrite such risks in 2013, however, it focuses solely on short term export credit insurance⁷⁰².

Sinosure started operations in 2001⁷⁰³. According to its website, it is "*a state-funded and policy-oriented insurance company established and supported by the state to promote China's foreign economic and trade development and cooperation. [...] Taking 'performing policy functions and serving open economy' as its own responsibility, SINOSURE effectively serves for national strategies, accurately supports the development of enterprises and ensures financial sustainability. The company actively expands its coverage of export credit insurance and plays an irreplaceable role in supporting the construction of the Belt and Road Initiative (BRI), promoting a steady and quality growth of foreign trade, cultivating new edges for international economic cooperation and competition, and accelerating the optimization of economic structure. [...] SINOSURE, a policy-oriented financial institution established to meet the demands of economic globalization and the development of China's foreign economy and trade, will closely focus on the goal of serving the national strategies*"⁷⁰⁴.

Sinosure is wholly owned by the State, and the Government exercises full ownership and financial control over it – MOF owns 26.4% of the stake, while 73.6% is owned by Central

⁶⁹⁹ See for example the China Structural Reform Fund being managed by the state-owned China Chengtong Holdings Group Ltd., *The structural adjustment fund has become an important driving force for the reform of state-owned enterprises*, 21 September 2017; available at: <http://www.sasac.gov.cn/n2588025/n2588139/c7895224/content.html> (accessed on 29 August 2023) or *The Shareholding of the China Central Enterprises' Innovation and Investment Guidance Fund consisting almost entirely of state-owned enterprises*; available at: https://www.most.gov.cn/kjbgz/201705/t20170519_132869.html (accessed on 8 September 2023).

⁷⁰⁰ Luong, N., Arnold, Z., Murphy, B., *Understanding Chinese Government Guidance Funds*, CSET, March 2021, p. 22; available at: <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf> (accessed 29 August 2023); Noble, L., *Paying for Industrial Policy*, Gavekal Dragonomics, 4 December 2018, pp. 6, 10, 14.

⁷⁰¹ See for example *The credit insurance market in China*, 23 December 2019; available at: <https://daxueconsulting.com/credit-insurance-market-in-china/> (accessed on 29 August 2023).

⁷⁰² See at PICC website; available at: <https://www.cpic.com.cn/market/c/2017-06-16/1199498.shtml> (accessed on 29 August 2023).

⁷⁰³ See in particular the Notice on establishing the China Export & Credit Insurance Corporation, 23 May 2001; available at: www.elinklaw.com/zsglmobile/lawView.aspx?id=37788 (accessed on 29 August 2023).

⁷⁰⁴ See Sinosure's Corporate Profile at its website: <https://www.sinosure.com.cn/en/Sinosure/Profile/index.shtml> (accessed on 29 August 2023).

Huijin⁷⁰⁵. The AoA⁷⁰⁶ state that "*the competent business department of the company is the Ministry of Finance*" and also require the company to submit financial and accounting reports and the fiscal budget report to MOF for examination and approval⁷⁰⁷. Sinosure's dependence on the State and reliance of the latter's support is reflected in the assessments of the company's (higher) credit ratings⁷⁰⁸.

All of the supervisors on Sinosure's Board of Supervisors are appointed by the State Council and execute their duties according to the Interim Regulation on the Board of Supervisors of Important State-owned Financial Institution⁷⁰⁹. The senior management of Sinosure is also appointed by the Government. The company's website shows that the Chairman of Sinosure is the Secretary of the Party Committee of Sinosure, and that members of the senior management hold also functions in Sinosure's Party Committee. Moreover, the head of the discipline inspection and supervision team of the Central Commission for Discipline Inspection and the State Supervision Commission stationed in the company is also member of Sinosure's senior management⁷¹⁰.

Sinosure appears as a direct instrument of the State in fulfilling the latter's policies. Commercial considerations do not seem to play a major role in the company's operations. As reported by the media, one of the company's employees stated: "*We're fulfilling our role as a policy insurer, not a for-profit commercial institution*". Accordingly, in 2018, Sinosure's insured amount rose by 16.7% (to USD 612 billion) and claimed pay-outs by 41% (to some USD 2 billion) due notably to US-China trade tensions, the premium income increased by 6% only⁷¹¹. The corresponding figures for 2021 amounted to USD 682 billion (insured amount) and USD 1.9 billion (pay-outs) respectively.

The continued role of Sinosure as a platform for supporting Government policies remains unchanged, as apparent from a joint 2022 call by MOFCOM and Sinosure to "*support to enterprises to deepen traditional export destinations and tap diversified markets, with a focus*

⁷⁰⁵ See *Fitch Affirms Sinosure's 'A+' IFS Rating; Outlook Stable*, Fitch Ratings, 11 April 2022; available at: <https://www.fitchratings.com/research/insurance/fitch-affirms-sinosure-a-ifs-rating-outlook-stable-11-04-2022> (accessed on 29 August 2023).

⁷⁰⁶ Sinosure's AoA were approved by the State Council and issued as a part of the Circular of the State Council on the Establishment of Sinosure. See for example the Notice on establishing the China Export & Credit Insurance Corporation, 23 May 2001; available at: http://www.shaanxi.gov.cn/zfxgk/zfgb/2001/d17q_4408/200806/t20080626_1642793.html (accessed on 29 August 2023).

⁷⁰⁷ Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC (OJ L 325, 5.12.2013, p. 66), recital 228.

⁷⁰⁸ See *Fitch Affirms Sinosure's 'A+' IFS Rating; Outlook Stable*, Fitch Ratings, 11 April 2022 (accessed on 29 August 2023).

⁷⁰⁹ Available at: <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0MTBkNGU4YzEzZGI%3D> (accessed on 29 August 2023).

⁷¹⁰ See Sinosure's Senior Management at its website: <https://www.sinosure.com.cn/en/Sinosure/Management/index.shtml> (accessed on 29 August 2023).

⁷¹¹ See Leng, C., Shen, S., Tham, E., *As trade war deepens, a state-owned insurer in China helps soften the blow*, Reuters, 12 September 2019; available at: <https://www.reuters.com/article/us-usa-trade-china-insurers-idUSKCN1VX0L3> (accessed on 29 August 2023).

on providing credit insurance services for exports to countries along the Belt and Road, emerging markets, and free-trade zone partners'⁷¹².

The 2021 annual report of Sinosure further confirms the influence of the State and CCP ideology as *"SINOSURE resolutely implements the decisions and requirements of the state, [...], supporting jointly building of the Belt and Road Initiative [...], making every effort to promote the stability and quality of foreign trade"*⁷¹³. Moreover, *"[f]ull and strict Party governance was exercised with the responsibility of the Company in Party governance articulated and reinforced, and the plan to tighten up supervision on leaders and senior management at all levels set out and put into action. The inspection of the Central Leading Group for Inspection Work on SINOSURE concluded with full cooperation of the Company along the way"*⁷¹⁴ and *"SINOSURE integrated the Party's leadership into all aspects of corporate governance, optimized the authorization system, and tightened up supervision and restriction over exercise of power, thereby further improving the corporate governance"*⁷¹⁵.

Significant in this respect is that China is not a signatory to the Arrangement on Officially Supported Export Credits⁷¹⁶, that, amongst other things, prescribes a range of Commercial Interest Reference Rates within which most OECD-based export credit agencies are permitted to lend. As Sinosure is not bound by this arrangement, it is able to provide insurance premiums at highly competitive rates compared with its OECD counterparts⁷¹⁷. As a result of the State support and interference described above, export credit insurance in China is thus offered on more favourable terms to Chinese companies and at the same time distorted towards State policy goals.

6.7. BANKRUPTCY PROCEDURES

6.7.1. GENERAL LEGAL FRAMEWORK

China's first bankruptcy law, passed in 1986, concerned only SOEs and had little impact in practice. China's corporate bankruptcy law was revised in 2006, with the present Enterprise Bankruptcy Law of the PRC ('Bankruptcy Law')⁷¹⁸ effective since 2007. The Bankruptcy Law applies to enterprises with a legal person status, including financial institutions⁷¹⁹, as well as other organizations falling under liquidation procedures⁷²⁰. Thus, the Bankruptcy Law applies

⁷¹² See *China boosts support for export credit insurance*, Xinhua, 23 February 2022; available at: http://english.www.gov.cn/statecouncil/ministries/202202/23/content_WS62162bddc6d09c94e48a5627.html (accessed on 29 August 2023).

⁷¹³ Sinosure *Annual Report* 2021, p. 2; available at: <https://www.sinosure.com.cn/images/xwzx/ndbd/2022/07/01/614A436D74F31027D0FF4290DBC964F8.pdf> (accessed on 29 August 2023).

⁷¹⁴ *Ibid.*, p. 8.

⁷¹⁵ *Ibid.*, p. 55.

⁷¹⁶ The full text of the Arrangement on Officially Supported Export Credits is available at: [https://one.oecd.org/document/TAD/PG\(2022\)1/en/pdf](https://one.oecd.org/document/TAD/PG(2022)1/en/pdf) (accessed on 29 August 2023).

⁷¹⁷ See for Dawar, K. (2020). *Official Export Credit Support: Competition and Compliance Issues*. *Journal of World Trade* 54, no. 3 (2020), p. 373–396 (accessed on 29 August 2017).

⁷¹⁸ The Bankruptcy Law of the PRC, Order of the President of the PRC nr. 54, 27 August 2006.

⁷¹⁹ According to Article 134 of the Bankruptcy Law, 'financial institutions' entail commercial banks, securities companies, insurance companies or any other financial institution.

⁷²⁰ Articles 2, 134 and 135 of the Bankruptcy Law.

to all companies, SOEs and private alike (except partnerships and sole proprietorships⁷²¹). The Bankruptcy Law provides for detailed procedural rules, setting out the conditions which trigger the bankruptcy proceedings, the role of the relevant entities – like the administrator or the creditors’ committee – or the outcome of the process⁷²².

However, it is important to mention that in the case of financial institutions only the relevant financial supervisory/regulatory authority may file for their bankruptcy (see Section 6.7.2.); if a financial institution is considered insolvent, the financial regulatory authority under the State Council can formulate the measures to carry out liquidation⁷²³. To be noted that in 2021, the State Council announced a review of the enterprise bankruptcy law planned for 2022, including the provisions applicable to for financial institutions. As of writing of this report, the revision process was still ongoing⁷²⁴.

The provisions of the Bankruptcy Law are often the subject of interpretation and secondary rule-setting by the SPC. For instance, the SPC⁷²⁵ issued the 2018 Minutes of the National Court Work Conference on Bankruptcy Trials that contain a special proceeding called substantive consolidation⁷²⁶ which have been the object of various procedural approaches by courts and administrators⁷²⁷. As another example of interpretative action, the SPC issued in March 2019 the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III)*⁷²⁸, which clarify how companies should pay off debts after a bankruptcy application is accepted, what are creditors’ rights in declaring claims, how administrators should deal with claims etc. Furthermore, the COVID-19 pandemic led to several changes of the bankruptcy-related rules and guidelines⁷²⁹.

⁷²¹ For details see CSRC’s website at <http://www.csrc.gov.cn/> (accessed on 28 March 2023).

⁷²² These procedural rules are described in more detail in Section 6.9.1 of the 2017 version of this Report.

⁷²³ The Bankruptcy Law, Article 134.

⁷²⁴ *China to put financial institution bankruptcy laws on legislative agenda*, Reuters, 8 March 2021; available at: <https://www.reuters.com/article/us-china-parliament-bankruptcy-idUSKBN2B00YU> (accessed on 29 August 2023). See also *The revised draft of the Enterprise Bankruptcy Law has been written*, 15 November 2022; available at: <http://www.npc.gov.cn/npc/c30834/202211/fc9b2eb1a512487da4f1daf68a623c78.shtml> (accessed on 29 August 2023).

⁷²⁵ *Notice of the Supreme People's Court on Issuing the Minutes of the National Court Work Conference on Bankruptcy Trials*, Law info China. (n.d.); available at: <http://gongbao.court.gov.cn/Details/2ee4b89e25f895a91885e746d361a0.html> (accessed on 8 September 2023).

⁷²⁶ In substantive consolidation, the assets of the consolidated affiliates are deemed as a single estate, the debts and claims between the consolidated affiliates are extinguished, and creditors of the consolidated affiliates will participate and receive payments through one bankruptcy proceeding. That is, assets and liabilities of the consolidated affiliates will be combined into a single pool, which will be arranged as a whole in the bankruptcy proceeding to achieve fair compensation to all creditors.

⁷²⁷ Bangwei, X., and Gongcheng, Z., *Main modes to initiate substantive consolidation bankruptcy*, China Business Law Journal, 21 October 2019; available at: <https://law.asia/consolidation-bankruptcy/> (accessed on 29 August 2023).

⁷²⁸ *Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the People's Republic of China (III)*, Supreme Court of China, 28 March 2019, amended 23 December 2020; available at: <http://gongbao.court.gov.cn/Details/2767d0164e52411e47607e2d32c437.html> (accessed on 8 September 2023).

⁷²⁹ Austin, D. A., Yu, H., *Bankruptcy in the time of COVID-19: Special measures adopted by the People’s*

The SPC published, in May 2020, guidelines regarding trial of civil cases during the epidemic period⁷³⁰. These guidelines encourage courts to actively guide negotiations between debtors and creditors to find solutions outside of the court system, such as the extension of the repayment period⁷³¹. The SPC also published eight typical cases⁷³², guiding lower courts in their judgments, pointing towards economic continuity and social stability as a priority during the Covid-19 crisis⁷³³, thereby further showing a continued influence and control of the State, through the encouragement of debt workout, restructuring techniques and out-of-court settlement⁷³⁴. The SPC guidelines are applied by lower-level courts, such as in the case of the *Ruling on Xia Wei and Zhang Zhanzu's Application for Liquidation Bankruptcy Filed Against Guangzhou Laitai Pharmaceutical Co., Ltd.* where the Guangdong Higher People's Court referred to the Supreme Courts guidelines in order to deny the liquidation application against Guangzhou Laitai Pharmaceutical Co., Ltd⁷³⁵.

In terms of organisational set-up, the SPC instructed in 2016 intermediate people's courts located in provincial capital cities and vice-provincial cities to create liquidation and bankruptcy tribunals within respective courts⁷³⁶. Until December 2017, 97 specialized courts had been established⁷³⁷. In 2019, *ad hoc* bankruptcy courts were put into place in major cities (Shenzhen, Beijing, Shanghai, Tianjin, Guangzhou, Wenzhou, Zhejiang, Chongqing, and Nanjing)⁷³⁸ showing a more local approach to bankruptcy, albeit operating under the influence of local governments.

6.7.2. IMPLEMENTATION OF THE LEGAL FRAMEWORK

In many formal aspects, the current Bankruptcy Law is similar to bankruptcy laws in Western countries. It leads to either liquidation or reorganisation, and it relies on the intervention of the

Republic of China courts during the period of COVID-19 prevention and control, International Insolvency Review, 2021; available at : <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8652823/> (accessed on 29 August 2023).

⁷³⁰ *Guiding Opinions of the Supreme People's Court on Several Issues Concerning the Proper Trial of Civil Cases Related to the Novel Coronavirus Epidemic in accordance with the Law*. Supreme Court of China. (2019, May 15); available at: <https://www.court.gov.cn/fabu-xiangqing-230181.html> (accessed on 28 March 2023).

⁷³¹ Austin, D. A., Yu, H., *Bankruptcy in the time of COVID-19: Special measures adopted by the People's Republic of China courts during the period of COVID-19 prevention and control*, International Insolvency Review, 2021, p. 1; available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8652823/> (accessed on 29 August 2023).

⁷³² Zhang, Y., Godwin, A., & Steele, S., *China's Covid-19 Response: The Role of Bankruptcy Law and 'Typical' Cases*, Australian Journal of Asian Law, 2022, Vol 22 No 2, p. 99; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4062602 (accessed on 29 August 2023).

⁷³³ *Ibid.*, pp. 100, 109, 112.

⁷³⁴ *Ibid.*, p. 100.

⁷³⁵ Austin, D. A., Yu, H., *Bankruptcy in the time of COVID-19: Special measures adopted by the People's Republic of China courts during the period of COVID-19 prevention and control*, International Insolvency Review, 2021, p. 7; available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8652823/> (accessed on 29 August 2023).

⁷³⁶ Zhang, Y., Godwin, A., and Steele, S., *China's Covid-19 Response: The Role of Bankruptcy Law and 'Typical' Cases*, Australian Journal of Asian Law, 2022, Vol 22 No 2, p. 101; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4062602 (accessed on 29 August 2023).

⁷³⁷ Li, B., Ponticelli, J., *Going Bankrupt in China*, Review of Finance, Volume 26, Issue 3, May 2022, p. 456; available at: <https://academic.oup.com/rof/article/26/3/449/6355599> (accessed on 29 August 2023).

⁷³⁸ *Ibid.*, p. 457.

court, as well as of an administrator, who manages the assets of the debtor after the court has accepted the bankruptcy filing⁷³⁹. Moreover, the Bankruptcy Law states that the administrators should be independent professionals⁷⁴⁰. Likewise, creditors are by law normally able to decide the outcome of the insolvency process.

Despite this, the number of insolvency cases has been low for an economy of the size of China⁷⁴¹. During the years following the entry into force of the Bankruptcy Law, they have been on a downward trend until 2013⁷⁴² despite worsening economic conditions. In 2015 and 2016, the numbers of accepted bankruptcy filings reached 3 568 and 5 665, respectively⁷⁴³. In 2019 and 2020, respectively, 11 826 and 11 999 businesses applied for bankruptcy, which lowered considerably to 8 691 cases in 2021, pointing towards a strong effort to avoid insolvencies⁷⁴⁴. In any event, in comparison to these figures, for example, courts in France registered 51 145 insolvencies in 2019, 31 217 in 2020, 27 609 in 2021 and 41 249 in 2022⁷⁴⁵, while statistics for Germany reveal 18 749 business bankruptcies in 2019, 15 840 in 2020 and 13 993 cases in 2021⁷⁴⁶.

Moreover, the increase since 2015 of bankruptcy cases in China appears to be to a large extent the result of insolvencies of smaller companies – since 2014, the share in bankruptcy cases concerning companies of more than 500 employees appears in constant decline, while that share has been on a steady rise particularly for companies employing less than 100 people⁷⁴⁷.

In addition, although 2020 has seen a number of SOEs defaults (see Section 5.5.1), SOEs bankruptcies continue to be significantly less numerous than private companies' failures⁷⁴⁸. This might be attributable to a broader State approach towards SOE bankruptcies consisting of guiding any insolvency proceeding towards a merger or reorganisation rather than liquidation.

⁷³⁹ The Bankruptcy Law, Article 13.

⁷⁴⁰ The Bankruptcy Law, Article 24.

⁷⁴¹ Jiang Y., *The curious case of inactive bankruptcy practice in China: A Comparative Study of U.S. and Chinese Bankruptcy Law*, Northwestern Journal of International Law & Business, 2014, vol. 34, issue 3, p. 561. See also Maliszewski, W., et al., *Resolving China's corporate debt problem*, IMF Working Paper WP/16/203, 2016.

⁷⁴² *Ramping up China's bankruptcy courts, the latest data*, Supreme People's Court Monitor, 18 May 2016; available at: <https://supremepeoplescourtmonitor.com/2016/05/18/ramping-up-chinas-bankruptcy-courts-the-latest-data/> (accessed on 29 August 2023).

⁷⁴³ *Chinese Leaders Back Bankruptcies for Unwanted Zombie Firms*, Bloomberg, 13 March 2017, updated 14 March 2017; available at: <https://www.bloomberg.com/news/articles/2017-03-13/chinese-leaders-back-bankruptcies-for-unwanted-zombie-companies> (accessed on 29 August 2023).

⁷⁴⁴ *Global Insolvency Report – Growing risks and uneven state support*, Allianz Research, 18 May 2022; available at: https://www.allianz-trade.com/content/dam/onemarketing/aztrade/allianz-trade.com/en_gl/erd/publications/pdf/2022_05_18_Insolvency-Report.pdf (accessed on 29 August 2023).

⁷⁴⁵ *Suivi mensuel des défaillances – Janvier 2023*, Banque De France, 15 February 2023; available at: https://www.banque-france.fr/sites/default/files/webstat_pdf/def_ent_2267_fr_si_defaillances_202301_fr.pdf (accessed on 29 August 2023).

⁷⁴⁶ *Global Insolvency Report – Growing risks and uneven state support*, Allianz Research, 18 May 2022, p. 17; available at: https://www.allianz-trade.com/content/dam/onemarketing/aztrade/allianz-trade.com/en_gl/erd/publications/pdf/2022_05_18_Insolvency-Report.pdf (accessed on 29 August 2023).

⁷⁴⁷ Li, B., Ponticelli, J., *Going Bankrupt in China*, Review of Finance, Volume 26, Issue 3, May 2022, p. 461; available at: <https://academic.oup.com/rof/article/26/3/449/6355599> (accessed on 29 August 2023).

⁷⁴⁸ *Ibid.*

One basis of this approach is the 2009 Opinion of the SPC⁷⁴⁹. It instructs the courts that even in the case of companies which have already been or are at present threatened with insolvency, the judges should look into the possibility of reorganisation and composition⁷⁵⁰. Indeed, the SPC and local courts have stressed that reorganisation is preferable to liquidation⁷⁵¹. Up to now, all the bankruptcy cases of listed companies have preferred reorganisation without exception. Large non-listed companies often also choose reorganisation, such as Peking University Founder Group (a debt scale of over 200 billion yuan)⁷⁵². While reorganisation of a bankrupt company is indeed often preferable to liquidation, there are limits to this principle, for instance if this leads to maintaining excess capacities that should have been eliminated long time ago. The reorganisation of Bohai Iron and Steel Group, a prominent example in the Chinese steel sector, is such a case in point where China maintains artificially alive capacities (see Chapter 14)

The reasons of this unsatisfactory state of affairs are related to a number of factors, such as (i) certain shortcomings of the Bankruptcy Law itself or (ii) the far-reaching influence of State authorities which would often pursue political and policy objectives when deciding on the fate of failing companies subject to bankruptcy procedures:

- (i) The legal standards for determinations are vague, including for criteria to open the proceedings and their outcome⁷⁵³. It should also be mentioned that the approval of the relevant provincial government, the SPC, and CSRC are required to accept a reorganization case affecting a listed company⁷⁵⁴. Reports suggest that until 2022 no listed company failure ended up with liquidation. Instead, reorganisation was preferred⁷⁵⁵.

A separate regime governs the bankruptcy of financial institutions, i.e. normal insolvency procedures provided for in the Bankruptcy Law may not apply to financial institutions. The banks' ultimate fate in that respect is therefore in the hands of the State Council, which is empowered to adopt bankruptcy implementing measures⁷⁵⁶. The draft revision of the Banking Law (see Section 6.3.3.1) foresees additional provisions, specifying under

⁷⁴⁹ *Opinion of the Supreme People's Court on various questions related to the correct handling of enterprise bankruptcy cases so as to maintain the market economy order and provide judicial guarantees*. Notice no. 36 [2009] of 12 June 2009; available at: <http://gongbao.court.gov.cn/Details/3a8f0a6153d66484528fa8d7744383.html> (accessed on 8 September 2023).

⁷⁵⁰ *Ibid.*

⁷⁵¹ For example, Section IV of the *Notice of the Supreme People's Court on Issuing the Minutes of the National Court Work Conference on Bankruptcy Trials*, available at <http://gongbao.court.gov.cn/Details/2ee4b89e25f895a91885e746d361a0.html> (accessed on 8 September 2023).

⁷⁵² Ren Yimin, Zhu Yun, *The Insolvency Review: China*, Capital Equity Legal Group, 25 October 2022; available at: <https://thelawreviews.co.uk/title/the-insolvency-review/china> (accessed on 29 August 2023).

⁷⁵³ See Article 10 of the Bankruptcy Law which does not specify the exact criteria on which the people's court takes a decision whether a bankruptcy case is accepted by the people's court.

⁷⁵⁴ See *On the Trial of Bankruptcy and Reorganisation Cases of Listed Companies*, the Supreme People's Court, 29 October 2012, no. 261; available at: <http://gongbao.court.gov.cn/Details/28b74c487b233d05d78963f466a18e.html?sw=> (accessed on 29 August 2023).

⁷⁵⁵ Ren Yimin, Zhu Yun, *The Insolvency Review: China*, Capital Equity Legal Group, 25 October 2022; available at: <https://thelawreviews.co.uk/title/the-insolvency-review/china> (accessed on 29 August 2023).

⁷⁵⁶ See Article 134 of the Bankruptcy Law.

which conditions the banking regulatory authority under the State Council could take over a bank and what should be the main objectives of a potential reorganisation⁷⁵⁷. This change, if eventually signed into law, would enlarge the discretionary power of the State Council. At the same time, the effect of the current legal set-up is that, since the entry into force of the new insolvency system in 2007, only a small number of Chinese Banks such as the Liaoyang Rural Commercial Bank, Liaoning Taizihe Village Bank⁷⁵⁸ and the relatively large Baoshang Bank have been formally allowed to file bankruptcy cases. In relation to the latter, market experts viewed the liquidation as an exceptional case⁷⁵⁹.

- (ii) Administrators of bankruptcy files are often connected to local government officials⁷⁶⁰. The active role of local authorities is further reflected in their control over reorganisation processes⁷⁶¹. Reorganisation, rather than liquidation, has been mainly granted to SOEs and large listed firms⁷⁶² and reorganisation plans are often negotiated outside of the court proceedings, under the direct influence of - or even by - the local authorities⁷⁶³. An insolvency process appears also to present additional risks for debtor's management staff, as they may be held liable under the law and incur civil penalties. This translates, among others, into possible worries from parties involved that the insolvency process might result in them possibly facing accusations of mismanagement of state assets. In addition, the Bankruptcy Law confers broad powers on the courts to accept reorganisation plans against the will of dissenting creditors. As a result, the reorganisation process will vary depending on the court's interpretation and/or – what is more – on the will of the local authorities which operate under the pressure of potential social unrest which could be

⁷⁵⁷ See the Notice of the Bank of China on Public Comments on the proposed draft revision of the Banking Law, 16 October 2020; available at: www.gov.cn/hudong/2020-10/16/content_5551867.htm (accessed on 29 August 2023). See further *Chinese Central Bank Overhauls Commercial Banking Law*, China Banking News, 19 October 2020; available at: <https://www.chinabankingnews.com/2020/10/19/chinese-central-bank-overhauls-commercial-banking-law/> (accessed 29 August 2023).

⁷⁵⁸ *Two Chinese banks get provisional OK to enter bankruptcy proceedings*, Reuters, 26 August 2022; available at: <https://www.reuters.com/business/finance/two-chinese-banks-get-provisional-ok-enter-bankruptcy-proceedings-2022-08-26/> (accessed on 29 August 2023).

⁷⁵⁹ Lockett, H., Fei Ju, Sh., Yu, S., *China allows first commercial bank to go bankrupt in almost 20 years*, Financial Times, 6 August 2020; available at: <https://www.ft.com/content/014d324f-0423-4345-ab54-532b98165e29> (accessed on 29 August 2023).

⁷⁶⁰ See “Bankruptcy chapter” in the 2017 version of this report for further information regarding these procedural defaults in the provisions of the Bankruptcy Law.

⁷⁶¹ See Tomasic, R., Zhang, Z., *From Global Convergence in China's Enterprise Bankruptcy Law 2006 to Divergent Implementation: Corporate Reorganisation in China*, 2012, pp. 316-324.

⁷⁶² *Ibid.*, pp. 312-314.

⁷⁶³ "Although the terms of any such agreement would be negotiated with the management of the debtor, in practice the creditors would probably have to deal with the municipal government of the relevant province. Higher levels of government may also become involved in the process depending upon the importance of the debtor". See *Restructuring Across Borders – People's Republic of China: Corporate restructuring and insolvency procedures*, Allen and Overy, May 2020, p. 6; available at: https://www.allenoverly.com/global/-/media/allenoverly/2_documents/practices/restructuring/restructuring_across_borders_final/peoples_republic_of_china_-_corporate_restructuring_and_insolvency_procedures.pdf (accessed on 29 August 2023). See Maliszewski, W., et al., *Resolving China's corporate debt problem*, IMF Working Paper WP/16/203, 2016, p. 16 and Tomasic, R., Zhang, Z., *From Global Convergence in China's Enterprise Bankruptcy Law 2006 to Divergent Implementation: Corporate Reorganisation in China*, 2012, pp. 319, 328.

caused by sacked or displaced workers. Thus, local party officials do have strong incentives to keep unemployment low by curbing bankruptcy cases, keeping low-productivity firms running and supporting financially distressed firms⁷⁶⁴. Consequently, even if the creation of specialized courts and tribunals made insolvency resolution faster and more efficient in some respects⁷⁶⁵, political pressure on local courts persists⁷⁶⁶. Indeed, bankruptcy courts proceedings generally need the go-ahead of local authorities (see Section 6.7.2). Moreover, the broad decisional discretion that the Chinese courts have in the insolvency process and which, in combination with the lack of judiciary independence (see Section 3.2.2) remains an important issue hampering the efficient functioning of the bankruptcy system.

Moreover, beyond the provisions of the Bankruptcy Law, additional rules developed by the CBIRC are in place which are mainly aimed at preserving the company's assets and to reconcile the interests of the creditors, typically banking institutions, while at the same time remaining in line with '*national macroeconomic, industrial and support policies*'. In that process, the creditors are advised to avoid recalling loans in advance or ceasing lending to the company⁷⁶⁷. In 2021, the CBIRC issued a further set of rules⁷⁶⁸ concerning creditors' committees⁷⁶⁹. The rules set out, among others, the scope of responsibilities and duties of the creditor committees, the conditions where they may be set up, or the duties of different creditor committee levels. While one of the official aims of the creditors' committee system is to support the orderly exit of zombie companies, the CBIRC rules also confirm that the other aim is to rescue companies in distress, as well enshrining the State's vision of creditor committees playing an ever more active role in bankruptcy proceedings. Indeed, it appears from various media reports that creditors' committees still are, under the veil of consensus-building, a vehicle for avoiding 'allegedly' exaggerated claim activity by certain groups of creditors in their quest for

⁷⁶⁴ Li, B., Ponticelli, J., *Going Bankrupt in China*, Review of Finance, Volume 26, Issue 3, May 2022, p. 450; available at: <https://academic.oup.com/rof/article/26/3/449/6355599> (accessed on 29 August 2023).

⁷⁶⁵ *Ibid.*, p. 484.

⁷⁶⁶ *Ibid.*, p. 478.

⁷⁶⁷ CBRC notice 1196 of 6 July 2016; available at: <https://www.waizi.org.cn/law/12856.html> (accessed on 29 August 2023). See also Jiang, X., *Regulator calls for banks to form creditors' committees*, China Daily, 9 September 2016; available at: http://www.chinadaily.com.cn/business/2016-09/09/content_26754808.htm (accessed on 29 August 2023). See also Section 6.9.2. of the 2017 version of this Report. See further *Restructuring Across Borders – People's Republic of China: Corporate restructuring and insolvency procedures*, Allen and Overy, May 2020, p. 6; available at: https://www.allenoverly.com/global/-/media/allenoverly/2_documents/practices/restructuring/restructuring_across_borders_final/peoples_republic_of_china_-_corporate_restructuring_and_insolvency_procedures.pdf (accessed on 29 August 2023). "Once a creditor committee is established, all PRC banking financiers are required to join, while other financiers (such as foreign banks) have the discretion but not an obligation to join the creditors' committee. In practice, with the informal government endorsement, the creditor committees would usually manage to take control over all or at least the majority of the assets of the debtor group."

⁷⁶⁸ See CBIRC Notice on issuing working regulations concerning financial institutions' creditor committees, issued on 6 January 2021, CBIRC [2020] No. 57; available at: <http://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?docId=960104&itemId=4167&generaltype=1> (accessed on 29 August 2023).

⁷⁶⁹ See also Zhang W., and Jiajia Z., *Creditors' committees of banking institutions*, China Business Law Journal, 1 March 2019; available at: <https://law.asia/creditors-committees-banking-institutions/> (accessed on 29 August 2023).

repayments. This happens very often with the support of local governments, which naturally prefer to avoid social issues linked to bankruptcy and lay-offs as well as financial trouble linked to the loss of tax revenues. Such cases result often in the borrowing banks being pushed into forced cooperation in the restructuring process via the granting of further loans or the acceptance of debt-to-equity swaps⁷⁷⁰.

In sum, enforcement of the Bankruptcy Law remains overall weak and inconsistent. While the trend of rising defaults or near-defaults has been continuing, with more visibility in the case of SOEs, much of these instances have been handled on a case-by-case basis with differing degrees of State intervention and transparency, often resulting in restructuring or eventual recovery instead of taking out excess capacity⁷⁷¹. One element that has certainly contributed to the recent relative increase in numbers of SOE bond defaults is that many SOE debts have matured in 2020-2021 (e.g., SOE bonds constituted 87 % of the RMB 8.46 trillion worth credit bonds which were to mature in 2021⁷⁷²). Due to the pandemic-related economic difficulties, it also can be assumed that local governments benefited from less fiscal space and capacity to bail out certain SOEs. In this respect, year 2020 appears clearly as standing out in terms of central and local SOEs bond default amounts in comparison to previous years⁷⁷³. Some see the rising number of SOE defaults (25 in first half of 2021 as compared to 19 in the same period of 2020)⁷⁷⁴ as pointing towards a policy-change by the Chinese authorities, such as reducing implicit guarantees for SOEs⁷⁷⁵. However, the numbers are too small to support credibly such a conclusion. Moreover, even if there were a certain policy change, there is no indication to assume that the State has reduced its central role in the financial system⁷⁷⁶.

The continued (and artificially) low number of insolvencies in relative terms has two important effects. First, the practice of keeping companies alive in most of the cases results in the survival

⁷⁷⁰ Wildau G., *Regulator urges China banks to save ailing companies*, Financial Times, 26 May 2017; available at: <https://www.ft.com/content/5455689c-41c7-11e7-9d56-25f963e998b2> (accessed on 29 August 2023).

⁷⁷¹ "By end-February 2020, half of the SOEs that had defaulted were in full or partial recovery, including six that repaid bondholders in full. All of the examples involving full recovery of payments due were achieved without entering into any court-administered bankruptcy proceedings. Most were completed within one week following the default. In contrast, only 22% of privately owned enterprises made full or partial repayments after default." See *Ownership and Sector Key Factors in China SOE Defaults*, Fitch Ratings, 30 March 2020; available at: <https://www.fitchratings.com/research/corporate-finance/ownership-sector-key-factors-in-china-soe-defaults-30-03-2020> (accessed on 29 August 2023). See also Cong, L.W., Gao, H., Ponticelli, J., Yang, X., *Credit Allocation Under Economic Stimulus: Evidence from China*, Review of Financial Studies, September 2019, p. 3450; available at: <https://academic.oup.com/rfs/article-pdf/32/9/3412/29194622/hhz008.pdf> (accessed on 29 August 2023).

⁷⁷² See *SOE bonds in 2021*; available at: https://finance.sina.com.cn/money/bond/market/2020-12-28/doc-ijznezxs8760202.shtml?cre=tianyi&mod=pcpager_tech&loc=23&r=9&rfunc=100&tj=none&tr=9 (accessed on 29 August 2023).

⁷⁷³ See Figure 15 in *The Internationalization of the China Corporate Bond Market*, ICMA, Zurich, 2021, p. 20; available at: <https://www.icmagroup.org/assets/documents/About-ICMA/APAC/The-Internationalization-of-the-China-Corporate-Bond-Market-January-2021-140121.pdf> (accessed on 24 August 2023).

⁷⁷⁴ Murugaboopathy, P., Galbraith, A., *China's corporate bond defaults touch a record high*, Reuters, 9 July 2021; available at: <https://www.reuters.com/world/china/chinas-corporate-bond-defaults-touch-record-high-2021-07-09/> (accessed on 29 August 2023).

⁷⁷⁵ Adams, N., Jacobs, D., Kenny, S., Russell, S., Sutton, M., *China's Evolving Financial System and Its Global Importance*, Reserve Bank of Australia, 2021, p. 75.

⁷⁷⁶ *Ibid.*, p. 72.

of large numbers of unviable companies, which contributes to the persistence of excess production capacities (see for example Chapters 14, 15, 17). Second, the relatively low reliance on bankruptcy proceedings, in particular concerning SOEs, creates a specific market perception of the corporate fabric in China which reverberates in Chinese financial and borrowing markets. Indeed, the governmental and judiciary-induced practice of keeping companies alive amounts to granting implicit State guarantees to these companies, thereby artificially reducing the costs of credit and of access to finance, and resulting in vast amounts of loans received by State-related firms at attractive rates, at the expense of private players⁷⁷⁷. Despite a recent increase in the number of SOE defaults (the numbers are still very small), there are no clear signs that the phenomenon of implicit guarantee or State preferential treatment or support for SOEs is to disappear⁷⁷⁸. Indeed, as observed by experts at the end of 2020⁷⁷⁹:

market consequences of defaults [...] can easily escalate and start to have major implications for the functioning of credit markets. The PBOC and other financial regulators certainly do not wish to see this happen. In its [...] quarterly monetary policy report [...] the PBOC said it would “resolutely prevent local risks from developing into systemic risks, and regional risks from evolving into national risks.”

⁷⁸⁰ *That means it will try to strike a balance between gradually letting insolvent SOEs default, and preventing those events from causing a credit squeeze.*

The shortcomings in the functioning of the bankruptcy system affect at the same time the viability of the Chinese banking system⁷⁸¹, with the Chinese financial institutions, however, as specified above, largely shielded from normal insolvency procedures.

6.8. CHAPTER SUMMARY

Despite changes throughout the past decades, the current Chinese financial system is still characterized by two features: (1) a strong presence of state-owned banks and (2) a widespread influence of the State which imposes on the financial system a number of policy objectives, in particular the implementation of the sophisticated economic planning system. Moreover, the recent/ongoing changes in the organisational set-up of the regulatory bodies confirm and reinforce the subordination of these bodies to the CCP (see Section 6.2.2).

⁷⁷⁷ Balding, C., *China takes on State-owned firm*. Bloomberg News, 10 August 2017; available at: <https://www.bloomberg.com/view/articles/2017-08-10/china-takes-on-state-owned-firms> (accessed on 29 August 2023). See also *A moral deficit*, The Economist, 18 October 2014; available at: <https://www.economist.com/news/finance-and-economics/21625823-rein-its-debt-china-must-be-willing-let-companies-fail-moral-deficit> (accessed on 29 August 2023); see further Anzoategui, D., Chivakul, M., Maliszewski, W., *Financial Distortions in China: A General Equilibrium Approach*, IMF Working Paper WP/15/274, pp. 5-8; available at: <http://www.imf.org/external/pubs/ft/wp/2015/wp15274.pdf> (accessed on 29 August 2023).

⁷⁷⁸ See further *China Bond Monitor: SOE credit differentiation will intensify*, Moody's Investor Service, 20 May 2021, p. 4: "*Despite a handful of SOE default cases in recent years, onshore investors still prefer SOEs over POEs [privately owned enterprises] because of the expected government support for SOEs*".

⁷⁷⁹ See He, W., *Eroding the Implicit Guarantee*, Gavekal Dragonomics, 1 December 2020.

⁷⁸⁰ See *China Monetary Policy Implementation Report Q3 2020*, available at: www.pbc.gov.cn/goutongjiaoliu/113456/113469/4133903/2020112615473038246.pdf (accessed on 29 August 2023).

⁷⁸¹ Wu, Y., & Pan, H., *Zombie firms and corporate financialization: evidence from China*, Review of Managerial Science, 2023, p. 12.

The Chinese financial system remains centred around banking, with RMB-denominated bank loans accounting for the largest portion of aggregate financing to the real economy in the country (see Section 6.3.1). The most important categories of banks in China are the following: large state-owned commercial banks, joint-stock commercial banks and policy banks. The rest is mainly accounted for by smaller rural or city commercial banks which are mostly owned by local or provincial governments. Foreign-invested banks remain negligible in China's banking sector (see Section 6.3.1.4). The State dominance over the banking sector and the legal framework which encourages lending in line with industrial policies, perpetuates the existence of significant shadow banking sector, given that certain categories of economic operators may face difficulties to raise capital in the current system (see Section 6.3.1.5).

The State controls the banks through various channels, in particular through direct and indirect ownership which in turn facilitates its control over the management bodies of the banking institutions (see Section 6.3.2.1). Moreover, irrespective of the degree of State ownership, all important banks host internal CCP organisations. As apparent from relevant legislation, as well as from the AoA of major banks, significant personnel overlaps between the management of the banks and the Party organisations are in place (and indeed required) and the CCP organisations have to be involved in major operational and management issues of the respective banks (see Section 6.3.2.2).

The legal framework spells out that banks are to implement China's economic policy. Article 1 of the Banking Law stipulates, inter alia, that banks promote the development of the socialist market economy and Article 34 states that "[c]ommercial banks shall conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State". Provisions to a similar effect can be found in other pieces of applicable legislation, such as the Decision No. 40 or the CBIRC's Notice on the Commercial banks' performance evaluation method (see Section 6.3.3.).

The bond and stock markets in China are of lower importance compared to the banking sector. However, they too are tightly regulated to ultimately serve as tools for channelling capital to priority projects in line with the State's economic priorities (see Section 6.4.1). The Chinese bond market, other than being characterized by a high proportion of government bonds and by a strong presence of banks, also continues to feature irregularities related to credit risk assessment which in turn contribute to inappropriate functioning of the market and, therefore, to its imbalances (see Section 6.4.2). Similarly, the economic fundamentals and regulatory setup of the Chinese stock markets are not conducive to effective allocation of resources in the economy (see Section 6.4.3).

A relatively new financial tool are the GGFs, the purpose of which is to raise money from public and private sources and to make investments consistent with government priorities (see Section 6.5). Even if their actual track record in achieving the official goals may be mixed at the time of writing of this Report, their very size relative to the size of the market makes GGFs a distortive tool in their very nature, in any event strengthening the government control over resource allocation (see Section 6.5.3).

As to the export credit insurance market, Sinosure, as the main operator on the market remains fully State-controlled both in terms of ownership as well as stated purpose. Consequently, Sinosure appears to be mainly fulfilling the State's policies with limited regard to commercial considerations when providing insurance. In combination with China not being bound by the OECD-based rules, this results in export credit insurance typically being offered on inappropriately favourable terms to Chinese companies (see Section 6.6).

Last but not least, the number of bankruptcy cases, which is very low for an economy of China's size, points to serious issues with the enforcement of bankruptcy laws, stemming from a number of flaws in these laws, as well as from their inadequate implementation. In particular, the State plays an unduly active role in the bankruptcy proceedings, not least in view of the lack of Chinese judiciary system's independence, as well as given the government authorities' involvement in individual bankruptcy cases, often influencing their outcome. Consequently, the Chinese bankruptcy system continues to operate inadequately, with the slow progress on addressing core issues – such the removal of the implicit guarantees and tightening SOEs budget constraints – being reported (see Section 6.7 and 6.4.2.2).

Overall, the functioning of the entire financial system is characterized by high State presence on both borrowing and lending side, as well as by the absence of normal market mechanisms such as effective and transparent bankruptcy and market exit procedures.

7. PUBLIC PROCUREMENT IN CHINA

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7.1. LEGAL FRAMEWORK

Public procurement in China is governed by a set of laws and regulations that concern the purchase of goods, services and construction projects by government agencies and SOEs.

China’s legal and institutional framework for public procurement is complex and fragmented. It is made up of two principal pieces of legislation, the Government Procurement Law (‘*GPL*’) ⁷⁸² and the Tendering and Bidding Law (‘*TBL*’) ⁷⁸³, as well as their respective implementing

⁷⁸² See Section 7.1.2.1 below.

⁷⁸³ See Section 7.1.2.2 below.

rules and regulations. The GPL regulates all aspects of government procurement but does not cover procurement by SOEs and procurement of construction projects where a tendering procedure is used. The TBL applies to the procurement of construction projects by public entities, including SOEs, which are subject to tendering procedure (see Section 7.1.2.1 for details).

In 2021 the total value of procurement by SOEs using public funds exceeded RMB 35 trillion⁷⁸⁴ (see also Section 7.2). Given that the GPL does not apply to SOEs, it is worthwhile noting that a draft GPL revision⁷⁸⁵ would, for the first time, cover SOEs as procuring entities (see Section 7.1.2.1). However, as of writing of this Report, there was no set timetable as to when it would take effect.

The main actors involved in government procurement in China are:

- MOF: in charge of enforcing the GPL and of the management of the purchases of goods and services for government departments.
- NDRC: in charge of drafting the TBL and its implementing rules. It defines the national economic plan and approves the centrally funded large scale infrastructure projects.
- Ministry of Housing and Urban and Rural Development: in charge of the management of general construction procurement and the implementation of the TBL.
- MOFCOM: in charge of international trade and the procurement of electronic equipment.

7.1.1. WTO LAW

Government procurement is excluded from the WTO's multilateral trade agreements. Early efforts to bring government procurement under internationally agreed trade rules were undertaken in the OECD framework⁷⁸⁶. To ensure open, fair and transparent conditions of competition in the government procurement markets, a number of WTO members have negotiated the Agreement on Government Procurement ('GPA'), which is a plurilateral agreement within the framework of the WTO.

China is not a member of the GPA, nor has it signed any multilateral agreements on market access for government procurement. However, China's membership in the WTO entails certain government procurement-related obligations with respect to non-discrimination, most-favoured nation ('MFN') treatment and transparency.

⁷⁸⁴ See China Government Procurement News (15 April 2022), *China's total public procurement exceeded 45 trillion yuan last year*, Zhejiang Government Procurement Website, available at: <https://zfcg.czt.zj.gov.cn/training/2022-04-15/15195.html> (accessed on 16 June 2023). See also CCTV (8 April 2022), *'China's Public Procurement Development Report (2021)' released, the country's total public procurement exceeded 45 trillion yuan in 2021*, available at: <http://www.chinawuliu.com.cn/lhhzq/202204/08/574887.shtml> (accessed on 16 June 2023).

⁷⁸⁵ See Notice on the Government Procurement Law of the PRC (Draft Revision) is again open to the public for comments, available at: http://gks.mof.gov.cn/gongzuodongtai/202207/t20220715_3827392.htm (accessed on 19 June 2023); see also China Proposes New Revision of Procurement Law, available at: <https://trade.djaghe.com/?p=7409> (accessed on 19 June 2023).

⁷⁸⁶ See OECD (2015). *OECD recommendation on public procurement*, pp. 3, 13, available at: <https://www.oecd.org/gov/public-procurement/OECD-Recommendation-on-Public-Procurement.pdf> (accessed on 16 June 2023).

The Protocol on the Accession of the PRC to the WTO ('CAP')⁷⁸⁷ commits China to afford MFN treatment in government procurement processes. China must ensure that "*all government entities at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, [will] conduct their procurement in a transparent manner, and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement (e.g., through the bidding process)*"⁷⁸⁸.

In the CAP, China has committed also to certain transparency obligations. China pledged that the procurement of all government entities at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, will "*be subject only to laws, regulations, judicial decisions, administrative rulings of general application, and procedures (including standard contract clauses) which had been published and made available to the public*"⁷⁸⁹. Moreover, China has committed to seek accession to the GPA under the CAP⁷⁹⁰.

China's transparency obligations, and in particular the requirement to publish the measures governing government procurement, are therefore not limited to procurement tenders that have been opened to foreign suppliers but apply to all procurement tenders, including those where only domestic entities and their products and services compete.

7.1.2. CHINESE LAW

7.1.2.1. THE GOVERNMENT PROCUREMENT LAW

The GPL⁷⁹¹, in force since 2003⁷⁹², is the basic law governing all aspects of public procurement in China: principles, organisation, coverage, procurement methods and procedures, suppliers review, supervision and liabilities.

Article 2 of the GPL defines the scope of its application as "*the government procurement activities carried out within the territory of the People's Republic of China*". It defines

⁷⁸⁷ WTO Protocol on the accession of the PRC - WT/L/432 (2001), available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/432.pdf&Open=True> (accessed on 19 June 2023). This commitment is memorialized in para. 339 of the WTO Report of the Working Party on the Accession of China ('Working Party Report') - WT/ACC/CHN/49 (2001), available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/ACC/CHN49.pdf&Open=True> (accessed on 19 June 2023). According to Paragraph 1.2 of the CAP, '[t]his Protocol, which shall include the commitments referred to in paragraph 342 of the Working Party Report, shall be an integral part' of the Agreement Establishing the WTO.

⁷⁸⁸ Working Party Report, para. 339.

⁷⁸⁹ *Ibid.*

⁷⁹⁰ Working Party Report, paras. 339 and 341

⁷⁹¹ The Government Procurement Law, available at: https://www.pingli.gov.cn/UploadFiles/akjyhfj67/file/20210115/20210115165655_8831.pdf (accessed on 19 June 2023) and http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/06/content_1382108.htm (accessed on 3 November 2023).

⁷⁹² Most recently amended in 2014, see Standing Committee of the 12th NPC (2014), *Decision of the Standing Committee of the National People's Congress on Revising the Insurance Law of the People's Republic of China and Four Other Laws*, available at: http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2014-09/01/content_1933317.htm (accessed on 19 June 2023).

government procurement as “the purchasing activities conducted with fiscal funds by government departments, institutions and public organisations at all levels” of goods, construction works and services that are in the Centralised Procurement Catalogue (‘CPC’) or whose values exceed the respective Prescribed Procurement Threshold (‘PPT’)⁷⁹³.

The GPL does not provide a definition of ‘contracting authority’ or ‘procuring entity’ but only states that state organs, institutions and organisations at all levels are covered without defining them. An important point is that only procurement by these entities using ‘fiscal funds’ is covered by the GPL. Therefore, any entity financed by the state budget (central or local) could be covered by the GPL. However, the GPL does not define fiscal funds.

Article 4 of GPL excludes from its scope of application government procurement of construction projects subject to tendering procedures, which are regulated by the TBL. In addition, military procurement is not governed by the GPL but by internal military rules.

The Implementing Regulations of the GPL (‘IRGPL’)⁷⁹⁴ supplement the text of the law in ways that define ‘fiscal funds’, expand the GPL’s scope of coverage and provide transparency requirements:

- *Definition of ‘fiscal funds’*: Article 2 of the IRGPL defines ‘fiscal funds’ as funds covered by the budget management.
- *Expansion of scope*: Article 2 of the IRGPL expands the coverage of government procurement by noting that “where both fiscal funds and non-fiscal funds are used for the procurement projects of State organs, public institutions and public organizations, the portions procured with fiscal funds shall be governed by the GPL and these Regulations; and, where fiscal funds cannot be separated from non-fiscal funds in procurement, the GPL and these Regulations shall apply in a uniform manner.”
- *Transparency Requirements*: The IRGPL intend to improve transparency of government procurement and e-procurement. Article 8 requires that all government procurement projects be published on the media designated by the finance departments at and above the provincial level. Article 10 stipulates that China will issue unified standards on government procurement electronic transaction platforms, with a purpose to promote and encourage e-procurement across China.

In July 2022, MOF released for public comments the second draft revision of the GPL (‘Draft GPL Revision’), which makes substantial changes in order to both implement requirements set forth in the Central Commission for Deepening Reform’s Plan to Deepen the Reform of the Government Procurement System and accelerate the negotiation process for China’s accession to the GPA⁷⁹⁵.

⁷⁹³ GPL, Art. 2.

⁷⁹⁴ Implementing Regulations of the GPL, adopted on the 31 December 2014 by the 75th Executive Meeting of the State Council and entered into force on 1 March 2015. State Council Document number 658, available at: https://www.gov.cn/gongbao/content/2015/content_2827183.htm (accessed on 20 November 2023)

⁷⁹⁵ See MOF (2022), *Government Procurement Law of the PRC (Revised Draft for Comments)*. http://gks.mof.gov.cn/gongzuodongtai/202207/t20220715_3827392.htm (accessed on 19 June 2023). See

The Draft GPL Revision would maintain the territorial scope of the original law (i.e. “*all the government procurement activities carried out within the territory of the People's Republic of China*”), but change the definition of regulated purchasing activities to “*the acquisition of goods, construction works, and services by means of contract using fiscal funds or other state-owned assets by all levels of state authorities, institutions, social organizations and other procurement entities as needed for the performance of their functions or providing public services, including without limitation, purchases, leases, service engagements, and public-private partnerships (‘PPPs’)*”⁷⁹⁶.

It is noteworthy that the Draft GPL Revision expands procuring entities to include ‘*other procurement entities*’, adds ‘*other state-owned assets*’ as the source of funds in addition to fiscal funds and removes certain limitations on good and services to be procured. Article 12 of the Draft GPL Revision further defines ‘*other procurement entities*’ as ‘*public welfare-oriented SOEs that engage in public utility services, operate public infrastructure or operate public service networks for public purposes*’⁷⁹⁷. Such SOEs and their specific procurement scope will be determined by the State Council.

The GPL is administered by MOF and applies to all funds controlled or allocated by the ministry. For a long time, procuring entities covered by the GPL have been governmental, including all central and local bodies making use of fiscal funds (e.g. provinces, municipalities, hospitals). Entities using non-fiscal funds or fiscal funds below the PPT have been exempted. Such entities may no longer be exempted once the Draft GPL Revision takes effect, as procuring entities using other state-owned assets, including SOEs, will fall within the scope of regulated entities⁷⁹⁸. The Draft GPL Revision would further make significant changes to existing procurement methods⁷⁹⁹.

7.1.2.2. THE TENDERING AND BIDDING LAW

The TBL⁸⁰⁰, in force since 2000⁸⁰¹, is the basic law regulating bidding activities in China. Article 2 of the TBL stipulates that it is “*applicable to any bid invitation and bidding activities conducted within the territory of the People's Republic of China*”.

Article 3 of TBL provides that tendering procedures shall be carried out for the following construction projects undertaken within China’s territory, including the surveying and investigation, design, construction and construction supervision of such projects as well as the procurement of relevant major equipment and materials for such projects [...]:

also Xinhua News Agency (16 November 2018), *The fifth meeting of the Central Comprehensive Deepening Reform Committee reviewed and approved the “Deepening Government Procurement System Reform Plan”*, available at: http://www.cgpnews.cn/epapers/46544?epaper_period_id=3814 (accessed on 19 June 2023).

⁷⁹⁶ Draft GPL Revision, Art. 12.

⁷⁹⁷ *Ibid.*

⁷⁹⁸ *Ibid.*, Art. 2.

⁷⁹⁹ Draft GPL Revision, Art. 56-70.

⁸⁰⁰ The TBL, available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383557.htm (accessed on 19 June 2023).

⁸⁰¹ Most recently amended in 2019.

- (1) *Large-scale infrastructure projects and public utility projects concerning public interests and public security;*
- (2) *Projects invested completely or partly by the government or funded through state financing;*
- (3) *Projects using loans and aid funds from international organizations or foreign governments.*

Consequently, the TBL applies to certain tendering activities of both public and private companies, including SOEs. It is not only linked to the nature of the funds (either fiscal or private), but also to the nature of projects. However, it does not regulate purchases using only private funds that do not also include the activities listed above.

Under the TBL, the following bidding methods⁸⁰² exist:

- *Open tenders*: the organising entity, in the form of tender notice, invite unspecified legal persons or other organizations to bid.
- *Selective tenders*: the organising entity, in the form of invitation to bid, invite specified legal persons or other organizations to bid.

Although the TBL does not require a public procurement notice for selective tenders, relevant procurement information needs to be published according to the GPL and associated regulations. Local governments may establish their own rules that supplement the TBL⁸⁰³.

In December 2019, NDRC solicited public comments on a revised version of the TBL (*Draft TBL Revision*) and issued a document that compared the TBL and the revised draft⁸⁰⁴. The comment period ended on 1 January 2020, but NDRC has subsequently not indicated if and when revisions would be enacted.

7.1.2.3. REGULATORY CONFLICTS BETWEEN THE GPL AND THE TBL

There is a continuous tension between the two basic Acts. The EU-China Trade Project carried out a comprehensive study on the conflicts between the GPL and TBL. Although this study was delivered in 2008 and in 2014 the IRGPL providing some clarifications were issued, there are still some areas of conflicts between the two basic acts.

The GPL (Article 2)⁸⁰⁵ applies to government procurement activities conducted with fiscal funds by all public administration levels, for goods, construction and services included in the CPC and for values exceeding a PPT.

In contrast, the TBL (Article 3)⁸⁰⁶ applies to tendering activities of both fiscal and private entities, including SOEs, in large-scale infrastructure projects and public utility projects concerning public interests and public security; projects invested completely or partly by the

⁸⁰² TBL, Art. 10.

⁸⁰³ Chen, J. (2019). Public Procurement in China. Lexology. <https://www.lexology.com/library/detail.aspx?g=3f2001cc-811a-4e32-81f3-0e8bbc853df6> (accessed on 20 October 2023).

⁸⁰⁴ NDRC (2019). *Announcement on the Public Consultation of the “Law of the People's Republic of China on Tendering and Bidding (Revised Draft for Public Comment)”*; available at: https://hd.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=325 (accessed on 19 June 2023).

⁸⁰⁵ See explanations in Section 7.1.2.1

⁸⁰⁶ See explanations in Section 7.1.2.2

government or funded through state financing; and projects using loans and aid funds from international organizations or foreign governments.

The two sets of legislation overlap when the construction projects falling under the TBL are conducted with fiscal funds.

Article 4 of GPL tries to address this clash by providing that the TBL applies when bidding is used for government procurement of construction works. This implies that the TBL does not apply to tendering procedures in government procurement of goods and services and to government procurement of works, in which tendering procedure is not used. The delimitation of the respective scopes of application has been further clarified in the respective implementing regulations. Article 83 of the TBL Implementing Regulation⁸⁰⁷ (*'IRTBL'*) states that government procurement of goods and services through tendering are subject to government procurement laws and administrative regulations (i.e. GPL and IRGPL). Article 7 of the IRGPL provides that government procurement of works and related goods and services through (open and selective) tendering is subject to the TBL and that government procurement of works using procuring methods other than tendering procedures are subject to the GPL and IRGPL.

But the current practice still involves the application of the GPL when fiscal funds are used. Tangible and explicit evidence of this risk is contained in Article 22 of the Notice on Implementing Several Supporting Policies for the Outline of the National Medium - and Long-Term Program for Science and Technology Development (2006-2020)⁸⁰⁸ issued by the State Council in 2006:

For major national construction projects and other major equipment and products procurement projects involving fiscal funds, the relevant authorities shall list a commitment to procuring indigenous innovation projects as one of the conditions in their projects application and clearly indicate the specific requirements for procuring indigenous innovation projects. For key projects with government investment from the state or local level, the ratio of procuring domestic equipment shall be no less than the 60% of the total value. The finance department shall not release the funds if the requirements of procuring indigenous innovation projects are not satisfied.

The potential inconsistency in the application of one or the other legislation generates uncertainty for both procuring entities and suppliers.

The GPL and TBL overlap could be enlarged if the Draft GPL Revision and the Draft TBL Revision take effect in their proposed redactions. The Draft GPL Revision would encompass SOEs as procuring entities and apply to procurement activities conducted with fiscal funds or other state-owned assets⁸⁰⁹. The Draft TBL Revision would apply to construction projects above certain thresholds that use government funds, are financed by the government or use

⁸⁰⁷ See IRTBL https://www.gov.cn/gongbao/content/2019/content_5468831.htm (accessed on 20 November 2023)

⁸⁰⁸ *Notice on Implementing Several Supporting Policies for the Outline of the National Medium- and Long-Term Program for Science and Technology Development (2006-2020)*, Article 22 (State Council, No. 6, 2006).

⁸⁰⁹ See Draft GPL Revision, Art. 2.

loans and aid funds from international organizations or foreign governments⁸¹⁰. There accordingly would be an overlap when construction projects falling under the Draft TBL Revision, including those owned by SOEs, are constructed with fiscal funds or other state-owned assets, which would fall under the Draft GPL Revision.

7.1.2.4. OTHER REGULATIONS CONCERNING GOVERNMENT PROCUREMENT

A number of other regulations govern public procurement activity in China, including *inter alia*:

- *Measures for the Administration of the Government Procurement of Imported Products* (effective since 27 December 2007): Regulates government procurement of imported products in China, including setting out procedures for procuring such products. Defines imported products and specifically requires that domestic products should be procured unless it is absolutely necessary to purchase imported products and imported products may only be procured upon examination and approval by MOF⁸¹¹.
- *Administrative Measures for Non-Bidding Government Procurement* (effective since 1 February 2014): Outlines procedures for non-bidding government procurement in China⁸¹².
- *Measures for the Administration of Tendering and Bidding for Government Procurement of Goods and Services* (effective since 1 October 2017) or Decree No. 87: Regulates government procurement of goods and services through bidding in China⁸¹³.
- *Measures for the Administration of the Government Procurement of Services* (effective since 1 March 2020): Regulates government procurement of services in China. Sets out procedures for procuring services, including the use of public tendering and competitive negotiation⁸¹⁴.
- *Administrative Measures for the Release of Government Procurement Information* (effective since 1 March 2020): Sets rules for releasing government procurement information through designated platforms in China⁸¹⁵.
- *Circular on Publication of Government Procurement Intentions* (effective since 2 March 2020): Requires publication of government procurement goals on designated platforms in China⁸¹⁶.

⁸¹⁰ See Draft TBL Revision, Art. 3.

⁸¹¹ General Office of the State Council (2007). *Administrative Measures for Government Procurement of Imported Products*; available at: http://www.gov.cn/ztlz/kjzgh/content_883643.htm (accessed on 19 June 2023).

⁸¹² MOF (2013). *Administrative Measures for Non-Bidding Government Procurement*; available at: http://www.gov.cn/zhengce/2014-01/03/content_2603509.htm (accessed on 19 June 2023).

⁸¹³ MOF (2017). *Measures for the Administration of Tendering and Bidding for Government Procurement of Goods and Services*; available at: http://www.gov.cn/gongbao/content/2017/content_5241918.htm (accessed on 19 June 2023).

⁸¹⁴ MOF (2020). *Measures for the Administration of the Government Procurement of Services*; available at: http://www.gov.cn/gongbao/content/2021/content_5582627.htm (accessed on 19 June 2023).

⁸¹⁵ MOF (2019). *Administrative Measures for the Release of Government Procurement Information*; available at: http://www.gov.cn/xinwen/2019-12/11/content_5460211.htm (accessed on 19 June 2023).

⁸¹⁶ MOF (2020). *Circular on Publication of Government Procurement Intentions*; available at: http://www.gov.cn/zhengce/zhengceku/2020-03/11/content_5489882.htm (accessed on 19 June 2023).

- *Interim Administrative Measures for Procurement under the Government Procurement Framework Agreement* (effective since 1 March 2022): Regulates government procurement where the procuring entity or an organ in charge of departmental budgeting determines shortlisted suppliers and creates a framework agreement through public solicitation procedures⁸¹⁷.
- *Regulation on the Implementation of the Bidding Law of the People's Republic of China* (2019 Revision effective since 2 March 2019): Regulates bidding activities⁸¹⁸.

In addition, procurement regulations in a wide variety of sectors – ranging from education to environmental protection and wireless local area network products – are issued by the ministry in charge of the sector either on its own or in conjunction with MOF.

Some of these regulations are intended to set detailed procedures. For example, Decree No. 87 of the MOF⁸¹⁹ clarifies specific rules applicable to public tenders, ranging from the modalities and timing of their announcement to their evaluation and the awarding of the contracts. MOF issued a revised draft for public comments in April 2021⁸²⁰.

Others – such as those for wireless local areas network products – are designed to promote domestic industries (see also Section 7.3.1). For instance, the MOFCOM enacted its own set of regulations in the field of electrical equipment, thus adding to the complexity of the system.

7.1.2.5. CONCESSION RULES

Public concessions are usually intended as a tool under which non-governmental investors (state-owned or private) are granted the right to invest, construct and operate a public infrastructure or utility project for a certain period of time.

There is no unified legal framework on concession contracts. However, some sectoral provisions exist. For instance, the Administrative Measures on Infrastructure and Public Utilities Concessions⁸²¹ issued by NDRC, MOF, the Ministry of Housing and Urban-Rural Development, Ministry of Transport, Ministry of Water Resources, and the PBOC in 2015 established a legal framework for infrastructure and public utility-related work and service concessions, covering energy, transportation, water conservancy, environmental protection, municipal engineering and other fields of infrastructure and public utilities within Chinese

⁸¹⁷ MOF (2022). *Interim Administrative Measures for Procurement under the Government Procurement Framework Agreement*; available at: http://www.gov.cn/gongbao/content/2022/content_5687507.htm (accessed on 19 June 2023).

⁸¹⁸ Order No.709 of the State Council of the PRC, available at: https://www.pkulaw.com/en_law/e7f93f8a4b71aef3bdfb.html (accessed on 14 November 2023).

⁸¹⁹ Decree No. 87 issued by the MOF on 11 July 2017, in force as of 1 October 2017, revising the Measures for the Administration of Tendering and Bidding for Government Procurement of Goods and Services. This Decree specifies that its provisions are made '[...] according to Government Procurement Law, the Government Procurement Law Implementing Regulations [...]' (Article 1).

⁸²⁰ MOF (2021). *Measures for the Administration of Tendering and Bidding for Government Procurement of Goods and Services (Revised Draft for Public Comments)*; available at: https://www.ccgp.gov.cn/news/202105/t20210510_16258407.htm (accessed on 19 June 2023).

⁸²¹ See Measures for the Administration of Infrastructure and Utilities Concessions; available at: https://www.gov.cn/zhengce/2015-04/25/content_5712289.htm (accessed on 19 June 2023).

territory ('*Concession Rules*'). Under the Concession Rules, a concession can only be granted by means of competition including with respect to bidding and competitive negotiation⁸²².

7.2. VALUE OF THE PROCUREMENT MARKET

According to data provided to the WTO by the Chinese authorities, the total value of the public procurement market in China, consisting of tenders issued by Chinese central and local governments regulated under the GPL, represents 3.3% of China's GDP (i.e. RMB 3.3 trillion in 2019)⁸²³.

The overall value of the public procurement market in China significantly increases when SOEs procurement activities not governed under the current GPL are included, boosting the total value to over RMB 14 trillion from 2019 through June 2020⁸²⁴. However, given that the precise data concerning procurement expenditures not governed under the GPL are unavailable, this section focuses on public procurement in China specifically regulated under the GPL.

Table 7.1: Value of the Procurement Market in China⁸²⁵

in billion RMB	2017	2018	2019
Government procurement under GPL	3 211	3 586	3 307
% of GDP	3.8%	3.9%	3.3%
% of government expenditure	15.8%	16.2%	13.9%

The value of China's public procurement market under the GPL increased from roughly EUR 73 billion in 2009 to almost EUR 450 billion in 2019, an increase of more than 300% over this period⁸²⁶. The primary source of public procurement governed in China can be attributed to procurement by local entities, which accounted for 91.9% of the total value of China's government procurement in 2019. The remaining 8.1% pertains to central government procurement⁸²⁷.

⁸²² The World Bank (2015). *Measures (regulations) for the administration of concession for infrastructure and public utilities*; available at: <https://ppp.worldbank.org/public-private-partnership/library/measures-regulations-administration-concession-infrastructure-and-public-utilities-chinese-%E5%9F%BA> (accessed on 19 June 2023).

⁸²³ *Trade Policy Review on China*, WTO (2021), p. 99; available at: https://www.wto.org/english/tratop_e/tpr_e/s415_e.pdf (accessed on 19 June 2023).

⁸²⁴ US-China Business Council. (2021). *Government procurement and sales to State-Owned enterprises in China*, p. 1, available at: https://www.uschina.org/sites/default/files/uscbc_government_procurement_report_2021.pdf (accessed on 19 June 2023).

⁸²⁵ *Trade Policy Review on China*, WTO (2021), pp. 16-17, 99-102; available at: https://www.wto.org/english/tratop_e/tpr_e/s415_e.pdf (accessed on 19 June 2023).

⁸²⁶ *Ibid.* In USD, the public procurement market grew roughly from USD 100 billion in 2009 to almost USD 500 billion in 2019. Conversion to EUR is based on the average exchange rate during the timeframe referenced, using the exchange rate calculator publicly available on the European Central Bank's website. *Euro foreign exchange reference rates*, European Central Bank, 2023; available at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html (accessed on 19 June 2023).

⁸²⁷ *Trade Policy Review on China*, WTO (2021), p. 99; available at: https://www.wto.org/english/tratop_e/tpr_e/s415_e.pdf (accessed on 19 June 2023).

Table 7.2: Government Procurement by Entities⁸²⁸

in billion RMB	2017	2018	2019
Total procurement by the central government	191.3	224.0	266.6
Total procurement by local government entities	3 020.2	3 362.1	3 040.0
TOTAL	3 211.4	3 586.1	3 306.7

Construction and engineering projects account for the majority of China's public procurement expenditure, accounting for 45% of the total expenditure in 2019. These projects include, but are not limited to, funds allocated for construction, demolition and renovation. Purchases of other services, including items such as maintenance, IT and training accounted for 29% of the total expenditure. The remaining 26% can be attributed to purchases of goods (e.g. equipment), which saw the greatest sustained growth in value out of all the purchase categories, increasing by an average annual growth rate of 4%⁸²⁹.

Table 7.3: Government Procurement by Nature of Expenses⁸³⁰

in billion RMB	2017	2018	2019
Construction and engineering services	1 521.1	1 571.4	1 500.4
Other services	890.2	1208.1	945.5
Goods	800.2	806.5	860.7
TOTAL	3 211.4	3 586.1	3 306.7

7.3. DISTORTIONS

Despite the existence of legal provisions, Chinese public procurement policies discriminate in favour of domestic goods, construction and services. The allocation of contracts under public procurement is not always done in a competitive way or based on market rules, as illustrated by the non-exhaustive set of examples below.

7.3.1. DISTORTIONS ASSOCIATED WITH THE GPL

In the GPL and the IRGPL, the discrimination in favour of domestic goods, construction and services is explicit.

7.3.1.1. 'BUY CHINESE'

Article 10 of the GPL stipulates: "*The government shall procure domestic goods, construction and services, except in one of the following situations:*

⁸²⁸ *Ibid.*

⁸²⁹ *Ibid.*

⁸³⁰ *Ibid.*

- (1) *where the goods, construction or services needed are not available within the territory of the People's Republic of China or, though available, cannot be acquired on reasonable commercial terms;*
- (2) *where the items to be procured are for use abroad; and*
- (3) *where otherwise provided for by other laws and administrative regulations.”*

Article 23 of the Draft GPL Revision contains similar ‘Buy Chinese’ provision, adding that *“products manufactured in China that meet the specified added value rate and other criteria shall be evaluated preferentially in government procurement activities”*⁸³¹.

Article 7 of the IRGPL clarifies that government procurement of construction works and the goods and services related to constructions shall be subject to government procurement policies (i.e. the policy objectives laid down in the GPL, including the ‘Buy Chinese’ requirement despite the fact that their tendering procedure is subject to the TBL).

Article 4 of the Measures for the Administration of the Government Procurement of Imported Products provides that *“government procurement shall purchase domestic products, and if it is really necessary to purchase imported products, audit management shall be implemented”*. Such procurement is subject to rigorous application-evaluation- approval procedure to enforce the ‘Buy Chinese’ requirement. Indicative ‘positive lists’ of imported products that can be procured also exist at national and local levels. Article 5 of the Measures for the Administration of the Government Procurement of Imported Products provides for the use of offsets, such as technology transfer requirements, by stipulating that *“when purchasing imported products, purchasers should adhere to the principle of being conducive to independent innovation or digestion and absorption of core technologies by domestic enterprises and give priority to purchasing products that transfer technology to us, provide training services and other compensation trade measures”*.

The preferential treatment of domestic goods, construction and services is discriminatory towards foreign goods, construction and services and *de facto* towards foreign bidders offering them. This results in a reduced competition in the procurement process. On the one hand, this could lead to a higher award price, and on the other hand, the offered range of goods/services is limited, with possible negative impact on the delivered quality. This policy is therefore at odds with market-based rules and the principle of non-discrimination.

In October 2021, MOF published the Notice on Implementing the Policies on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities, stating that *“in order to build an unified, open, competitive and orderly government procurement market system and encourage fair competition in government procurement [...], in accordance with law, government procurements shall give equal treatment to products domestically produced in China (including the services provided) by local and foreign enterprises”*⁸³². The notice also stated that *“as regards products produced in China, no matter if the supplier is a*

⁸³¹ Draft GPL Revision, Art. 23.

⁸³² See Notice on implementing policies on equal treatment of domestic and foreign enterprises in government procurement activities, available at: http://gks.mof.gov.cn/guizhangzhidu/202110/t20211020_3759590.htm (accessed on 19 June 2023).

domestic or a foreign invested enterprise, its right to participate equally in government procurement activities shall be guaranteed”.

In 2021, MOF also announced that all procurement by public hospitals is to be considered ‘government procurement’ and thus implying that, in accordance with the GPL, public hospitals must preferably buy medical devices manufactured in China⁸³³.

Distortions in the Chinese government procurement market affect not only foreign bidders, but also domestic providers. One of the goals of the Government is to favour key Chinese enterprises - the ‘*national champions*’ - in the government procurement process⁸³⁴. Such measures represent an explicit discrimination not only against foreign companies, but also against non-key domestic providers, and show that government procurement process often operate against market-based rules, by pursuing other secondary goals.

7.3.1.2. LACK OF CLEAR DEFINITION OF ‘DOMESTIC’ GOOD OR COMPANY

While there is a preference for domestic products, construction and services in the GPL, there is no clear definition of what is actually meant by ‘domestic’ good/construction/service or company. A draft of the IRGPL issued in 2010 for public comments defined ‘*domestic goods, construction, and services*’ as ‘*made within China’s borders and for which domestic manufacturing costs exceed a certain percentage of the final price*’⁸³⁵ and set this percentage at 50%. However, this was removed from the final version of the IRGPL to avoid controversy with the consulted parties which were opposing this criterion. As a result, as of writing of this Report, this definition is still missing. Similarly, the IRGPL do not make the distinction between local or foreign suppliers. Article 20 explicitly states that all bidders should be treated equally.

In the framework of the ongoing revision of the GPL, China has communicated the intention to define domestic goods/construction/services. However, as of writing of this Report, there is no draft definition yet.

An exact definition of ‘domestic’ good or company is crucial to allow foreign bidders – especially Foreign Invested Enterprises (‘*FIEs*’) in China – to know whether the goods and companies they plan to include in their bids would qualify for consideration. Furthermore, the lack of an unambiguous definition leaves room for interpretation by the procuring entities, which might result in discriminating in favour of domestic suppliers.

7.3.1.3. SUBSTANTIAL DISCRETION IN PURSUING SECONDARY POLICY GOALS

The GPL and the IRGPL liaise government procurement actions to the achievement of national policy goals.

⁸³³ European Chamber of Commerce in China, *European Business in China Position paper*, 2022/2023, p.245 and p.251; available at: [https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2022_2023\[1068\].pdf](https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2022_2023[1068].pdf) (accessed on 19 June 2023).

⁸³⁴ Covington & Burling LLP, (2014). *Measures and Practices Restraining Foreign Investment in China*, prepared for the European Commission Directorate-General for Trade, 10 August 2014, p. 39.

⁸³⁵ *State Council of Legislative Affairs Office of State Council calls for comments on the Draft Implementing Regulations on GPL*, Legislative Affairs Office of State Council PR China, 11th January 2010.

For instance, Article 9 of the GPL stipulates that “government procurement shall be conducted in such a manner as to facilitate achievement of the goals designed by State policies for economic and social development, including but not limited to environmental protection, assistance to underdeveloped or ethnic minority areas, and promotion of the growth of small and medium-sized enterprises.”

Similarly, Article 8 of the Draft GPL Revision provides that “government procurement shall help achieve sustainable economic and social development goals, including maintaining national security, supporting scientific and technological innovation, boosting the development of small and medium-sized enterprises, supporting green development, providing support to underdeveloped areas and ethnic minority areas, protecting the interests of disadvantaged and vulnerable groups, etc.”, explicitly mentioning additional policy goals concerning economic and social development, including with respect to national security, scientific and technological innovation, green development and protecting vulnerable groups⁸³⁶.

In addition, Article 6 of the IRGPL states that: “The State Council Finance Department shall, in accordance with the national economic and social development policies, together with other relevant departments of the State Council, set out government procurement policies, using measures such as formulating criteria applicable to procurement needs, setting aside shares of procurements, adopting preferential price evaluation policies, conducting priority procurement, so as to achieve the objectives of energy saving, environmental protection, support to the development of less-developed regions and ethnic minority regions, promotion of the development of small and medium-sized enterprises, etc.”

The generic references made in both pieces of legislation to the achievement of national goals, without delineating a finite list, leaves *de facto* substantial discretion to the procuring entities in choosing among different candidates and offers to public tenders.

In other words, on top of the ‘Buy Chinese’ policy set out in the GPL, the IRGPL introduce additional potential distortions by allowing the procurement entities to pursue a broad (and ultimately undefined) range of policy goals and favour domestic providers. While some of these policies may pursue widely shared goals such as the protection of the environment, the provisions leave considerable discretion to the procuring entities to also consider other goals set by the Government (e.g. in the development plans, including FYPs and Made in China 2025)⁸³⁷.

As an example of a plan that sets goals which procuring agencies may pursue, Civil Aviation Administration of China (‘CAAC’), NDRC, and Ministry of Transport issued the 14th FYP for Civil Aviation in 2021⁸³⁸. Chapter 20 of this plan provides that China “needs to strengthen R&D of key technologies”, “promote the application of independent innovation” and “accelerate the application of domestic technologies and equipment”⁸³⁹. Similarly, the 14th FYP for the

⁸³⁶ Draft GPL Revision, Art. 8.

⁸³⁷ The goals in the development plans and FYPs are extensively discussed in the dedicated chapters of this Report, in particular Chapter 4.

⁸³⁸ CAAC, NDRC, and Ministry of Transport. (2021). *14th FYP for Civil Aviation*, available at: http://www.gov.cn/zhengce/zhengceku/2022-01/07/content_5667003.htm (accessed on 19 June 2023).

⁸³⁹ *Ibid.*, pp. 52-55.

Medical Equipment Industry Development (2021-2025)⁸⁴⁰ provides that *“local governments, industrial funds and social resources will be guided to support the breakthroughs of medical-industry collaboration in developing medical equipment, key parts and basic materials, and financial investment in the transformation and industrialization of breakthroughs. We shall further strengthen the government procurement management and support the medical equipment industry development”*.

State planners’ localisation demands and the push for dominance of indigenous technology is also impacting public, and even private, procurement of network equipment and telecommunications services. One of the most blatant examples is the ‘3-5-2’ policy, a directive released in 2019 by the PRC Chamber of Commerce, under which the use of foreign hardware and software is to be reduced in Chinese government offices by 30% in two years, 50% in four, and the remaining 20% in six⁸⁴¹.

7.3.1.4. DISTORTIONS ASSOCIATED WITH PROCUREMENT BY SOES

Although procurement by SOEs is not deemed government procurement under China’s laws as of writing of this Report, some of China’s SOEs act like arms of the Chinese government, and their procurement can offer prominent examples of discrimination against foreign companies. For example, in 2014 the China Railway Group launched tenders for the supply of 232 high-speed trains to only domestic companies⁸⁴². In the aviation sector, China’s three largest airlines – Air China, China Southern Airlines and China Eastern Airlines, all of them are SOEs – are required to follow the instructions of, or at least give consideration to, the Government’s recommendations on purchasing domestically produced aircraft, as the purchase must be approved by CAAC⁸⁴³. Indeed, public bodies have been active in lobbying for airlines to purchase domestically produced aircraft in order to promote the development of China’s civil aviation industry. For instance, at the 2020 Shanghai-Henan Cooperation and Exchange Conference, an event that was promoted by the governments of these two regions, the main domestic manufacturers for large civil aircraft, Commercial Aircraft Corporation of China, Ltd. (‘COMAC’) and Henan Civil Aviation Development & Investment Co. Ltd.⁸⁴⁴ signed an MoU for the purchase of 50 COMAC aircraft. In addition, in 2019, CAAC leadership publicly stated

⁸⁴⁰ See Chapter IX, Section I of the 14th FYP for the Medical Equipment Industry Development (2021-2025).

⁸⁴¹ European Union Chamber of Commerce in China, European Business in China Position Paper 2021/2022, p. 9, available at: [https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022\[964\].pdf](https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022[964].pdf) (accessed on 19 June 2023).

⁸⁴² Barrow, K. (2014), *China issues tenders for 232 high-speed trains*, International Railway Journal, available at: <http://www.railjournal.com/index.php/high-speed/china-issues-tenders-for-232-high-speed-trains.html> (accessed on 19 June 2023).

⁸⁴³ Juneyao Air (12 September 2018). *Announcement of Juneyao Air on change of certain investments using raised funds* [Press release], p. 8, available at: http://pdf.dfcfw.com/pdf/H2_AN201809111193100713_1.pdf (accessed on 19 June 2023); See also Air China (18 March 2021) *Announcement of Air China on Purchase of Aircraft*, available at: https://pdf.dfcfw.com/pdf/H2_AN202103181473312050_1.pdf?1616087314000.pdf (accessed on 19 June 2023).

⁸⁴⁴ Henan Civil Aviation Development & Investment Co. Ltd. is an SOE mainly responsible for accelerating the development of Henan Province’s civil aviation industry as approved by the Henan CCP Provincial Committee and Government.

that it encourages domestic airlines to purchase COMAC aircraft in order to promote the development of China's civil aviation industry⁸⁴⁵.

Another example of 'Buy Chinese' practice may be found in the telecom industry. Major SOEs including China Telecom, China Mobile and China Unicom, have increased purchases of domestic servers since 2020. Between 2020 and 2022, more than a third of new purchases the above-mentioned three companies were servers equipped with domestic chips, suggesting a preference to purchase from domestic suppliers⁸⁴⁶.

Examples of foreign companies being prevented from competing fairly with SOEs are also in tendering processes for renewable projects. Most Chinese provinces have implemented competitive tendering processes to determine which projects sponsored by different developers should be included in their annual construction plans, a pre-condition for a project to be approved. Many such tendering rules have a score-based system to measure a developer's 'track record' in the renewable energy industry. However, similar to procurement in construction and other industries, only track records within China can be assessed, with international records currently not being taken into consideration⁸⁴⁷.

7.3.1.5 DISCRIMINATIONS AGAINST PROCURED IMPORTED GOODS

Discriminations against procured imported goods (especially also for medical devices) happen through a rigorous application-evaluation-approval procedure for the procurement of imported products; imposing offsets for such procurement, e.g. technology transfer; and a mandatory national/public interests exception clause in the procurement contracts for imported goods.

7.3.1.6 DISTORTIONS DUE TO THE SYSTEM OF VOLUME-BASED PROCUREMENT

Especially in the area of medical devices⁸⁴⁸, China uses the system of volume-based procurement ('VBP'), under which it sets very low reference prices for tenders based on volume that do not appear to be market-economy-based. Overall, it is the suspicion that subsidised Chinese companies can afford the low prices, but this is not sustainable for foreign companies.

7.3.2. DISTORTIONS ASSOCIATED WITH THE TBL

Unlike the GPL, the TBL does not explicitly mention any provision in favour of national suppliers. Nonetheless, a number of distortions are generated at the level of basic and secondary laws, as well as in implementation.

⁸⁴⁵ CCA Online (28 February 2019). *Feng Zhenglin met with Chairman of COMAC He Dongfeng and his party*; available at: <http://www.ccaonline.cn/news/top/501661.html> (accessed on 19 June 2023).

⁸⁴⁶ See Eechi, Z., et al. (23 December 2022). *China's drive to kick the foreign IT habit*. NikkeiAsia; available at: <https://asia.nikkei.com/Spotlight/Caixin/China-s-drive-to-kick-the-foreign-IT-habit> (accessed 25 April 2023).

⁸⁴⁷ European Union Chamber of Commerce in China. *European Business in China Position Paper 2021/2022*, p.26; available at: [https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022\[964\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022[964].pdf) (accessed on 19 June 2023).

⁸⁴⁸ The Chinese medical device market reached in 2022 RMB 958 billion, which represents an increase of 19% compared with 2021, accounting for about a quarter of the global device market. See EUCCC Position Paper 2023/2024, available at: <https://www.europeanchamber.com.cn/en/publications-position-paper> (accessed on 14 November 2023).

7.3.2.1. LICENCE REQUIREMENTS FOR BIDDING AND PROMOTION OF ‘INDIGENOUS INNOVATION’ THROUGH PUBLIC PROCUREMENT

NDRC, which is the relevant body responsible for the implementation of the TBL, often requires that FIEs obtain a licence in order to participate in bidding procedures in China. This is in line with a broad government goal of promoting ‘indigenous innovation’⁸⁴⁹. For this, central and local governments used to stipulate domestic innovation requirements in public procurement tenders⁸⁵⁰.

A study conducted for the Commission on measures restraining foreign investments in China⁸⁵¹ identified dozens of measures relating to government procurement, largely from sub-central governments, that contained at least one restraint in favour of domestic investors or investments over foreign investors or investments.

For example, the accessibility rate of foreign investors to the Chinese rail market, according to the Association of the European Rail Industry (‘UNIFE’), dramatically fell over the years – from 65% in 2009-2011 to 20% in 2013-2015⁸⁵² and 18% in 2015-2017⁸⁵³ – and has reached, according to the 2020 World Rail Market Study, a record low of 17%⁸⁵⁴.

The NDRC requirement to obtain a licence can only be achieved by constituting a JV with a Chinese partner. Although there are no formal rules at the national level, the concerned parties often claim that tenders are only open to local companies or to JVs where the Chinese partner has no less than 50% of the JV's shares⁸⁵⁵. This practice in the rail market and in other industries appears to be persisting, despite the State Council circular number 5 on Promotion of the Opening-up and Active Use of Foreign Investments, introduced in January 2017. The circular states: “It is vital to deepen government procurement reform, adhere to the principles of openness, transparency and fair competition, treat the products produced by foreign-invested enterprises in Mainland China equally pursuant to laws and regulations, and facilitate Chinese-funded and foreign-invested enterprises to participate in bidding and bid submission for government procurement in a fair manner.”

⁸⁴⁹ State Council (2005). *National Medium- and Long-Term Program for Science and Technology Development* (2006-2020), Art. 8.3; available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 19 June 2023). See also Draft GPL Revision, Artt. 8, 25.

⁸⁵⁰ Covington & Burling LLP (2014). *Measures and Practices Restraining Foreign Investment in China*, prepared for the European Commission Directorate-General for Trade, 10 August 2014, p. 37.

⁸⁵¹ *Ibid.*, Tables 5 and 7.

⁸⁵² See UNIFE, *Annual Report 2016*, available at: <https://www.unife.org/wp-content/uploads/2021/03/ANNUAL-REPORT-2016-13MB.pdf> (accessed on 19 June 2023).

⁸⁵³ See UNIFE, *Annual Report 2018*, p.30, available at: <https://www.unife.org/wp-content/uploads/2021/03/Annual-Report-2018.pdf> and see UNIFE, *Annual Report 2019*, p.29, available at: <https://www.unife.org/wp-content/uploads/2020/02/nual-Report-2019.pdf> (both accessed on 19 June 2023).

⁸⁵⁴ See UNIFE, *Annual Report 2021*, p.46, available at: https://www.unife.org/wp-content/uploads/2022/03/UNIFE-AR2021_Updated-HQspreads-07022022.pdf and UNIFE, *Annual Report 2020*, p.50, available at: <https://www.unife.org/wp-content/uploads/2021/03/ANNUAL-REPORT-2020-UNIFE.pdf> (both accessed on 19 June 2023).

⁸⁵⁵ See UNIFE, *Position Paper Accessibility of China’s Rail Market for the European Rail Supply Industry*, July 2016, p. 7.

More recently, MOF emphasized these goals in its 2019 Circular on Promoting the Level Playing Field for Government Procurement to Improve the Business Environment, which included directions to revise regulations and practices that "*hinder fair competition in the field of government procurement*", implement a fair competition review system and enhance the transparency of government procurement more broadly⁸⁵⁶.

Finally, several tender invitations provide for exclusion of consortia. For example, in the abovementioned 2014 China Railway Group tenders for high-speed trains consortia were excluded from the bidding⁸⁵⁷. The European Chamber of Commerce in China ('EUCCC') points out that bidding requirements could be established to impede bidders that are otherwise qualified but unable to meet unreasonable procurement rules set in the bidding document⁸⁵⁸.

7.3.2.2. LACK OF REMEDIES

The GPL introduced a detailed bid challenge and complaint system⁸⁵⁹. This system guarantees to the bidders three grades of complaints to ensure their right of defence (i.e. to the procuring entity, to the department for supervision of government procurement and to the People's Court). It sets forth a streamlined procedure and criteria that complainants and complaints have to meet in order to be eligible. The Implementing Regulations of the GPL further develop the framework by streamlining the procedures relating to the available remedies⁸⁶⁰. The Draft GPL Revision generally maintains the same complaint system but adds that suppliers to government procurement contracts may directly file lawsuits if they believe that the conduct of the procuring entities or procurement intermediaries infringes on their legal rights and interests⁸⁶¹.

By contrast, the TBL remains quite general on the complaint system. The only reference to complaints is made under the supplementary provisions in Article 65: "*A bidder or any other interested person has the right to raise his objections to the tenderer or to file a complaint with the relevant administrative supervision department if he believes that the bidding and tendering activities do not comply with the relevant provisions of this Law.*"

The TBL does not provide procedures or remedies for loss or damage to the aggrieved tenderer, but subsequent Implementing Regulation⁸⁶² clarified that the ultimate body to handle

⁸⁵⁶ MOF (2019). *Circular on Promoting the Level Playing Field for Government Procurement to Improve the Business Environment*, Art. 1, available at: http://www.gov.cn/xinwen/2019-07/30/content_5417344.htm (accessed on 19 June 2023).

⁸⁵⁷ Barrow, K. (2014). *China issues tenders for 232 high-speed trains*. International Railway Journal; available at: <http://www.railjournal.com/index.php/high-speed/china-issues-tenders-for-232-high-speed-trains.html> (accessed on 19 June 2023).

⁸⁵⁸ European Union Chamber of Commerce in China. *European Business in China Position Paper 2021/2022*, p.144, available at: [https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022\[964\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022[964].pdf) (accessed on 19 June 2023).

⁸⁵⁹ See GPL Chapter VI (articles 51 to 58).

⁸⁶⁰ See Implementation Rules of the GPL (Chapter VI, Articles 52 to 58).

⁸⁶¹ Draft GPL Revision, Art. 93.

⁸⁶² *Inter alia*, the Measure on Handling the Complaints of Bidding for Construction Projects by NDRC, Ministry of Construction, Ministry of Railway, Ministry of Communications, Ministry of Information Industry, Ministry of Water Resource, and CAAC, issued and effective since 1 August 2004.

complaints on bidding activities is the NDRC, which will not accept the case if other regulatory authorities have already accepted the complaint.

Therefore, under the TBL complainants cannot claim for compensation. The rationale behind the lack of remedies in the TBL was that the aggrieved tenderers could refer to the existing administrative rules, at each level of the public administration. However, unlike the GPL, procurement under TBL covers a wide array of procuring entities (SOEs, ministries, local or central authorities). Hence the processes and the supervision authorities can differ. This means that a company that wants to lodge a complaint shall refer each time to a different body or complaint process.

This complexity could have a dissuasive effect on suppliers, especially foreigners, in bidding under the TBL.

7.3.3. OTHER EXAMPLES OF DISTORTIONS

The Business Confidence Survey 2022, conducted by the EUCCC, indicated that 21% of responded European companies experienced differentiated treatment in public procurement. The respondents reported that their local competitors are given tender details ahead of time, allowing them to assemble a highly competitive bid by the submission deadline⁸⁶³.

This is a key challenge for companies operating in the medical devices, civil engineering, and IT and telecommunications sectors⁸⁶⁴. Below are outlined certain examples of distortions observed across a number of sectors.

- *Medical Equipment*: In implementing Made in China 2025 (see Section 4.2.3), China sets out government-designated domestic market share targets for a number of strategic sectors. In the case of medical devices, China set a target of 85% domestic market share for Chinese companies producing ‘core medical device components’ by 2025. In order to achieve these targets, China has notably been utilizing market-distorting measures and practices linked to localization and technology transfer, as well as volume-based procurement. For medical devices, 2016 State Council Guiding Opinion⁸⁶⁵ further stipulates that “[i]f domestic drugs and medical devices can meet the requirements, the government procurement project must purchase domestic products in principle, and gradually improve the level of domestic equipment in public medical institutions”. Furthermore, in May 2021 MOF and MIIT jointly distributed ‘Notice 551’⁸⁶⁶ to procuring authorities and selected Chinese companies but have never made it public. The notice 551 sets domestic product procurement requirement of up to 100% for many categories of medical devices across China (it imposes domestic product requirements for the procurement of 178 categories of medical devices across

⁸⁶³ European Union Chamber of Commerce in China, *European Business in China Position Paper 2022/2023*, p. 97-98, available at: https://www.europeanchamber.com.cn/en/publications-archive/1068/European_Business_in_China_Position_Paper_2022_2023 (accessed on 1 June 2023).

⁸⁶⁴ *Ibid.*

⁸⁶⁵ See Art. 13 of the State Council Guiding Opinion on promoting the sound development of medical industry; available at: https://www.gov.cn/zhengce/content/2016-03/11/content_5052267.htm (accessed on 20 November 2023).

⁸⁶⁶ Available at : https://www.cgwenjian.com/view/industry/202110110000184101?zt_id_from=54 (accessed on 20 November 2023).

China, and for 137 of these categories 100 percent of the products procured must be domestic).

Moreover, in 2020, the Health Commission of Guangdong Province published an official letter (No. 20200567) to restrict local hospitals' access to foreign medical equipment and encourage them to buy domestic branded medical equipment, but the Shanghai Municipal Charity Foundation and the Red Cross Society purchased several computed tomography devices from a local manufacturer without having an open procurement process to allow all computed tomography's manufacturers to compete⁸⁶⁷.

The increasing emphasis on local and state-oriented procurement for medical devices has only increased in recent years. The shift to centralised state procurement in medical technology products, including by mandating significant price cuts in the procurement market, turned a EUR 1.3 billion trade deficit for China in 2019 into a EUR 5.2 billion surplus just one year later⁸⁶⁸. As an example of a recent policy, MOF and MIIT secretly circulated in 2021 the Auditing Guidelines for Government Procurement of Imported Products to local finance and industry and information authorities, which required a wide range of medical equipment to be procured by hospitals domestically, with 137 goods needing to be procured only from local sources⁸⁶⁹.

- *Airline Industry*: Distortions can be found in both airline ticketing and aircraft manufacturing. First, the European industry pointed out the existence of an explicit barrier against FIEs bidding for contracts for supplying tickets to government personnel travelling on business⁸⁷⁰, whereas on 14 April 2014, MOF and CAAC issued the Notice on Strengthening Official Air-ticket Purchases which explicitly stipulates the '*principle of development of national airlines*' (Article 1). This translates into the obligation to give precedence to domestic airlines when purchasing tickets for business purposes to any category of staff in all levels of public institutions in China, or when purchasing commercial tickets using fiscal funds. Moreover, Article 3 obliges the officials which are not in a position to choose a national carrier, to submit an approval form to "*take non-domestic*

⁸⁶⁷ European Union Chamber of Commerce in China, *European Business in China Position Paper 2021/2022*, p.253, available at: [https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022\[964\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2021_2022[964].pdf) (accessed on 19 June 2023).

⁸⁶⁸ Erixon, F., Guinea, O., and Guilda, A. (2022). *When the State Becomes the Only Buyer: Monopsony in China's Public Procurement of Medical Technology*, p. 4. European Centre for International Political Economy; available at: https://ecipe.org/wp-content/uploads/2022/03/ECI_22_PolicyBrief_Monopsony_04_2022_LY07.pdf (accessed on 19 June 2023).

⁸⁶⁹ See The Medical Device Distributors Alliance (10 November 2021). *The MOF's guidelines for the review of imported products: 137 kinds of medical devices are all purchased domestically*; available at: https://www.cgwenjian.com/view/industry/202110110000184101?zt_id_from=54 (accessed on 19 June 2023).

⁸⁷⁰ See European Union Chamber of Commerce in China, *European Business in China Position Paper 2014/2015*, pp. 97, available at: https://www.eusmecentre.org.cn/sites/default/files/European%20Business%20in%20China%20Position%20Paper%202015-2016_en.pdf (accessed on 19 June 2023).

airline flights and change the transit" to the relevant foreign affairs and financial departments.

With respect to aircraft manufacturing, the USTR observed in its 2018 investigation into Chinese trade practices that the government can use its leverage due to the significant size of the country's commercial aircraft market to "*foster the development of a domestic supply chain for Chinese-made aircraft*"⁸⁷¹. The report stated that "*purchases of commercial aircraft by China's state-owned airlines require approval by the Chinese government,*" which gives the Government additional control over the procurement process⁸⁷². As an example, the report noted that COMAC requires foreign suppliers of C919 aircraft to enter into JVs with Chinese suppliers in order to participate in the tendering process.

- *Solar*: In a 2021 report, the European Council on Foreign Relations stated that while China has officially encouraged foreign participation in the solar power sector since 2011, such participation is "*constrained by a strong informal preference for local players in public procurement, which has resulted in a nearly 100 per cent market share for domestic firms*"⁸⁷³. The report explained that the barriers are "*principally in the form of a strong preference for domestic firms over foreign ones*" due to the procurement process being driven by state entities that are incentivised to favour local players⁸⁷⁴.
- *Innovation products*⁸⁷⁵: The State Council issued the *Opinions on Promoting the High-quality Development of Innovation and Entrepreneurship and Creating an Upgraded Version of 'Mass Innovation and Entrepreneurship'* on 18 September 2018, which required that government procurement policies be improved to support innovation and SMEs and to focus on increasing efforts to procure major innovative products and services as well as key technologies. The opinions also stated that NDRC, MOF, MIIT, Ministry of Science and Technology ('MOST') and local governments have authority to update the policies and measures.
- *Wind power equipment*: In 2006, the Management Measures for National Indigenous Innovation Product Accreditation stated that products made with Chinese intellectual property could qualify for priority in government procurement. While the Government officially ended this practice in December 2011, the European Commission reports that the

⁸⁷¹ US Trade Representative (2018). *Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974*, p. 34, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 19 June 2023).

⁸⁷² *Ibid.*, p. 33.

⁸⁷³ Kratz, A., Oertel J. (2021). *Home advantage: How China's protected market threatens Europe's economic power*, p. 11, European Council on Foreign Relations, available at: <https://ecfr.eu/wp-content/uploads/Home-advantage-How-Chinas-protected-market-threatens-Europes-economic-power.pdf> (accessed on 19 June 2023).

⁸⁷⁴ *Ibid.*, p. 22.

⁸⁷⁵ State Council (2018). *Opinions on Promoting High-quality Development of Innovation and Entrepreneurship and Creating an Upgraded Version of 'Mass Innovation and Entrepreneurship'*, available at: http://www.gov.cn/zhengce/content/2018-09/26/content_5325472.htm (accessed on 19 June 2023).

policy change did not apply to purchases made by China's SOEs, which controlled a significant part of the market⁸⁷⁶.

- *Rail*: The European Council on Foreign Relations observed in a 2021 report that while foreign companies have formally been able to participate in China via JVs for several decades, “*strong informal market barriers have kept their participation very low*”⁸⁷⁷. In particular, China Railway, an SOE, is the main buyer of rolling stock in the country and has “*ended to favour home players in its procurement processes*”⁸⁷⁸. The report noted that China’s main rolling stock manufacturer accounts for 86% of the country’s total rolling stock market volume as well as almost 100% of the high-speed rail rolling stock market.
- *Automotive*: MIIT released a preliminary list for official government automotive fleet purchases on 24 February 2012, which only included local Chinese car brands⁸⁷⁹. In 2014, MOF, MOST, MIIT, NDRC and the National Government Offices Administration jointly issued a notice⁸⁸⁰ stipulating that government organs and public institutions should prioritize new energy vehicles when purchasing vehicles and must choose new energy vehicles from the *Catalogue of Recommended Vehicle Models for the Promotion and Use of Fuel-efficient and New-energy Vehicles* when using fiscal funds. This catalogue is updated from time to time, and most of the recommended models are domestic brand vehicles. For a more comprehensive analysis see Chapter 22.
- *Postal and express delivery industry*⁸⁸¹: The State Postal Bureau issued the *Specifications for Allocating Safety Production Facilities in Postal Industry*, which tightened the compulsory requirements for security measures. As a result, it limited strongly foreign investments in the domestic postal delivery service.
- *Pharmaceuticals*⁸⁸²: Since 1998 the NDRC has mandated 28 rounds of price reductions of reimbursement for drugs estimated to have impacted 1 318 types of drugs by an average of 21%. As a practical matter, in accordance with the *National Reimbursement Drug List*, it is often the case that local generic drugs may be fully reimbursed while brand drugs may be only partially reimbursed.

⁸⁷⁶ European Commission (2016). *Overview Of Potentially Trade Restrictive Measures Identified Between 2008 And End-2015*, p. 167, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en) (accessed on 19 June 2023).

⁸⁷⁷ European Council on Foreign Relations (2021). *Home advantage: How China’s protected market threatens Europe’s economic power*, available at: <https://ecfr.eu/wp-content/uploads/Home-advantage-How-Chinas-protected-market-threatens-Europes-economic-power.pdf> (accessed on 19 June 2023).

⁸⁷⁸ *Ibid.*

⁸⁷⁹ European Commission (2016). *Overview Of Potentially Trade Restrictive Measures Identified Between 2008 And End-2015*, p. 30, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en) (accessed on 19 June 2023).

⁸⁸⁰ MOF, MOST, MIIT, NDRC & National Government Offices (2014). *Implementation Plan on Procurement of new energy vehicles by Government and Public Institution*, available at: http://www.gov.cn/xinwen/2014-07/13/content_2716565.htm (accessed on 19 June 2023).

⁸⁸¹ European Commission Staff Working Document (2016). *Analysis of new potentially trade restrictive measures in the period 1 July 2014 - 31 December 2015*, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52016SC0204> (accessed on 19 June 2023).

⁸⁸² See for example at: <https://www.pharmaceutical-technology.com/pricing-and-market-access/china-nrdl-foreign-pd1-inhibitors/> (accessed on 21 June 2023).

- *Chemical manufacturing*⁸⁸³: NDRC issued in 2005 the Urgent Notice Regarding the Orderly and Healthy Development of the Oil Refining and Ethylene Industry⁸⁸⁴. Article 4 states: *"Large petrochemical installations have been listed as a focus area of the State's revitalization of the equipment manufacturing industry. We must actively adopt technologies and domestic equipment that are developed indigenously or that are re-innovated after being imported, digested, and absorbed, strengthening the capability of indigenous innovation and system integration."*

7.4. CHAPTER SUMMARY

The total value of the public procurement market in China, consisting of tenders issued by Chinese central and local governments regulated under GPL, is estimated to represent 3.3% of China's GDP. When including sales to SOEs, the value of the central government procurement market was estimated to be USD 2.15 trillion from 2019 to June 2020 (see Section 7.2). Public procurement is subject to two main pieces of legislation, the GPL and the TBL and their respective implementing regulations. The GPL, effective since 2003, applies to government procurement for goods, construction and services conducted with fiscal funds at all administrative levels above certain thresholds. The GPL does not apply to SOEs. The TBL, effective since 2000, governs procurement activities of both fiscal and private entities (including SOE's) relating to large infrastructure and public utility projects. These projects can be financed totally or, in part, by the government, state financing, loans and aid funds from international organisations or foreign governments. Draft revisions to both the GPL and the TBL have been released for public comments in 2019 and 2022 respectively but, as of writing of this report, have yet to be finalized (see Section 7.1.2).

In some respects, allocation of contracts under existing rules is not always transparent, done in a competitive way or based on market rules. Preferential treatment of domestic over foreign enterprises is enshrined in the GPL where the '*Buy Chinese*' provisions are explicitly set out. Ensuing distortions, as a result of limiting the competitive field, can manifest themselves through higher award prices or a limited range of goods and services on offer. These restrictive practices can be further compounded by discrimination in favour of 'national champions' as expressed in a 2008 MOFCOM notice regarding the protection and promotion of famous brands. While the TBL does not explicitly require '*Buy Chinese*', certain practices including licencing requirements, preferences for holders of indigenous patents as well as exclusions of consortia, in fact skew the process in favour of Chinese enterprises. Such practices are prevalent in sectors including energy, construction and engineering.

The pursuit of secondary policy goals through the public procurement process further undermines market-based principles in the area. The legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies (see Section 7.3). Given the undefined nature of these goals, there is broad scope for

interpretation by the decision-making bodies in justifying the allocation of contracts, thus overriding market driven decisions.

Ambiguities regarding the definition of domestic goods, services and construction works and domestic enterprises (e.g. whether they include FIEs), a lack of clear or effective remedial systems for challenges and complaints, overlaps and opaque provisions existing in both sets of relevant governing legislation all serve as further deterrents to foreign suppliers bidding for public procurement contracts in China (see Section 7.3).

Given the value of procurement contracts in China, the absence of clear competitive market-based rules has a significant distortive effect.

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8.1. INTRODUCTION

Since 1978, when China adopted its ‘*reform and opening-up*’ policy, China’s leadership has repeatedly expressed its intention to liberalise market access for domestic and foreign investment, replacing the highly centralised investment management system associated with China’s former planned economy with a more market-oriented investment regime. Although there has been progress liberalising some aspects of the economy, significant barriers remain for domestic and foreign investment. In particular, China’s leadership continues to regulate investment (in order to guide investment flows to favoured sectors based on the central economic planning).

Restrictions and controls on investment are implemented at all levels of government in China and affect both domestic and foreign investment. Central, provincial and local governments play pivotal roles in determining the destination, sector and scale of state-financed investment, as well as private investment⁸⁸⁵ in China. A system for controlling outbound direct investment (ODI) is also in place, under the authority of MOFCOM and NDRC. Chinese policymakers regulate investment decisions using a complex net of industrial policies that are national and local, cross-sector and industry-specific and short-, medium- and long-term.

The government employs a broad toolkit to advance its industrial policy goals. These tools include laws, regulations and investment approval processes that apply varying treatment and levels of regulatory scrutiny depending on the nature of the investor and the proposed investment. By employing incentives, restrictions and prohibitions related to investment, the Chinese government maintains considerable control over the country’s economy and actively seeks to counter market forces or to alter the terrain for (or ‘*guide*’) market forces.

The main government agencies involved in the regulation of private investment in China are:

⁸⁸⁵ The use of the term ‘*private investment*’ in this chapter primarily refers to investments made by private domestic investors and private foreign investors. Depending on the circumstances, investments by state-owned enterprises may or may not be subject to the same written rules or rules as they apply in practice.

- NDRC (together with provincial and local development and reform commissions ('DRCs')) which oversees China's economic development and industrial policy framework, conducts project approvals for certain investment projects and regulates certain foreign investment-related matters;
- MOFCOM (together with provincial and local commerce departments) which regulates certain foreign investment-related matters such as the foreign investment security review (together with NDRC)⁸⁸⁶;
- SAMR (together with provincial and local administrations for market regulation ('AMRs')) which is responsible for the registration of enterprises and anti-trust reviews and enforcement⁸⁸⁷;
- various industry regulators which regulate and grant licenses for activities in specific industries (e.g. MIIT which regulates and issues licenses for the telecommunications and information technology sectors, among others⁸⁸⁸).

This chapter's second section takes a look at the system of laws, regulations and policies that China uses to lay out and effectuate the country's industrial and economic policies with respect to investment, both at a high level and, often, in very detailed form, impacting opportunities and outcomes in China for domestic and foreign investors.

The third section describes the approval process for private investment, both domestic and foreign, which serves as a vehicle for the government to micromanage the country's economy in line with its industrial and economic development policies, particularly in sectors it considers to be of strategic importance.

8.2. INDUSTRIAL POLICY PRESCRIPTIONS IN LAWS, REGULATIONS AND POLICY DOCUMENTS THAT IMPACT INVESTMENT DECISIONS

China endeavours to use its industrial and economic policies to regulate and channel foreign and domestic investment flows towards its policy goals and strategic ambitions. The Government implements its investment policies through laws, regulations and administrative approval processes, including the approval process for private investment.

In May 2020, China formally embraced a new framing of the country's economic policy, the so-called 'dual circulation' strategy (see Section 2.3.2), which was first mentioned by President Xi at the 7th session of the Central Financial and Economic Affairs Committee in April 2020⁸⁸⁹.

⁸⁸⁶ NDRC and MOFCOM. (2020). *Measures for the Security Review of Foreign Investment*. https://www.gov.cn/gongbao/content/2021/content_5582626.htm (accessed on 7 November 2022).

⁸⁸⁷ General Office of the CPC Central Committee and General Office of the State Council. (2018). *Provisions on Functional Configuration, Internal Organizations and Staffing of the State Administration for Market Regulation*, Article 3. http://www.gov.cn/zhengce/2018-09/10/content_5320813.htm (accessed on 8 November 2022); see also State Administration for Market Regulation. *Responsibilities of SAMR*. <https://www.samr.gov.cn/jg/> (accessed on 7 November 2022).

⁸⁸⁸ General Office of the State Council. (2008). *Provisions on Major Functions, Internal Organizations, and Staffing of MIIT*, Article 2. http://www.gov.cn/fuwu/2014-02/22/content_2618642.htm (accessed on 23 November 2022).

⁸⁸⁹ See Xinhua News Agency. (2022, February 19). *Developing new paths in promoting high-quality development' - commentary 7 on 'ten clarifications' which highlights the new leap of Marxism in Sinicization*. http://www.gov.cn/xinwen/2022-02/19/content_5674696.htm (accessed on 7 November 2022).

The ‘*dual circulation*’ strategy was subsequently enshrined in the 14th FYP’ (see Section 2.2.5) and has guided reforms and policy makers across economic policy domains, including the regulation of domestic and foreign investment.

The 14th FYP notes the fundamental role of consumption in driving economic development and the key role of investment in optimizing the supply structure and calls for building “*a strong domestic market with copious demand for consumption and investment*”⁸⁹⁰.

This section further examines three overarching interrelated goals that characterize Chinese investment policy. Sub-section 8.2.1 looks at how investment policy and corresponding laws and regulations serve as a vehicle for maintaining control over the economy, particularly in key sectors. Sub-section 8.2.2 examines elements of China’s investment policy aimed at bolstering domestic industry capabilities. Sub-section 8.2.3 considers how investment policy is geared towards selectively utilizing foreign investment in service of state priorities.

8.2.1. GOAL: MAINTAINING CONTROL OVER KEY INDUSTRY SECTORS

Under China’s centralised socialist market economy, private ownership does not mean autonomy from the State⁸⁹¹ (see Section 3.3.2). In fact, the Government and the CCP are increasingly looking to strengthen their leadership and control of China’s growing private sector⁸⁹² (see Section 2.2.5). This is a recent development, following decades of gradual liberalisation, and can be considered as an attempt to buttress a renewed emphasis on state-managed industrial policy, managed trade and address emerging challenges and risks, as the scale of private enterprises has expanded and private business leaders have more diverse values and interests.

As mentioned in Sections 2.2.5 and 3.3.2, the 2020 Guideline on Strengthening the United Front Work of the Private Economy in the New Era⁸⁹³ (see also Sections 2.2.5 and 3.3.2), called on the United Front Work Department⁸⁹⁴ to increase the CCP’s ideological work and influence in the private sector. In particular, the policy intends to “*increase political and ideological guidance*”, to “*continue to build the foundation for the ideological and political work of private economy practitioners*” and to “*build a team of high-quality and responsible private economy*

⁸⁹⁰ See the 14th FYP, Article XIV.

⁸⁹¹ For the CCP and state control over China’s privately-owned enterprises in general, see, e.g., Milhaupt, C. J.; Zheng, W. (2015). Beyond ownership: State capitalism and the Chinese firm. *Georgetown Law Journal*, 103. <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1693&context=facultypub> (accessed on 7 November 2022).

⁸⁹² See, for example, Buckley, C.; Bradsher, K. (2020, September 17). *China’s communists to private business: You heed us, we’ll help you*. New York Times. <https://www.nytimes.com/2020/09/17/business/china-communist-private-business.html> (accessed on 7 November 2022); see also Xinhua Net. (2020, September 16). *Xi focus: Xi Stresses promoting healthy development of private sector*; available at: http://www.xinhuanet.com/english/2020-09/16/c_139373545.htm (accessed on 7 November 2022).

⁸⁹³ Central Committee of the Communist Party of China. (2020, September 15). *Opinion on Strengthening the United Front Work of the Private Economy in the New Era*. http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 7 November 2022).

⁸⁹⁴ An umbrella organization that aims to increase the Party’s influence and control both domestically and internationally and reports directly to the Central Committee of the CCP.

representatives with the aim of improving quality, optimizing structures, and playing a key role in the economy”⁸⁹⁵.

The State maintains control over key or otherwise sensitive industry sectors using a range of policy tools. As one aspect of its control, it carefully regulates private investment activity in key sectors – through an array of restrictions, prohibitions and incentives that operate both pre-establishment and post-establishment – to ensure that firms under effective government control, including SOEs, maintain their market dominance.

The emphasis on the dominance of the state-owned economy is clearly stated in key texts and the pronouncements of the country’s leaders (see Chapter 2). Although recent decades have seen an expansion in the space afforded to private capital, the pendulum seems to have swung towards a reemphasis on the role of state-owned capital in the economy in recent years under President Xi’s leadership. This is especially the case in sectors of importance for national security or other strategic reasons⁸⁹⁶.

According to SASAC, these “*important industries and key sectors*” include the following seven industries: (i) military and defence, (ii) power infrastructure, (iii) petroleum and petrochemicals, (iv) telecommunications, (v) coal, (vi) civil aviation and (vii) shipping. In these seven industries and sectors, Chinese policy is to maintain ‘*absolute control*’⁸⁹⁷. Moreover, SASAC has made clear that it is government policy to maintain ‘*relatively strong control*’ over the major backbone enterprises of nine additional ‘*basic and pillar industries*’, which are (i) equipment manufacturing, (ii) automobiles, (iii) electronic information, (iv) construction, (v) steel, (vi) non-ferrous metals, (vii) chemicals, (viii) survey and design and (ix) science and technology⁸⁹⁸. What is more, SASAC has made clear that Chinese policy is to maintain ‘*necessary influence*’ in more general areas and sectors including trade, investment, pharmaceuticals, building materials and agriculture⁸⁹⁹ (see Section 5.5).

Beyond the substantial role of state-ownership in the Chinese economy, the country’s leaders also utilise a diverse set of regulatory instruments to manage investment. These include national

⁸⁹⁵ See also Livingston, S. (2020). *The Chinese Communist Party targets the private sector*. CSIS (providing also full translation of the Opinion); available at: <https://www.csis.org/analysis/chinese-communist-party-targets-private-sector> (accessed on 7 November 2022).

⁸⁹⁶ See Xinhua News Agency. (2014). *Xi Jinping presided over the fourth meeting of the Central Leading Group for Comprehensively Deepening Reform*. http://www.gov.cn/xinwen/2014-08/18/content_2736451.htm (accessed on 7 November 2022) (unofficial translation). Note that these are not new ideas, even if they are receiving renewed emphasis. For instance, SASAC in 2006 urged managers of state-owned capital to concentrate on the ‘*important industries and key sectors that are vital to national security and the lifeline of the national economy*’ (unofficial translation), see Xinhua News Agency (2006) - SASAC: *The State-owned economy should maintain absolute control over seven industries*; available at: https://www.gov.cn/jrzg/2006-12/18/content_472256.htm (accessed on 28 August 2023).

⁸⁹⁷ See Xinhua News Agency. (2006, December 18). SASAC: *The State-owned economy should maintain absolute control over seven industries*. https://www.gov.cn/jrzg/2006-12/18/content_472256.htm (accessed on 23 November 2022).

⁸⁹⁸ *Ibid.*

⁸⁹⁹ *Ibid.*

security reviews⁹⁰⁰, foreign investment security reviews⁹⁰¹, cybersecurity reviews⁹⁰² and project approval requirements for fixed-asset investments. In Chinese legal texts and policy discourse, national security is a very broad concept covering not only national defense, but also economic security, financial security, cultural security, scientific and technological security, network and information security, resource security and other aspects⁹⁰³.

The Government also seeks to gain or retain control over and expand support for strategic sectors (see Section 2.3.2) by taking effective control of companies in such sectors, even when not acquiring a majority stake. In 2020 alone, China's SOEs or state-backed funds have taken effective control of over 50 companies, up from around 20 to 30 in 2018 and 2019⁹⁰⁴. In September 2020, for instance, Luoyang Guohong Investment Group, an investment fund backed by the Henan Province city of Luoyang, signed a contract with industrial robot manufacturer Saimo Technology that would make it a controlling shareholder⁹⁰⁵. While the increase in de facto takeovers can partly be explained by the Government's efforts to assist businesses hit by the COVID-19 pandemic, the increase in numbers is likely also related to the Xi administration's strategic decision to increase control over key industries, including semiconductors, wind power and pharmaceuticals, as well as its 'dual circulation' strategy⁹⁰⁶.

8.2.1.1. MARKET ACCESS PREFERENTIAL TREATMENT FOR SOES

Many measures granting preferential treatment to SOEs have their effect prior to the establishment of an enterprise, i.e. by prohibiting or restricting the ability of non-SOEs to investment in particular sectors⁹⁰⁷.

Discussed in greater detail in Section 8.2.1.2 below, the Catalogue of Investment Projects Subject to Government Approval⁹⁰⁸ ('*Project Approval Catalogue*'), a detailed industrial policy document with binding effect through the investment approval process, lists industry sectors

⁹⁰⁰ Standing Committee of the NPC. (2015, July 1). *National Security Law of the PRC*. <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY3ZTA2NzA4MmY%3D> (accessed on 7 November 2022).

⁹⁰¹ NDRC and MOFCOM. (2020). *Measures for the Security Review of Foreign Investment*. https://www.gov.cn/gongbao/content/2021/content_5582626.htm (accessed on 7 November 2022).

⁹⁰² Cyberspace Administration of China, et al. (2021). *Measures on Cybersecurity Review*. http://www.gov.cn/zhengce/zhengceku/2022-01/04/content_5666430.htm (accessed on 7 November 2022).

⁹⁰³ Standing Committee of the NPC. (1 July 2015). *National Security Law of the PRC*, Arts. 15–25. <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY3ZTA2NzA4MmY%3D> (accessed on 7 November 2022).

⁹⁰⁴ Cho, Y. (2020, November 14). *China's state control of economy grows with 50 backdoor takeovers*. Nikkei Asia. <https://asia.nikkei.com/Economy/China-s-state-control-of-economy-grows-with-50-backdoor-takeovers> (accessed on 7 November 2022).

⁹⁰⁵ "Luoyang Guohong Investment Group received more than 20% of Saimo's outstanding shares—including some held by top leadership [of Saimo] — along with nearly 10% of additional voting rights." See Cho, Y. (2020, November 14). *China's state control of economy grows with 50 backdoor takeovers*. Nikkei Asia. <https://asia.nikkei.com/Economy/China-s-state-control-of-economy-grows-with-50-backdoor-takeovers> (accessed on 7 November 2022). ('Top leadership' should be understood to refer to executives of Saimo.)

⁹⁰⁶ *Ibid.*

⁹⁰⁷ Covington & Burling. (2015). *Assessing 'National Treatment' as a Basis for Securing Market Access Under a Comprehensive Agreement on Investment with the PRC*, 23 July 2015, pp. 63–66.

⁹⁰⁸ State Council. (2016). *Catalogue of Investment Projects Subject to Government Approval*. http://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm (accessed on 28 August 2023).

that require project approvals from NDRC or other designated central or local government agencies⁹⁰⁹. Industry sectors listed in the Project Approval Catalogue tend to be key industry sectors in which the state-owned sector plays a prominent role. Further, laws and regulations prohibiting or restricting the activities of private investors (both domestic and foreign) or otherwise benefiting SOEs can be found in cross-industry laws and regulations⁹¹⁰, as well as those focused on specific industries such as telecommunications, national defence, postal services and distribution⁹¹¹.

8.2.1.2. POST-ESTABLISHMENT PREFERENTIAL TREATMENT FOR SOES

China's SOEs are widely understood to receive preferential treatment from the Government well after their establishment, thereby enjoying an unfair competitive advantage over other companies⁹¹². Expectations regarding post-establishment treatment can also impact investment decisions at the pre-establishment stage. According to a 2020 US-China Business Council member survey, a large majority of respondents (77%) either have concrete knowledge of or suspect that SOEs are receiving subsidies or other benefits from the Government⁹¹³.

Some of the primary benefits that China's SOEs enjoy include:

- Preferential financing through the banking system, facilitating greater access and/or below-market rates for credit as China's state-owned banks often provide preferential (below-market) loan rates and terms to Chinese SOEs (see Chapter 5).
- Direct government financial support to SOEs (see Chapter 6).
- Land Allocation. SOEs continue to receive land at below market prices, or even for free, for example by means of land use right allocations for projects that fall into the Catalogue of Allocated Lands⁹¹⁴ (see Section 9.4).
- Preferences in government procurement. to support domestic industry, especially SOEs (see Chapter 7).

⁹⁰⁹ Designated approval authorities for different types of projects include the State Council, industry-specific regulators, and the local counterparts of these government organs.

⁹¹⁰ See e.g. the AML and the Foreign Trade Law.

⁹¹¹ See, e.g., the Announcement of MOFCOM and General Administration of Customs on the Publication of the Catalogue of Goods under Export License Administration (2023); available at: <http://file.mofcom.gov.cn/article/zcfb/zcdwmy/202212/20221203376706.shtml> (accessed on 28 August 2023) or the *Opinion of Guangdong Provincial Government on Implementation of Decisions of State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries* (2011). https://www.gd.gov.cn/zwgk/gongbao/2011/22/content/post_3363219.html (accessed on 28 August 2023).

⁹¹² See, e.g., García-Herrero, A.; Ng, G. (2021). *China's State-Owned enterprises and competitive neutrality*. Bruegel Policy Contribution, No. 05/21, § 5.1. <https://www.bruegel.org/sites/default/files/wp-content/uploads/2021/02/PC-05-2021.pdf> (accessed on 7 November 2022); Covington & Burling. (2015). *Assessing 'National Treatment' as a Basis for Securing Market Access Under a Comprehensive Agreement on Investment with the PRC*, 23 July 2015, pp. 67-69.

⁹¹³ US-China Business Council. (2020). Member Survey. https://www.uschina.org/sites/default/files/uscbc_member_survey_2020.pdf (accessed on 17 October 2023).

⁹¹⁴ Ministry of Land and Resources. (2001). Catalogue of Allocated Lands. https://www.gov.cn/gongbao/content/2002/content_61572.htm (accessed on 31 August 2023).

SOEs also receive a measure of protection from antitrust laws and enforcement. China's enforcement of the Anti-Monopoly Law⁹¹⁵ ('AML'), for instance, singles out SOEs for special and favourable treatment⁹¹⁶. Article 8 of the AML, revised in 2022, states that "[f]or industries in which State-owned economy dominates and that are vital to the national economy and national security [...] the State protects the lawful business activities of the undertakings in those industries and conducts supervision and regulation of their business activities and the prices of their goods and services in accordance with law, so as to safeguard consumers' interests and promote technological progress"⁹¹⁷.

There have been few AML enforcement cases against big SOEs, indicating weak enforcement of the AML against big SOEs⁹¹⁸. According to the Office of the USTR⁹¹⁹:

While Chinese regulatory authorities have clarified that the Anti-monopoly Law does apply to state-owned enterprises, to date they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of SASAC. In addition, provisions in the Anti-monopoly Law protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Many US companies have cited selective enforcement of the Anti-monopoly Law against foreign companies seeking to do business in China as a major concern, and they have highlighted the limited enforcement of this law against state-owned enterprises.

Another related concern involves state-directed mergers of SOEs, which could provide the merged company with excessive market power that can be used in an anti-competitive manner in China and in markets around the world⁹²⁰ (see Section 5.5).

8.2.2. GOAL: ADVANCING THE CAPABILITIES OF DOMESTIC INDUSTRY

Beyond seeking to shore up the strength of the SOE sector in key industries, a central goal of Chinese economic policy is to advance the capabilities of domestic industries overall, including those of private domestic industry. In recent years, two key themes that have risen to prominence in this regard are: (i) fostering indigenous innovation capabilities⁹²¹ and

⁹¹⁵ Available e.g. at: <https://www.chinalawtranslate.com/en/anti-monopoly-law-2022/> (accessed on 31 August 2023).

⁹¹⁶ US State Department. (2022). 2022 investment climate statements: China. <https://www.state.gov/reports/2022-investment-climate-statements/china/> (accessed on 7 November 2022).

⁹¹⁷ Standing Committee of the NPC. (2022). *Anti-Monopoly Law of the PRC*, Article 8. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4MjM0Y2NiNTAxODI5ZjQ2YzZhYzJhNWE%3D> (accessed on 28 August 2023) (unofficial translation).

⁹¹⁸ See Chen, H.; Whalley, J. (2014). The State-Owned enterprises issue in China's prospective trade negotiations. *CIGI Papers*, No. 48, pp. 3–4.

⁹¹⁹ United States Trade Representative. (2021). *2021 report to Congress on China's WTO compliance*. <https://ustr.gov/sites/default/files/files/Press/Reports/2021USTR%20ReportCongressChinaWTO.pdf> (accessed on 7 November 2022).

⁹²⁰ *Ibid.*

⁹²¹ Zhifeng, L. (2021, March 26). *Improving enterprises' indigenous innovation capabilities*. QS Theory. http://www.qstheory.cn/dukan/hqwg/2021-03/26/c_1127258668.htm (accessed on 7 November 2022).

(ii) promoting domestic champion companies⁹²². Advancing domestic industry also involves a third theme related to the trimming or restructuring industries that have outlived or outgrown their purpose. These goals are furthered by China's approach to investment scrutiny, as will be described in more detail below.

8.2.2.1. SEEKING TO FOSTER INDIGENOUS INNOVATION

A key focus of recent industrial policies, including the 14th FYP, has been to improve the Chinese economy's capacity for innovation⁹²³. This theme can be seen manifested throughout Chinese industrial policymaking, perhaps most notably in policies relating to the information technology industry.

In the mid-2000s, when Chinese policymakers once again began to embrace industrial policy planning after years of diminished emphasis, the Government issued the National Medium- and Long-Term Science and Technology Development Plan (2006-2020) ('S&T MLP'). Subsequently, in June 2019, the Ministry of Science and Technology began developing the 2021-2035 National Medium- and Long-term Science and Technology Development Plan⁹²⁴.

In the 14th FYP, China made the following statement: "[China will] *adhere to the core position of innovation in China's overall modernization, have science and technology self-reliance and self-improvement as strategic support for national development, and be oriented toward the world's cutting edge in science and technology, toward the main economic battlefields, toward the nation's major needs, and toward the lives and health of the people. [China will] deeply implement the strategy of reinvigorating China through science and education, the talent powerhouse strategy, and the innovation-driven development strategy, refine the national innovation system, and speed up the effort to make China into an science and technology powerhouse*"⁹²⁵.

8.2.2.2. SEEKING TO PROMOTE DOMESTIC CHAMPION COMPANIES

The 14th FYP also demonstrates – as did also previously the 13th FYP – the key goal of promoting domestic champion companies⁹²⁶ – large, powerful Chinese companies that dominate markets domestically and globally – with language that is representative of how this goal is manifested in various Chinese legal and policy measures. For a series of industry sectors, the 14th FYP calls for "*insisting on the combination of economy and security, making up shortcomings and strengthening advantages, and properly implementing strategic design and precise strategies for the supply chain by sector, thus developing more secure and more reliable industry chains and supply chains with stronger innovation capability and higher added values*"⁹²⁷. It goes on to set the goals of fostering leading companies, specialized and

⁹²² Technology Daily. (2021, July 13). *Fostering of champion technology companies shall focus on establishing standards*. http://www.xinhuanet.com/tech/2021-07/13/c_1127648681.htm (accessed on 7 November 2022).

⁹²³ 14th FYP, Chapter 2, 3 and 5.

⁹²⁴ MoST. (26 June 2019) - *The kick-off meeting for studying and drafting the '2021-2035 National Medium - and Long-term Science and Technology Development Plan' was held*, available at: https://www.gov.cn/xinwen/2019-06/26/content_5403265.htm (accessed on 30 August 2023).

⁹²⁵ See 14th FYP, Part 2.

⁹²⁶ *Ibid.* Part 3, Chapter 8, Sec. 2.

⁹²⁷ *Ibid.*

sophisticated ‘*little giant*’ enterprises and single champion enterprises in the manufacturing sector⁹²⁸, as described in more detail in Section 4.2.5.

This kind of language in high-level policy documents also makes its way into legal and regulatory measures issued by Chinese government agencies. For instance, the *Implementation Plan of the Special Action to Cultivate and Improve Single-item Champion Enterprises in the Manufacturing Industry* defines a single-item champion enterprise in the manufacturing industry as “an enterprise that has long focused on some specific product segments in the manufacturing industry, possesses internationally leading production technology or processes, and has a market share for its individual product that ranks among the top in the world”⁹²⁹. MIIT requires that funding for cultivating such champion enterprises is ensured and supports them in their applications for priority state-funded projects⁹³⁰. In a further example (described in more details in Section 2.3.2), the 2021 Guiding Opinions on Accelerating the Cultivation and Development of High-quality Manufacturing Enterprises set a goal to have ten thousand ‘*little giant*’ enterprises, thousands of individual champion enterprises and a large number of pilot enterprises by 2025 and they call for using various government-backed funds to encourage private capital to establish cultivation funds for high-quality enterprises, and for guiding financial institutions to provide accurate and effective financial support to high-quality enterprises (see Section 2.3.2).

8.2.2.3. PROMOTING INDUSTRIAL RESTRUCTURING

In addition to bolstering domestic industry, industrial policies are also used to restructure existing industry, sometimes cutting away at industries that have outlived or outgrown their purpose. A key government document for this purpose is the NDRC’s Catalogue for Guiding Industrial Restructuring (‘*Restructuring Catalogue*’, see Section 4.2.9 for further details).

The contents of the Restructuring Catalogue are not simple lists. They go into considerable detail in order to make sure that government officials implementing the policies it outlines have clear instructions on how to proceed. The Restructuring Catalogue demonstrates how the Government explicitly encourages and supports the development of certain industries and specific technologies, while discouraging, restricting and even prohibiting others. In July 2023, NDRC released a draft version of the 2023 Restructuring Catalogue for public comments, making further changes, e.g. by removing the words ‘*new construction*’ and ‘*including aromatics extraction*’ from these items of the restricted list⁹³¹.

⁹²⁸ *Ibid.*

⁹²⁹ MIIT (2016). *Notice of the Ministry of Industry and Information Technology on the Implementation Plan of the Special Action to Cultivate and Improve Single-item Champion Enterprises in the Manufacturing Industry*. https://wap.miit.gov.cn/jgsj/zfs/qypy/art/2020/art_c61cdc1f38b3424aaf3d9c54086b05ce.html (accessed on 30 August 2023) (unofficial translation).

⁹³⁰ *Ibid.*, Article 3 (3), Article 4 (1).

⁹³¹ NDRC (2023). *Proposal of NDRC to Revise the Catalogue for Guiding Industrial Restructuring – Published for Public Comments*. https://www.gov.cn/lianbo/bumen/202307/content_6893707.htm (accessed on 31 July 2023).

A similar dynamic can be seen in the FYPs. For example, the treatment of ‘modern energy systems’ in the 14th FYP for Modern Energy Systems⁹³² demonstrates how policymakers welcome certain types of investment, while restricting others⁹³³:

[China shall] continually optimise the coal production structure, by prioritizing the development of advanced production capacity, plan several large modern coal mines with good resource conditions, strong competitive advantages, and high degree of security and strengthen the building of intelligent, secure and efficient mines [...].

[China shall] fully promote the large-scale exploration and high-quality development of wind power generation and solar power generation [...].

[China shall] promote the transformation and upgrading of the refining industry, strictly control the increase of refining capacity, orderly promote the exit of outdated and low-efficient production capacity, extend the industry chains, increase the proportion of products high in added value, improve the comprehensive utilization of resources and accelerate the building of green refineries and smart refineries.

The high importance given to national (and sectoral) FYPs in Chinese policymaking ensures that, when confronted with an investment approval decision, the authorities are likely to be guided by the FYPs’ goals. For example, the Review and Approval of New Construction, Reconstruction, and Expansion of Civil Airports within Specified Authority issued by the CAAC in 2015 explains that one of the conditions for successful applications for the construction, reconstruction or expansion of civil airports is that such projects shall conform to the plan for national economic and social development and the plan for the development of the civil aviation industry⁹³⁴. Furthermore, government agencies take such guidance into account as they draft laws, regulations and policies that affect investment in the corresponding industry. For example, the State Council considered that “[a] plan for a specific field is developed by targeting a specific field for national economic and social development, [...] and also serves as a basis for the government to guide the development of such field and to review and approve major projects, [...] as well as to develop relevant policies for the specific field”⁹³⁵. In this way, the State is able to use its industrial policy apparatus to concretely influence the country’s economy, including flows of investment.

⁹³² NDRC and NEA. (2022). *14th FYP for Modern Energy Systems*, Article 7, p. 9. <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202203/P020220322582066837126.pdf> (accessed on 7 November 2022).

⁹³³ *Ibid.* Article 7, p. 9; Article 9, p. 13; Article 11, p. 18.

⁹³⁴ CAAC. (2015). *Review and Approval of New Construction, Reconstruction, and Expansion of Civil Airports within Specified Authority*, Article 7.1. http://www.caac.gov.cn/FWDT/WSBS/JCGLL/54009/201705/t20170531_44403.html (accessed on 7 November 2022).

⁹³⁵ State Council. (2005). *Several Opinions of State Council on Strengthening the Development of Plans for National Economic and Social Development*, Article 1.2. http://www.gov.cn/gongbao/content/2005/content_121467.htm (accessed on 13 December 2022) (unofficial translation).

8.2.3. GOAL: UTILIZE FOREIGN INVESTMENT

Increased openness to foreign investment has been an important factor in China's development, and China's leaders continue to pledge further opening of the economy. However, as China develops economically, there is greater emphasis on inviting foreign investment on China's own terms, mainly by directing or guiding foreign investment into priority industry sectors and priority geographic regions.

The State Council emphasized the need to optimize the direction of foreign investment, for example, in its 2018 Notice on Certain Measures for Actively and Effectively Utilizing Foreign Investment to Promote Quality Economic Development⁹³⁶:

[F]oreign investment, advanced technology, and management experience shall be vigorously attracted, foreign investors shall be supported in participating in the construction of the free trade port in Hainan in all aspects, and the pioneering role of pilot free trade zones in the aspects of expanding opening up and attracting foreign investment shall be enhanced. (The Ministry of Commerce shall take the lead, and the member entities of the Inter-Ministerial Joint Meeting for Pilot Free Trade Zone Work of the State Council shall be responsible according to the division of labor based on duties[...]) Foreign investors shall be guided in investing more in modern agriculture, ecological construction, advanced manufacturing, and modern services and in central and western China.

The way in which China seeks to manage foreign investment to achieve its goals has been changing. In recent years, the Government has been seeking to transform its role from one focused on serving as a pre-establishment gatekeeper to one more focused on post-establishment regulation⁹³⁷. In March 2019, the NPC passed a new Foreign Investment Law ('FIL'), effective as of 1 January 2020, that explicitly applies the pre-establishment national treatment and negative list reforms to foreign investment⁹³⁸.

The principal stated aims of FIL are to further open China's economy, to attract foreign investment and to better protect the rights and interests of foreign investors⁹³⁹. To these ends, the FIL makes several broad commitments to treat foreign investment consistently with

⁹³⁶ State Council. (2018). *Notice of the State Council on Certain Measures for Actively and Effectively Utilizing Foreign Investment to Promote Quality Economic Development*, Article 3.9. https://www.gov.cn/zhengce/content/2018-06/15/content_5298972.htm (accessed on 7 November 2022). Unofficial translation from PKU Law, translation available at: https://www.pkulaw.com/en_law/77f7a5e976eb0f22bdfb.html?keyword=%E6%8E%A8%E5%8A%A8%E7%BB%8F%E6%B5%8E%E9%AB%98%E8%B4%A8%E9%87%8F%E5%8F%91%E5%B1%95%E8%8B%A5%E5%B9%B2%E6%8E%AA%E6%96%BD%E7%9A%84%E9%80%9A%E7%9F%A5 (accessed on 7 November 2022); see also *Decisions of the State Council on publication and implementation of provisional regulations for promoting the industrial restructuring* issued on December 2, 2005, which states "optimizing the structure of foreign trade and of utilization of foreign investment", available at: http://www.gov.cn/zwggk/2005-12/21/content_133214.htm (accessed on 8 November 2022).

⁹³⁷ See, e.g. 13th FYP.

⁹³⁸ NPC. (2020). *Foreign Investment Law of the PRC*, Article 4. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 31 July 2023).

⁹³⁹ NPC. (2020). *Foreign Investment Law of the PRC*, Article 1. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 11 August 2023).

investment by domestic parties – other than with respect to permitting investment in certain industries.

Upon its passage, the FIL eliminated three existing foreign investment laws: the Law on Sino-Foreign Equity Joint Ventures (the ‘EJV Law’), the Law on Sino-Foreign Contractual Joint Ventures (the ‘CJV Law’) and the Law on Wholly Foreign Owned Enterprises⁹⁴⁰. The FIL provides that the organizational structure and operating rules of FIEs must, like those of domestic invested enterprises, comply with China’s Company Law or Partnership Enterprise Law and other relevant statutes⁹⁴¹. This had the greatest impact on Sino-foreign JVs – equity JVs and cooperative JVs -, as the EJV Law and the CJV Law vested principal decision-making authority in a JV’s board of directors⁹⁴², whereas the Company Law vests principal decision-making authority in a company’s shareholders via the shareholders’ meeting⁹⁴³.

Outside of the negative list industries, the FIL commits that China will treat foreign investors and their investments no less favourably than domestic investors at “*the stage of investment access*”⁹⁴⁴.

The FIL also includes provisions on expropriation. Article 20 provides that the Chinese government may expropriate the investments of foreign investors only ‘*in special circumstances*’ for public purposes, and that foreign investors will receive fair compensation therefor, in each case, in accordance with law⁹⁴⁵. Similar commitments not to impair FIEs without legal authorization are found in Articles 24 and 25. The FIL also signals fair treatment of foreign investors through the creation of a complaint mechanism to help foreign investors that believe their rights or interests have been infringed by administrative bodies or their personnel⁹⁴⁶. To implement the FIL’s commitment to create a complaint handling mechanism for foreign investment, MOFCOM issued *the Rules on Handling Complaints of Foreign Invested Enterprises* (‘*Complaints Rules*’) that create an inter-ministerial conference system for handling the complaints of FIEs between MOFCOM and other relevant ministries at the national level and establish a *National Centre for Complaints of Foreign-Invested Enterprises* as part of MOFCOM⁹⁴⁷.

⁹⁴⁰ *Ibid.*, Article 42.

⁹⁴¹ *Ibid.*, Article 31.

⁹⁴² NPC. (2016). *Law on Sino-Foreign Equity Joint Ventures*, Article 6. <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY4MjIxZjA5Mjk%3D>. See also NPC. (2017). *Law on Sino-Foreign Contractual Joint Ventures*, Article 12. <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY4ODRmNDBhY2Q%3D> (accessed on 11 August 2023).

⁹⁴³ NPC. (2018). *Company Law of the PRC*, Article 36 and Article 98. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxY2M5OGFkODExMzQ%3D> (accessed on 11 August 2023).

⁹⁴⁴ NPC. (2020). *Foreign Investment Law of the PRC*, Article 4. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 11 August 2023) (unofficial translation).

⁹⁴⁵ *Ibid.*, Article 20 (unofficial translation).

⁹⁴⁶ *Ibid.*, Article 26.

⁹⁴⁷ The Complaints Rules also guide the handling of complaints at the local level and provide applicable procedures and timelines in the *Rules on Handling Complaints of Foreign-Invested Enterprises*, Articles 2, 5, 6 and chapter 3. <http://www.mofcom.gov.cn/article/b/f/202008/20200802996409.shtml> (accessed on 25

Despite the ostensible shift towards post-establishment regulation, the government continues to actively determine which kinds of foreign investments are welcome into the country in the first place. The transition to a ‘*negative list approach*’ through the issuance of a new negative list for foreign investment, the FI Negative List is largely a repackaging of the previous Catalogue of Industries for Guiding Foreign Investment⁹⁴⁸.

Although the FIL is designed to serve as an improved legal framework for foreign investment, the implementation of the FIL lags behind in some respects. In October 2022, the Enforcement Inspection Team of the NPC Standing Committee issued a report on FIL implementation. The report noted certain major difficulties and problems, including a need for further improvement of the state’s processes to combine the pre-establishment national treatment principle with the MA Negative List (see Section 8.3.9.1) and the FI Negative List, and concerns about the operation of the national security review and limited access of foreign investors to the State’s major projects, such as its national science and technology programs⁹⁴⁹. The report also acknowledged that even for sectors not regulated by the negative lists, which foreign investors are legally entitled to access, there is not always a level playing field due to different understandings and interpretations of the negative lists by local authorities⁹⁵⁰. The report further notes concerns that extend beyond the negative lists, such as discriminatory treatment of some FIEs by local governments, public institutions and SOEs in the course of government procurement⁹⁵¹. In addition, the report notes that FIEs may not be able to obtain the same government subsidies and preferential treatment provided to domestic companies⁹⁵², face limited IP protection and may be disadvantaged in standards development⁹⁵³.

In August 2023, the State Council issued an Opinion on Further Optimising the Foreign Investment Environment and Increasing the Attraction of Foreign Investment⁹⁵⁴. The opinion vows to strengthen the foreign investment climate for six topics, including 24 specific measures, aimed at improving the quality of utilising foreign investment, ensuring national treatment for foreign invested companies, strengthening the protection of foreign investment, improving

August 2023). In addition, MOFCOM issued the Working Guidelines for the National Centre for Complaints of Foreign-Invested Enterprises, which provide more details such as the materials required to submit a complaint (available at: <https://www.gov.cn/xinwen/2020-10/03/5549170/files/ff4ec6044ba1497090bd73db85c72cec.pdf> (accessed on 25 August 2023)) and the Directory of National Working Institutions for Complaints of Foreign-Invested Enterprises, which lists the names and contact details of the local institutions handling complaints (available at: <https://www.gov.cn/xinwen/2020-10/03/5549170/files/b48e8ab6fe4840bba2b962977b132916.pdf> (accessed on 25 August 2023)).

⁹⁴⁸ NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Foreign Investment Access* (2021). https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm (accessed on 31 July 2023).

⁹⁴⁹ NPC Standing Committee Enforcement Inspection Team. (2022). *Report of the Enforcement Inspection Team of NPC Standing Committee on the Inspection of Implementation of Foreign Investment Law of the PRC*. <http://www.npc.gov.cn/npc/c30834/202210/ece32ab2e6f54c4caac8c2286bd59b88.shtml> (accessed on 11 August 2023).

⁹⁵⁰ *Ibid.*

⁹⁵¹ *Ibid.*

⁹⁵² *Ibid.*

⁹⁵³ *Ibid.*

⁹⁵⁴ State Council (2023). Opinion on Further Optimising the Foreign Investment Environment and Increasing the Attraction of Foreign Investment; available at: https://www.gov.cn/zhengce/content/202308/content_6898048.htm (accessed on 15 October 2023).

investment and business facilitation, increasing fiscal and tax support and upgrading the foreign investment promotion mechanism.

However, only five out of the 24 points appear to contain new elements in the existing foreign investment mechanism, though they are not policy innovations as such and are in line with the existing general principles stipulated in the FIL. Moreover, for most of the measures, specific and clear national and provincial measures/additional detailed local implementation rules/guidance will need to be created in order for the measures to be properly implemented. Therefore, even if the 24-points seem to aim at further attracting and localising foreign investment, they remain aligned with the wider goal of directing foreign capital towards specific sectors key sectors linked to China's industrial policies or less developed regions.

8.2.3.1. LISTS AND CATALOGUES GUIDING FOREIGN INVESTMENT INTO PRIORITY INDUSTRY SECTORS

The Government aims to utilize foreign investment to advance priority industry sectors in China. China's formal policy efforts to encourage foreign investment in certain sectors date back to at least the mid-1990s and were put in place together with restrictions and prohibitions on foreign investment in other sectors. In 2017, the State Council issued two notices declaring Chinese policymakers' intentions to attract more foreign investment into China and make improvements to the role it plays in the economy.

In January 2017, the State Council published the Several Measures for Opening Wider to the Outside World and Making Active Use of Foreign Investment ('*Notice 5*')⁹⁵⁵. These measures declare the importance of opening the Chinese economy more to the outside world, creating a level playing field for foreign investment, and making greater efforts to attract it into the country.

In August 2017, the State Council's Several Measures for Promoting the Growth of Foreign Investment ('*Notice 39*')⁹⁵⁶ call for progress toward the following policy goals:

- Further reduce market entry restrictions for foreign investors: Promote the full adoption of '*negative lists*' at the national level.
- Formulate supportive fiscal and taxation policies: Among other things, multinational companies are encouraged to set up headquarters in China, with preferential tax rates and other forms of financial support.
- Improve the comprehensive investment environment in national-level development zones⁹⁵⁷.

⁹⁵⁵ State Council. (12 January 2017). *Notice of the State Council on Several Measures for Opening Wider to the Outside World and Making Active Use of Foreign Investment*, Guo Fa 2017, No. 5. https://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm (accessed on 31 July 2023).

⁹⁵⁶ State Council. (2017, August 8). *Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment*, Guo Fa 2017, No. 39. https://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm (accessed on 31 July 2023).

⁹⁵⁷ *Ibid*, paras. 1–12.

The kind of prescriptive language found in these documents, and others, lends further support to the view that the Chinese authorities see foreign investment as a means to an end, and continue to be deeply engaged in modulating incentives in order to achieve their preferred configuration of foreign investment in the economy. The ‘efforts’ proposed in the two documents (e.g. tax exemptions and other preferential treatment, an invitation to set-up headquarters in China, the possibility to reinvest profits abroad) are, above all, addressed towards certain geographical areas (e.g. western and central regions of China, though not exclusively) and certain sectors (e.g. technology and other high value industries)⁹⁵⁸.

The following excerpts from these two notices demonstrate, in greater detail, how Chinese policymakers steer foreign investment flows toward specific sectors⁹⁵⁹:

- [...] *Foreign investors are encouraged to invest in high-end manufacturing, smart manufacturing, green manufacturing, etc., as well as industrial design and innovation, engineering consulting, modern logistics, inspection, testing and certification and other production-oriented services to transform and upgrade traditional industries.*
- *Foreign investments shall play their positive role in optimising the structure of trade in services. The preferential income tax policies applicable to service enterprises with advanced technologies that satisfy the prescribed conditions in service outsourcing pilot cities shall be rolled out across the country to guide more foreign investors to invest in high-tech and high value-added services.*
- *National-level development zones shall be supported to enhance their capacities for providing industry supporting services. In regions where conditions are ripe, foreign-owned production supporting service enterprises shall be introduced to develop, on an experimental basis, domestic and overseas maintenance business of high-tech and high value-added projects so as to foster the extension of processing trade to the middle and higher ends of the global industry chain and value chain.*

In October 2021, the MOFCOM reasserted and further specified this policy ambition. The 14th FYP for Utilising Foreign Capital for Development calls on the regulators and officials to “guide foreign capital to invest more in industries such as digital transformation, energy conservation and environmental protection, ecological environment and green services, and participate in new infrastructure construction. [...] supporting foreign investors to increase investment in sectors such as mid- and high-end manufacturing, high and new technologies, traditional manufacturing transformation and upgrading and modern services, [...] supporting foreign-invested enterprises to develop producer service industries such as R&D design, financial services, modern logistics, supply chain management and information services, as well as life service industries such as medical care, health, pension, childcare, tourism and housekeeping, [...] supporting foreign-invested enterprises to set up global and regional

⁹⁵⁸ Ibid, paras. 4–7. https://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm (accessed on 31 July 2023).

⁹⁵⁹ Notice 5, para. 1(4); Notice 39, para. 2(4) and para. 3(12).

headquarters and R&D centres, and participate in undertaking national science and technology projects [...]"⁹⁶⁰.

Commenting on the 14th FYP for Utilising Foreign Capital for Development, MOFCOM noted that the plan “specifically includes further optimization of the industrial structure of foreign investment, and an obvious increase in levels of attracting foreign investment in sectors such as high-tech industries, strategic emerging industries and modern services industries [...]"⁹⁶¹.

The central document outlining (though not exclusively) whether particular types of investments are to be welcomed or restricted has, for many years, been the Catalogue of Industries for Guiding Foreign Investment (*‘Foreign Investment Catalogue’*)⁹⁶². The Government initially promulgated the Foreign Investment Catalogue in 1995 and amended it every couple of years based upon economic development and new government policies.

When foreign investment was seen as detrimental to domestic industry or other national interests, it would be restricted, or even prohibited. Such investments were placed on the *‘restricted’* or *‘prohibited’* lists of the Foreign Investment Catalogue. The 2017 version of the Foreign Investment Catalogue combined these two lists into the *‘negative list’* for foreign investment, and the 2017 Foreign Investment Catalogue also included a list of industries in which investment was encouraged⁹⁶³. In 2018, these two lists became the standalone national *‘negative list’* for foreign investment – the FI Negative List⁹⁶⁴ – and the list of industries for which investment is encouraged was turned into a separate Catalogue of Industries for Encouraged Foreign Investment (*‘Encouraged FI Catalogue’*)⁹⁶⁵, as discussed in Section 8.2.3.1.2 below.

8.2.3.1.1. Restricted and Prohibited Investments

Government policy and regulation, in part through the FI Negative List, aim to enhance the strength and vibrancy of the Chinese economy by facilitating technology transfer and spurring domestic competition and consumption. China has amended the FI Negative List each year from 2018 to 2021, and the list has ostensibly become shorter over time. Under the current 2021

⁹⁶⁰ MOFCOM. (2021). 14th FYP for Utilizing Foreign Capital for Development, § 4.1. <http://images.mofcom.gov.cn/wzs/202110/20211022094012249.pdf> (accessed on 7 November 2022).

⁹⁶¹ MOFCOM. (2021). 14th FYP for Utilizing Foreign Capital for Development, § 2.3. <http://images.mofcom.gov.cn/wzs/202110/20211022094012249.pdf> (accessed on 7 November 2022); People’s Daily. (2021, November 2). China has new guidelines for attracting foreign investment. http://www.gov.cn/zhengce/2021-11/02/content_5648317.htm (accessed on 7 November 2022).

⁹⁶² NDRC and MOFCOM. (2017). Catalogue of Industries for Guiding Foreign Investment (2017 Revision). https://www.gov.cn/xinwen/2017-06/28/content_5206424.htm (accessed on 28 August 2023).

⁹⁶³ NDRC and MOFCOM. (2017). Catalogue of Industries for Guiding Foreign Investment (2017 revision). <https://www.gov.cn/xinwen/2017-06/28/5206424/files/e4489bbd621542a480ff4c45c42fa202.pdf> (accessed on 30 August 2023).

⁹⁶⁴ NDRC and MOFCOM. (2018). Special Administrative Measures (Negative List) for Foreign Investment Access (2018 Version). https://www.gov.cn/gongbao/content/2018/content_5317104.htm (accessed on 31 July 2023); MOFCOM. (2019). Interpretations regarding the 2018 Version of the Special Administrative Measures (Negative List) for Foreign Investment Access. http://swj.xianning.gov.cn/xxgk/zc/zcjd/201906/t20190611_1728315.shtml (accessed on 31 July 2023).

⁹⁶⁵ NDRC and MOFCOM. (2019). Catalogue of Industries for Encouraged Foreign Investment (2019 Version). https://www.gov.cn/xinwen/2019-06/30/content_5404701.htm (accessed on 30 August 2023).

FI Negative List (effective as of 1 January 2022), 10 business sectors are restricted and 21 are prohibited.

Investments that are ‘*restricted*’ under the FI Negative List are subject to higher levels of government scrutiny, limitations on the choice of corporate forms (such as mandatory JVs) and ownership ceilings. Such restrictions apply, for instance, to certain sub-sectors within the services sector, including market survey services⁹⁶⁶. Foreign investments that fall under the ‘*prohibited*’ category are, simply, not permitted at all. This category includes, for example, domestic postal services.

Restricted investments are often subject to requirements that foreign investors enter into JVs with Chinese partners, or certain restrictions or requirements relating to equity ownership by foreign investors. Many such requirements can be found in the 2021 version of the FI Negative List, for example:

1. *The Chinese party shall hold at least 34% of the shares of a company undertaking the breeding [and seed production] of new wheat varieties; breeding [and seed production] of new corn varieties must be undertaken by a company controlled by the Chinese party. [...]*
6. *For the printing of publications, the controlling stake must be held by the Chinese party. [...]*
8. *For the construction or operation of nuclear power plants, the controlling stake must be held by the Chinese Party. [...]*
10. *Domestic water transport companies must be controlled by the Chinese party. [...]*
17. *Investment in market surveys shall be limited to the form of equity joint ventures, and where radio or television rating surveys are concerned, the controlling stake must be held by the Chinese party*⁹⁶⁷.

⁹⁶⁶ NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Foreign Investment Access* (2021), item 17. https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm (accessed on 31 July 2023).

⁹⁶⁷ *Ibid.* Items 1, 6, 8, 10, and 17. https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm. Unofficial translation from LexisNexis, translation available at: [https://hk.lexisn.com/law/content_cnen.php?eng=0&provider_id=1&isEnglish=Y&origin_id=4150898&keyword=5aSW5ZWG5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa977yI6LSf6Z2i5riF5Y2V77yJLOWkluWVhuaKlei1hOaKlei1hOWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbllYbmipXotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW6LWE5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa9L OWkluWVhuWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW5ZWG5oqV6LWELoi0n+mdoua4heWNI SzmipXotYQs5YeG5YWlOeJueWIqyznrqHnkIYs5aSW5ZWGLoi0n+mdoizmuIXljZUs5aSW6LWELoaOquaWvQ==&t kw=5aSW5ZWG5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa977yI6LSf6Z2i5riF5Y2V77yJLOWkluWVhuaKlei1hOaKlei1hOW HhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbllYbmipXotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW6LWE5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa9LOWkluWVhuWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW5ZWG5oqV6LWELoi0n+mdoizmuIXljZUs5aSW6LWELoaOquaWvQ==&prid=a060ae8e-6805-4931-12b8-68983ca63336&crd=4181530f-fbb5-4abd-97f6-07d0f3701051](https://hk.lexisn.com/law/content_cnen.php?eng=0&provider_id=1&isEnglish=Y&origin_id=4150898&keyword=5aSW5ZWG5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa977yI6LSf6Z2i5riF5Y2V77yJLOWkluWVhuaKlei1hOaKlei1hOWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbllYbmipXotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW6LWE5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa9L OWkluWVhuWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW5ZWG5oqV6LWELoi0n+mdoua4heWNI SzmipXotYQs5YeG5YWlOeJueWIqyznrqHnkIYs5aSW5ZWGLoi0n+mdoizmuIXljZUs5aSW6LWELoaOquaWvQ==&t kw=5aSW5ZWG5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa977yI6LSf6Z2i5riF5Y2V77yJLOWkluWVhuaKlei1hOaKlei1hOW HhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbllYbmipXotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW6LWE5oqV6LWE5YeG5YWl54m55Yir566h55CG5o6q5pa9LOWkluWVhuWHhuWFpeeJueWIq+euoeQhuaOquaWvSzlpJbotYTlh4blhaXnibnliKvnrqHnkIbmjqrmlr0s5aSW5ZWG5oqV6LWELoi0n+mdoua4heWNI SzmipXotYQs5YeG5YWlOeJueWIqyznrqHnkIYs5aSW5ZWGLoi0n+mdoizmuIXljZUs5aSW6LWELoaOquaWvQ==&prid=a060ae8e-6805-4931-12b8-68983ca63336&crd=4181530f-fbb5-4abd-97f6-07d0f3701051) (accessed on 31 July 2023).

Although the use of the term ‘*negative list*’ would suggest that it provides a one-stop resource for all restrictions, that is not in fact the case. Aside from additional licensing and approval requirements, additional limiting parameters can also be found scattered throughout various other regulatory and policy documents. For instance, the *Provisions on the Administration of Foreign-funded Telecommunications Enterprises* stipulate that “*In a foreign-invested telecom enterprise operating basic telecom services (excluding the wireless paging service), the foreign investors’ total capital contribution shall not exceed 49%, unless otherwise required by the state. In a foreign-invested telecom enterprise operating value-added telecom services (including the wireless paging service of basic telecom services), the foreign investors’ total capital contribution shall not exceed 50%, unless otherwise required by the state*”⁹⁶⁸.

Lastly, and in an apparent move to emphasize reciprocity in liberalizing foreign investment policies, the FIL reserves the Chinese government’s right to retaliate against countries and regions that discriminate Chinese investment with ‘*corresponding measures*’. Article 40 of FIL notes that “*where any country or region adopts any prohibitive, restrictive or other similar discriminatory measures against the People’s Republic of China in terms of investment, the People’s Republic of China may adopt corresponding measures against the aforesaid country or region according to the actual circumstances*”⁹⁶⁹.

8.2.3.1.2. Encouraged Investments

In line with the effort to create a standalone negative list, the listing of encouraged investments under the previous Foreign Investment Catalogue has been separated into the new Encouraged FI Catalogue.

The Encouraged FI Catalogue includes a number of high-tech and advanced manufacturing sectors, such as those relating to aerospace and pollution control. Such encouraged foreign investment may receive preferential terms, such as waiver of customs duty for importing certain equipment, possibly lower land prices and lower income tax rate at 15% for investing in some areas in western China or Hainan province⁹⁷⁰.

This catalogue continues to expand with the 2022 version increasing the number of entries from 1 235 to 1 474⁹⁷¹. It was noted by official Chinese sources that the Encouraged FI Catalogue would allow foreign capital to ‘*further exert the positive role*’ in the industrial chain and supply chain, while “*the national catalogue continues to take the manufacturing industry as the key direction for encouraging foreign investment, and adds relevant content according to the guidance of ‘introducing capital to supplement the chain’, ‘introducing capital to strengthen*

⁹⁶⁸ State Council. (2022). *Provisions on the Administration of Foreign-funded Telecommunications Enterprises*, Article 6; available at: <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4MGUwYTQ0MTAxODExZTMwNDljYTE0MDE> (accessed on 31 July 2023) (unofficial translation).

⁹⁶⁹ NPC. (2020). *Foreign Investment Law of the PRC*, Article 40. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D>. Unofficial translation from PKU Law, translation available at: https://www.pkulaw.com/en_law/6a88714068b3724dbdfb.html?keyword=%E5%A4%96%E5%95%86%E6%8A%95%E8%B5%84%E6%B3%95 (accessed on 29 August 2023).

⁹⁷⁰ MOFCOM. (2022, October 29). *MOFCOM’s Response regarding the Encouraged FI Catalogue (Version 2022)*. https://www.gov.cn/zhengce/2022-10/29/content_5722482.htm (accessed on 7 November 2022).

⁹⁷¹ *Ibid.*

*the chain' and 'introducing capital to expand the chain.' In the field of raw materials, items such as high-purity electronic grade hydrofluoric acid, hydrogen fluoride, and special glass fibres are added or modified; in the field of components, items such as high-pressure vacuum components, special valves, and wheel speed sensors are added or modified; in the field of end products, items such as integrated circuit test equipment, laser projection equipment, ultra-high-definition televisions, ventilators and artificial intelligence-assisted medical equipment are added or modified'*⁹⁷².

The Government seeks also to steer foreign investment flows towards specific geographic areas (see, for example, the Notice of the State Council on Several Measures for Opening Wider to the Outside World and Making Active Use of Foreign Investment⁹⁷³ and the Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment⁹⁷⁴). Accordingly, the Encouraged FI Catalogue includes a comprehensive catalogue designed to coordinate foreign investment in particular geographic areas⁹⁷⁵. It includes two sections: (i) catalogue of industries for encouraged foreign investment in the whole country of China, and (ii) catalogue of priority industries for foreign investment in central and western China. This second catalogue lists encouraged activities and investment sectors for provinces or regions in central and western China (i.e. Shanxi, Inner Mongolia, Liaoning, Jilin, Heilongjiang, Anhui, Jiangxi, Henan, Hubei, Hunan, Guangxi, Hainan, Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Qinghai, Ningxia and Xinjiang)⁹⁷⁶.

China also encourages local authorities to attract certain types of foreign investment, and the central government allows local governments to develop preferential policies for doing so⁹⁷⁷.

The Shanghai government, for example, provides incentives for establishing a corporate headquarters in the city⁹⁷⁸, and the Shanghai Tax Bureau and the Finance Bureau as well as other authorities facilitate and support the establishment of regional headquarters in the municipality. In the past, the Shanghai government's subsidies included support funds for office rental, office setup and other financial incentives⁹⁷⁹. Support may also extend to trade, R&D, project investment and the protection of a company's intellectual property. Unlike the previous

⁹⁷² Peiyu X. (2020, December 30). *China makes additional efforts to attract foreign investment (Ruicaijing)*. People's Daily Online. <http://politics.people.com.cn/n1/2020/1230/c1001-31983738.html> (accessed on 7 November 2022) (unofficial translation).

⁹⁷³ State Council. (2017, January 12). *Notice of the State Council on Several Measures for Opening Wider to the Outside World and Making Active Use of Foreign Investment*, Guo Fa 2017, No. 5. https://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm (accessed on 25 August 2023).

⁹⁷⁴ State Council. (2017, August 8). *Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment*, Guo Fa 2017, No. 39. https://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm (accessed on 25 August 2023).

⁹⁷⁵ NDRC and MOFCOM. (2022). *Catalogue of Industries for Encouraged Foreign Investment (2022 Version)*. https://www.gov.cn/zhengce/2022-11/29/content_5730383.htm (accessed on 31 July 2023).

⁹⁷⁶ *Ibid.*

⁹⁷⁷ Economy Daily. (2016). *Deputy Commissioner of NDRC: Local Governments May Develop Policies for Foreign Investment*. https://www.gov.cn/xinwen/2016-12/31/content_5155098.htm (accessed on 11 August 2023).

⁹⁷⁸ Shanghai Municipal People's Government. (2022). *Provisions of Shanghai Municipality on Encouraging Multinational Companies to Set Up Regional Headquarters*. <https://www.shanghai.gov.cn/gwk/search/content/6fa86f4b65554f43bc9633fca378ffa9> (accessed on 16 August 2023).

⁹⁷⁹ *Ibid.*

version, the latest *Provisions of Shanghai Municipality on Encouraging Multinational Companies to Set Up Regional Headquarters*, which were amended in October 2022, does not list specific financial incentive measures⁹⁸⁰.

Guangdong Province, a major destination for foreign investment, also has such preferential policies, including policies providing for incentives and subsidies for foreign investment projects, policies related to multinational company headquarters and foreign R&D centres in the province and special support policies for projects in the province's pilot free trade zone⁹⁸¹.

Zhejiang Province is another example. In March 2023, the Zhejiang provincial government issued *Several Measures for Attracting and Utilising Foreign Investment with Greater Efforts*, focusing on investment in advanced manufacturing sectors and key service sectors and the placement of multinational company headquarters in the province. Under the measures, Zhejiang is to provide incentives and subsidies for eligible foreign investment⁹⁸².

8.2.3.1.3. Foreign Investment to Facilitate Technology Transfer

As it seeks to develop the country's technological and innovation capabilities, the Government has been particularly focused on attracting foreign investment to bring needed technologies into the country, and to encourage the transfer of those technologies to, or the cultivation of relevant capabilities amongst, domestic industry players. This has led to the imposition of technology transfer requirements through written measures and, more commonly, through the structuring of incentives and through unwritten pre-conditions for market access implemented via the investment approval processes detailed in Section 8.3.

Although explicitly stated technology transfer requirements in laws and regulations have been prohibited by the FIL⁹⁸³, policy documents and statements make clear that technology transfer remains an important goal of policymakers. For instance, technology transfer may be a necessary result of the structure of another regulatory requirement; JVs are a good example.

Foreign investment restrictions such as a JV requirement have long been criticised as one of the most problematic Chinese measures for foreign technology transfer⁹⁸⁴. While China has over the years taken notable steps to relax and remove formal JV requirements in key sectors through the FIL and revised negative lists, there are ways for the Government to continue to effectively require JV arrangements. In fact, according to a 2020 survey conducted by the EUCCC, only 31% of the respondent companies increased their share in a JV following the lifting of equity caps in 2019, with only 5% reporting to have 'bought out [their] Chinese partner' to establish

⁹⁸⁰ *Ibid.*

⁹⁸¹ People's Daily. (2023). *Foreign Investment Expansion, Utilization of Foreign Investment to A Higher Level*. http://paper.people.com.cn/rmrb/html/2023-01/28/nw.D110000renmrb_20230128_3-01.htm (accessed on 11 August 2023).

⁹⁸² General Office of Zhejiang Provincial People's Government. (2023). *Several Measures for Attracting and Utilizing Foreign Investment with Greater Efforts*. http://zcom.zj.gov.cn/art/2023/4/4/art_1229562310_2473231.html (accessed on 11 August 2023).

⁹⁸³ NPC. (2020). *Foreign Investment Law of the PRC*, Article 22. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 11 August 2023).

⁹⁸⁴ Office of the USTR. (25 September 2018). *Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union*. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/joint-statement-trilateral> (accessed on 16 August 2023).

a wholly foreign owned enterprise and 20% taking a controlling share⁹⁸⁵. Some of the key mechanisms through which a preference for a Sino-Foreign JV may continue are:

- Informal (but express) JV requirement: Chinese officials can informally require a JV arrangement as a condition for the necessary approvals, even where there was no such legal requirement.
- Administrative discretion against foreign investors: Government agencies may use their broad discretion to systematically disfavour foreign or foreign-controlled companies.
- Discriminatory subsidies and other measures that effectively favour domestic companies: Foreign firms are also reported to be reluctant to change JV arrangements, seeing Chinese partners as a necessity to access lucrative subsidies, R&D support and other government assistance considered to favour Chinese entities⁹⁸⁶ (see also Chapter 22).
- Lastly, some may be simply reluctant to change the business structure that has been in place for decades⁹⁸⁷, or Chinese partners may simply refuse to sell their shares⁹⁸⁸.

While many technology transfer arrangements are fair and consented to, concerns about unfair practices relating to technology and intellectual property transfer have led the US Trade Representative to launch an investigation under Section 301 of the *US Trade Act of 1974*⁹⁸⁹.

8.3. ADVANCING CHINA'S INDUSTRIAL POLICY GOALS THROUGH INVESTMENT APPROVAL PROCESSES

While Chinese industrial policies find expression in laws and regulations regulating foreign investment, the investment approval process itself allows the authorities to more dynamically apply industrial and economic development policies to proposed investments on a case-by-case basis.

This section presents how the Government has set up a system for processing both foreign and domestic investment applications that allows it to micromanage access to the market and maintain an important role in overseeing and influencing the investment decisions of investors.

In particular, the section examines how government policy is implemented through the approval process via: (1) the inherent structure of the approval/filing process, which is in large part guided by the contents of industrial policy catalogues and negative lists that meticulously, and with great specificity, convert high-level policy guidance into approval/filing requirements and

⁹⁸⁵ EUCCC. (2020). European Business in China Business Confidence Survey 2020 “*Navigating in the Dark*”. p. 58.

⁹⁸⁶ See also Alves Dias, P. et al. (2019). China: Challenges and Prospects from an Industrial and Innovation Powerhouse. <https://publications.jrc.ec.europa.eu/repository/handle/JRC116516> (accessed on 16 August 2023).

⁹⁸⁷ EUCCC (2018). 2018/2019 Position Paper. https://www.europeanchamber.com.cn/en/publications-archive/646/European_Business_in_China_Position_Paper_2018_2019 (accessed on 16 August 2023).

⁹⁸⁸ EUCCC (2020). European Business in China Business Confidence Survey 2020 “*Navigating in the Dark*”. p. 59.

⁹⁸⁹ Office of the USTR (2017). USTR Announces Initiation of Section 301 Investigation of China. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/august/ustr-announces-initiation-section> (accessed on 16 August 2023).

restrictions for investment projects⁹⁹⁰, and (2) substantive criteria applied through administrative discretion granted to approval authorities.

8.3.1. OVERVIEW OF INVESTMENT APPROVAL PROCESS

The following chart presents, at a high level, the steps of the approval/filing process for domestic and foreign investments in China. Not all steps apply to all investments. Some steps apply only to foreign investments (i.e. Steps 1B and 1C), while other steps (except for Step 2) only apply to certain types of investments.

Step	Administrative Discretion	Approval/Filing Requirements
1A	High	AML SAMR ⁹⁹¹ Review
1B	High	[For foreign investment only] National Security Review of Foreign Investment <i>Foreign Investment Security Review: Working Mechanism (led by NDRC and MOFCOM)</i>
1C	High	[For foreign investment only] Approval of Foreign Investment in the Restricted Sectors of the Foreign Investment Negative List <i>Industry regulators</i>
1D	High	Pre-Registration Licensing ⁹⁹² <i>Industry regulators</i>
1E	High	State-Owned Assets Investment Review

⁹⁹⁰ NDRC and MOFCOM. (2022). MA Negative List. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 7 November, 2022); NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Foreign Investment Access (Negative List)*. https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2021). *Special Administrative Measures for Access of Foreign Investment in Pilot Free Trade Zones (Negative List)*. https://www.gov.cn/zhengce/2022-11/28/content_5713318.htm (accessed on 7 November 2022).

⁹⁹¹ SAMR's *Regulations on Review of Business Operator Concentration* (published on 10 March 2023, effective 15 April 2023) stipulates that "SAMR may, based on its work needs, designate and authorize the market regulation authorities at levels of province, autonomous region, and municipality directly under Central control (hereinafter "SAMR at Provincial Level") to conduct the review of business operator concentration.". See SAMR. (2023). *Regulations on Review of Business Operator Concentration*. https://www.gov.cn/gongbao/content/2023/content_5754540.htm?eqid=d8cb86e4000ee76100000005648db726 (accessed on 25 August 2023).

⁹⁹² Whether a license is required depends upon the contemplated business activities. Most of the licenses or filings required are post-registration.

		<i>SASAC or local SASACs, parent enterprises or central or local governments</i>
2	Low	Registration for Formation <i>SAMR and Local AMRs</i>
3A or 3B	High	Project Approval ⁹⁹³ <i>NDRC or local DRCs</i>
	Medium	Project Filing ⁹⁹⁴ <i>Local DRCs</i>
4	Medium	Land, Zoning, and Construction ⁹⁹⁵ <i>Various authorities (e.g. for environmental permits)</i>
5A and /or 5B	High	Post-Registration Licensing ⁹⁹⁶ <i>Industry regulators</i>
	Medium	Post-Registration Filing <i>Industry regulators</i>
6	High	Cybersecurity Review <i>Led by the Central Cyberspace Affairs Commission, cybersecurity review members include CAC, together with NDRC, MIIT, the Ministry of Public Security ('MPS'), the Ministry of State Security ('MSS'), MOF, MOFCOM, PBOC, SAMR, the National Radio and Television Administration ('NRTA'), CSRC, the National Administration of State Secret Protection ('NASSP') and the Office of State Commercial Cryptography Administration ('OSCCA')</i>

Some of these steps allow for significant amounts of administrative discretion, which can among other things be used to advance China's industrial policy goals.

⁹⁹³ Only fixed-asset investment projects require project approval or filing with NDRC or local DRCs. Depending upon local practice, it might be required before the registration for formation. But usually, local DRCs may agree that investors may establish the enterprise first, after which the enterprise may submit its application for the project approval/filing.

⁹⁹⁴ *Ibid.*

⁹⁹⁵ Most of the approvals in this step are required after the project approval.

⁹⁹⁶ The post-registration licensing or monitoring requirements do not necessarily require the project approval/filing.

8.3.2. ADMINISTRATIVE DISCRETION

Approval requirements play an important role in enabling Chinese government authorities to manage the economy, with each approval requirement creating an opportunity for officials to exercise varying levels of discretion in deciding if and how an investment project goes forward. Officials tasked with approving investment projects are expected to apply substantive criteria particular to the approval requirement. However, such criteria can often be vague, and the amount of discretion granted to authorities when tasked with applying them broad. This wide discretion serves as a channel for officials to (i) apply industrial and economic development policies and other government priorities on a case-by-case basis, (ii) apply non-public or unwritten policy guidance and (iii) impose their own views and interests. Investors may receive informal, oral instructions from officials that go beyond the requirements of the law⁹⁹⁷.

8.3.3. STEP 1A – ANTI-MONOPOLY LAW REVIEW⁹⁹⁸

If an investment causes a business concentration that meets the thresholds for a pre-closing filing⁹⁹⁹, the relevant companies involved in the investment transaction must make a filing with SAMR prior to the concentration. SAMR may also investigate a concentration that does not

⁹⁹⁷ Covington & Burling LLP. (2014). *Measures and practices restraining foreign investment in China, prepared for the European Commission Directorate-General for Trade*, Sec. 3.3.

⁹⁹⁸ Standing Committee of the NPC. (2022). 2022 AML. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE4MjM0Y2NiNTAxODI5ZjQ2YzZhYzJhNWE%3D> (accessed on 31 July 2023); State Council. (2018). *Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNiOTc4NDAxNmY0MjQ2NGMzMjA0NDc%3D> (accessed on 7 November 2022); SAMR. (2023). *Regulations on Review of Business Operator Concentration*. https://www.gov.cn/gongbao/content/2023/content_5754540.htm?eqid=d8cb86e4000ee76100000005648db726 (accessed on 31 July 2023); SAMR. (2018). *Guiding Opinions on the Declaration of Concentration of Business Operators*. https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5459698.htm (accessed on 7 November 2022). As of writing of this Report, due to the amendments to the AML in 2022, China was in the process of amending the *Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators* which is a supporting document of the AML. See SAMR. (2022, June 27). *Announcement of SAMR on Public Solicitation of Comments on the Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators (Draft for Comments)*. https://www.samr.gov.cn/cms_files/filemanager/samr/www/samrnew/hd/zjdc/202206/t20220625_348149.html (accessed on 30 August 2023).

⁹⁹⁹ State Council. (2018). *Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNiOTc4NDAxNmY0MjQ2NGMzMjA0NDc%3D> (accessed on 7 November 2022); SAMR. (2018). *Guiding Opinions on the Declaration of Concentration of Business Operators*. https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5459698.htm (accessed on 7 November 2022). Standing Committee of the NPC. (2022). 2022 AML. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE4MjM0Y2NiNTAxODI5ZjQ2YzZhYzJhNWE%3D> (accessed on 31 July 2023); SAMR. (2023). *Regulations on Review of Business Operator Concentration*, Article 8. https://www.gov.cn/gongbao/content/2023/content_5754540.htm?eqid=d8cb86e4000ee76100000005648db726 (accessed on 31 July 2023).

meet the thresholds¹⁰⁰⁰. The AML review can take up to 180 days¹⁰⁰¹. After review, SAMR will decide whether to unconditionally approve, conditionally approve or prohibit a concentration. In cases of conditional approval, SAMR's Anti-Monopoly Bureau may decide to impose restrictions to reduce a concentration's anti-competitive effect¹⁰⁰². Restrictions may include spin-offs of tangible and intangible assets, behavioural conditions (e.g. access to infrastructure or technologies) and combinations thereof¹⁰⁰³.

SAMR is allowed to consider industrial policy considerations during its review¹⁰⁰⁴. Under Article 33.5 of the AML, one of the factors that shall be considered during an AML review is the “*impact of the concentration of business operators on the national economic development*”, which means that SAMR may also have to consider industrial policies when conducting the AML review¹⁰⁰⁵.

8.3.4. STEP 1B – FOREIGN INVESTMENT SECURITY REVIEW¹⁰⁰⁶

China issued a new security review regulation on foreign investment, which took effect on 18 January 2021. The regulation provides that if a foreign investment affects or might threaten the national security of China, then it is subject to security review¹⁰⁰⁷. Under such circumstances, the applicant – i.e. the foreign investor(s) or relevant domestic parties – must file an application to the Working Mechanism Office led by NDRC and MOFCOM prior to the commencement of investment¹⁰⁰⁸.

¹⁰⁰⁰ Standing Committee of the NPC. (2022). 2022 AML, Article 26. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4MjM0Y2NiNTAxODI5ZjQ2YzZhYzJhNWE%3D> (accessed on 31 July 2023); SAMR. (2023). *Regulations on Review of Business Operator Concentration*, Article 8. https://www.gov.cn/gongbao/content/2023/content_5754540.htm?eqid=d8cb86e4000ee76100000005648db726 (accessed on 31 July 2023).

¹⁰⁰¹ AML, Articles 30, 31.

¹⁰⁰² Ibid, Article 35.

¹⁰⁰³ SAMR. (2023). *Regulations on Review of Business Operator Concentration*, Article 40. https://www.gov.cn/gongbao/content/2023/content_5754540.htm?eqid=d8cb86e4000ee76100000005648db726 (accessed on 30 August 2023).

¹⁰⁰⁴ AML, Article 33.5.; Chongqing Municipal Administration for Market Regulation. (2022). *Q&A regarding AML*. https://scjgj.cq.gov.cn/zt_225/cjsjz/zcjd/202206/t20220616_10821755_wap.html. Cangzhou Municipal Administration for Market Regulation. (2023). *Interpretations of the AML*. <https://scjgj.cangzhou.gov.cn/scjd/c100611/202308/e07007f7ffc9458899ffc6e1c58449fe.shtml> (accessed on 30 August 2023).

¹⁰⁰⁵ AML, Article 33.5.

¹⁰⁰⁶ NDRC and MOFCOM. (2020). *Measures for the Security Review of Foreign Investment*. https://www.gov.cn/gongbao/content/2021/content_5582626.htm (accessed on 7 November 2022); NPC (2020). *Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 7 November 2022); State Council. (2020). *Regulations for Implementing the Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzRjN2EzZDAxNzc2YzUyODAxNDE2MTI%3D> (accessed on 7 November 2022).

¹⁰⁰⁷ NDRC and MOFCOM. (2020). *Measures for the Security Review of Foreign Investment*, Article 2. https://www.gov.cn/gongbao/content/2021/content_5582626.htm (accessed on 7 November 2022).

¹⁰⁰⁸ Ibid., Article 2, 3, 4.

Given the regulation is relatively new and the review process is rather opaque, it is still unclear, as of writing of this Report, how much time a review will actually take¹⁰⁰⁹.

Upon concluding the review, the Working Mechanism Office decides either to permit, prohibit, or conditionally approve the foreign investment. Conditional approval is subject to the investors accepting requirements designed to eliminate the adverse impacts on national security¹⁰¹⁰. The nature of the conditions is not specified by the rules, but such conditions may include transfer of certain shares to eliminate actual control by foreign investor(s) or spin-off of assets or businesses that may affect China's national security.

Since national security is often broadly construed in Chinese legal and policy documents¹⁰¹¹, the inclusion of this review creates substantial discretion for regulators to channel industrial policy priorities.

8.3.5. STEP 1C – APPROVAL OF FOREIGN INVESTMENT IN THE RESTRICTED SECTORS OF THE FOREIGN INVESTMENT NEGATIVE LIST

If foreign investors want to invest in one of the restricted lists under the FI Negative List (see Section 8.2.3 above), they must first obtain approval from the relevant industry regulator before registering the enterprise. A typical condition of investment in the restricted sectors are that the Chinese shareholder(s) shall be the majority shareholder(s). However, in practice, it has been extremely difficult and complex to obtain the approval from industry regulators for foreign investment in a restricted sector. Even if an approval is granted, that is usually on a case-by-case basis and can hardly be a precedent for other foreign investors.

8.3.6. STEP 1D – PRE-REGISTRATION LICENSING¹⁰¹²

¹⁰⁰⁹ *Ibid.*, Articles 7, 8, 9.

¹⁰¹⁰ *Ibid.*, Article 9.

¹⁰¹¹ As defined in the PRC *National Security Law*, “[N]ational security refers to political power of the state, sovereignty, unity and territorial integrity, people's well-being, sustainable development of economy and society, and other significant interests of the state are relatively free from danger and threats within and outside the state, and the country's capacity for safeguarding continued security”. Standing Committee of the NPC. (2015). *National Security Law of the PRC*, Article 2. <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY3ZTA2NzA4MmY%3D>. Unofficial translation from LexisNexis, translation available at: https://hk.lexiscn.com/law/content_cnen.php?eng=0&provider_id=1&isEnglish=Y&origin_id=2615853&keyword=5Zu95a625a6J5YWo5rOV&t_kw=5Zu95a625a6J5YWo5rOV&prid=a7709941-12f0-d808-3af1-c472251505d5&cid=828a22d3-ca7d-4505-8a84-e422379beb31 (accessed on 31 July 2023).

¹⁰¹² Standing Committee of the NPC (2019). *Administrative License Law of the PRC*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYyMTZiZjk2YjFhZTY%3D> (accessed on 7 November 2022); State Council (2020). *Decision of the State Council to Cancel or Delegate to Lower-Level Authorities a Group of Administrative Licensing Items*. https://www.gov.cn/zhengce/content/2020-09/21/content_5545345.htm (accessed on 7 November 2022); State Council. (2021). *Notice by the State Council Regarding Deepening the Reform of Separating Permits from Business Licenses and Further Increasing the Development Vitality of Market Participants*. https://www.gov.cn/zhengce/content/2021-06/03/content_5615031.htm (accessed on 7 November 2022); SAMR. (2021). *Notice by the State Administration for Market Regulation of Maximizing the Functional Role to Deepen the Reform of 'Separating Permits and Certificates from Business Licenses'*. https://www.samr.gov.cn/djzcj/zyfb/zjfb/art/2023/art_94cfa4a5b7474199b0256a58be53a6fd.html (accessed on 7 November 2022); MOFCOM. (2021). *Notice Issuing the Implementation Plan for Deepening the Reform of 'Separation of Permits from Business Licenses' and Further Stimulating the*

Investment in certain sectors, and related business operations, are subject to obtaining business operation-related licenses prior to the registration for formation, regardless of whether it is a foreign investment or a Chinese domestic investment.

In general, most licenses that Chinese companies require can be obtained post-registration. However, among the more than 400 activities for which companies require a license from the Chinese government (assuming they occur outside of the more liberal free zones), 35 types of activities require pre-registration licenses¹⁰¹³.

Examples of business activities that still require pre-registration licenses include establishment of a securities company (approval by the CSRC), a financial holding company (approval by the PBOC), and a foreign bank representative office in China (approval by the CBIRC)¹⁰¹⁴.

These industry regulators have broad leeway to regulate industries within their domains, creating, granting, and administering various industry licenses and license-type approvals. This creates significant administrative discretion that officials can use to pursue China's overall industrial policy goals.

8.3.7. STEP 1E – STATE-OWNED ASSETS INVESTMENT REVIEW

Investment activities in China might involve state-owned assets in enterprises. In such circumstances, the transaction¹⁰¹⁵ might be subject to review by SASAC or its local counterparts, the state-owned or controlled enterprise that directly or indirectly invests in the Chinese investor or central or local governments. The objective of this review is to prevent losses of state-owned assets¹⁰¹⁶.

In general, the Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises¹⁰¹⁷ explicitly note that “[f]or transfer of rights and interests in an

-
- 1013 Development Vitality of Market Participants.
<http://bgt.mofcom.gov.cn/article/gztz/202107/20210703175900.shtml> (accessed on 7 November 2022).
 SAMR (2021). *Notice of State Administration for Market Regulation on Adjusting the Catalogue of Pre-Registration Approval Items of Enterprises*.
https://www.beijing.gov.cn/zhengce/zhengcefaui/qtwj/202204/t20220415_2677961.html (accessed on 7 November 2022); State Council. (2021). *Notice by the State Council Regarding Deepening the Reform of Separating Permits from Business Licenses and Further Increasing the Development Vitality of Market Participants*.
https://www.gov.cn/zhengce/content/2021-06/03/content_5615031.htm (accessed on 30 August 2023).
- 1014 SAMR (2021). *Notice of State Administration for Market Regulation on Adjusting the Catalogue of Pre-Registration Approval Items of Enterprises*.
https://www.beijing.gov.cn/zhengce/zhengcefaui/qtwj/202204/t20220415_2677961.html (accessed on 7 November 2022).
- 1015 Such transactions include transfer of rights and interests in enterprises, capital increase in enterprises and transfer of assets of enterprises. See SASAC and MOF. (2016). *Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises*, Article 3.
http://www.gov.cn/gongbao/content/2016/content_5115848.htm (accessed on 11 November 2022).
- 1016 SASAC and MOF (2016). *Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises*, Articles 1, 6.
http://www.gov.cn/gongbao/content/2016/content_5115848.htm (accessed on 11 November 2022)
- 1017 SASAC and MOF (2016). *Measures for the Supervision and Administration of the Transactions of State-Owned Assets of Enterprises*, available at: http://www.gov.cn/gongbao/content/2016/content_5115848.htm (accessed on 11 November 2022)

enterprise, no qualifications or conditions shall in principle be set on the transferees”¹⁰¹⁸. However, this free transfer requirement of SOE assets to any kind of buyer does not apply if the buyer is a foreign investor. In such cases, the transaction must meet relevant requirements including those stipulated in the FI Negative List and conform to provisions related to foreign investment security review (see Section 8.2.3.1.1)

8.3.8. STEP 2 –REGISTRATION FOR FORMATION¹⁰¹⁹

Before a ‘market entity’ (including individuals, corporations and unincorporated organizations) can carry out for-profit activities in China, it shall first register with the SAMR or its local counterparts. In accordance with the FIL and its implementation regulations, SAMR and its local counterparts are responsible for the registration of foreign-invested enterprises. Information submitted to the SAMR’s enterprise registration system will be shared with MOFCOM and other authorities¹⁰²⁰.

8.3.9. STEP 3A – PROJECT APPROVAL¹⁰²¹

¹⁰¹⁸ Ibid, Article 14.

¹⁰¹⁹ State Council (2022). *Regulation of the People's Republic of China on the Administration of the Registration of Market Entities*. https://www.gov.cn/zhengce/content/2021-08/24/content_5632964.htm (accesses 7 November 2022); SAMR. (2022). *Administrative Measures for the Authorization to Administer the Registration of Foreign-Invested Enterprises*. https://www.gov.cn/zhengce/2022-03/02/content_5723513.htm (accessed on 7 November 2022); NPC. (2020). *Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 7 November 2022); State Council. (2020). *Regulations for Implementing the Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzRjN2EzZDAxNzc2YzUyODAxNDE2MTI%3D> (accessed on 7 November 2022).

¹⁰²⁰ NPC. (2020). *Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 7 November 2022); State Council. (2020). *Regulations for Implementing the Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzRjN2EzZDAxNzc2YzUyODAxNDE2MTI%3D> (accessed on 7 November 2022).

¹⁰²¹ NDRC. (2021). *Several Opinions of NDRC on Further Promoting the Reform of the Approval System for Investment Projects*. https://www.gov.cn/zhengce/zhengceku/2021-12/22/content_5663959.htm (accessed on 7 November 2022); NPC. (2020). *Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 7 November 2022); State Council. (2020). *Regulations for Implementing the Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzRjN2EzZDAxNzc2YzUyODAxNDE2MTI%3D> (accessed on 7 November 2022); NDRC and MOFCOM. (2022). *MA Negative List*. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 7 November 2022); NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Foreign Investment Access (2021)*. https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Access of Foreign Investment in Pilot Free Trade Zones*. https://www.gov.cn/zhengce/2022-11/28/content_5713318.htm (accessed on 7 November 2022); MOFCOM. (2021). *Hainan FTP Special Administrative Measures (Negative List) for Cross-Border Service Trade*. https://www.gov.cn/gongbao/content/2021/content_5641344.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2020). *Hainan FTP Special Administrative Measures (Negative List) for Access of Foreign Investment*. <http://big5.www.gov.cn/gate/big5/www.gov.cn/zhengce/zhengceku/2021-01/01/5576049/files/9094cbe2f89b41df8a2ec1cdf36f5f93.pdf> <http://en.pkulaw.cn/display.aspx?id=63ad3be152cb63adbfdb&lib=law&SearchKeyword=&SearchCKeyword=%B8%BA%C3%E6%C7%E4> (accessed on 7 November 2022).

Industry policy catalogues and negative lists, which have been given binding effect by certain laws and regulations, including the FIL and its implementation regulations which came into force in 2020, play an important role in converting high-level industrial policy directions into detailed prescriptions for the treatment (restrictions, approval and conditions) of different types of investments. The main among these catalogues are the MA Negative List, the FI Negative List as well as the Negative List for Foreign Investment in Free Trade Zones¹⁰²² (see Section 8.3.9.1).

8.3.9.1. PROJECT APPROVAL CATALOGUE AND MARKET ACCESS NEGATIVE LIST

Chinese state planners, led by NDRC, have long maintained control over investment in the country, prioritizing investments by SOEs or otherwise furthering state policy priorities. Over time, these efforts were focused on industries where state interests were more significant, and to create more space for the market to operate where significant state interests were not, or less, involved. This resulted in reforms to NDRC-led project approvals in 2004, in 2015 and in the years thereafter to enhance the focus and efficiency of state leadership over the economy.

In 2004, China reformed its investment approval regime by listing in the Project Approval Catalogue the industries in which investment (domestic and foreign) are subject to project approval by NDRC or its local counterparts. Fixed-asset investment outside the Project Approval Catalogue from then on would only require a filing with NDRC or its local counterparts, rather than ex ante project approval.

In October 2015, the State Council issued the Opinions of State Council on the Implementation of the MA Negative List, which aimed to consolidate industries listed in the Restructuring Catalogue¹⁰²³ and the Project Approval Catalogue into one comprehensive MA Negative List. Items 1-10 of the Project Approval Catalogue were directly quoted in the MA Negative List. When the Government revises the Restructuring Catalogue and the Project Approval Catalogue, the relevant items quoted in the MA Negative List will be updated accordingly¹⁰²⁴. Only Items

on 7 November 2022); NDRC and MOFCOM. (2022). *Catalogue of Industries Encouraged for Foreign Investment*. https://www.gov.cn/zhengce/2022-11/29/content_5730383.htm (accessed on 30 August 2023); NDRC. (2020). *Notice by NDRC of Further Deepening Reform and Effectively Completing the Work Concerning Foreign-Funded Projects in Response to the Epidemic Situation*. https://www.gov.cn/zhengce/zhengceku/2020-03/11/content_5490062.htm<http://en.pkulaw.cn/display.aspx?id=5d6ebaea7e75fff6bdfb&lib=law&SearchKeyword=&SearchCKeyword=%D7%F6%BA%C3%CD%E2%D7%CA%CF%EEL%D3%E4%A4%D7%F7%B5%C4> (accessed on 7 November 2022).

¹⁰²² NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Access of Foreign Investment in Pilot Free Trade Zones*. https://www.gov.cn/zhengce/2022-11/28/content_5713318.htm (accessed on 7 November 2022).

¹⁰²³ The Restructuring Catalogue was revised in December 2021, but the revisions only affected the Eliminated Category. See NDRC. (2019). *Catalogue for Guiding Industrial Restructuring (2019 Version)*. <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 8 November 2022); see also NDRC. (2021). *Decision of NDRC to Revise the 2019 Catalogue for Guiding Industrial Restructuring*. https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202201/t20220110_1311640.html?code=&state=123, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202201/P020220110571444649051.pdf> (accessed on 8 November 2022).

¹⁰²⁴ The State Council. (2015) *Opinions of State Council on the Implementation of the Market Access Negative List*. Article 14 and 15. https://www.gov.cn/zhengce/content/2015-10/19/content_10247.htm. (accessed on 6 September 2023).

11 and 12 of the Project Approval Catalogue, which relate to foreign investment and outbound investment, were not quoted in the MA Negative List and are only contained in the Project Approval Catalogue¹⁰²⁵.

The MA Negative List was first issued as a pilot program in 2016 and then officially adopted in 2018. It was amended in 2019, 2020 and 2022. The list ostensibly signals China's intention – one that has yet to be realized – to formally move toward implementing a uniform market access negative lists' system nationwide that provides de jure equal access to foreign and domestic investors and their investments, subject to any additional restrictions or prohibitions on foreign investment contained in FI Negative List.

Part I of the MA Negative List sets out industries where investment, domestic or foreign, is prohibited. Part II of the MA Negative List lists industries in which investment requires approvals from industry regulators or NDRC. By incorporating almost all relevant parts of the Project Approval Catalogue (with the exception of Items 11 and 12), the MA Negative List is supposed to serve as a comprehensive reference point for investors and officials to determine which investment projects require the approvals of industry regulators or NDRC before they may proceed. As discussed in Section 8.3.9 on the investment approval process, however, many other licensing or approval requirements may still apply. The MA Negative List also enables local authorities to develop detailed provisions that apply in local project approval processes¹⁰²⁶.

The excerpts below illustrate entries in the MA Negative List that require project approvals for investments, for example, in energy and machinery manufacturing.

101. Energy (under the 2022 MA Negative List) (excerpts) ¹⁰²⁷	
<i>Hydropower stations</i>	<i>“[P]rojects with a per-station installed capacity of 500 MW or above built on trans-boundary (cross-border) rivers or on rivers crossing provinces (autonomous regions or municipalities directly under the Central Government) are subject to the approval of the competent investment authority under the State Council, among which, projects with a per-station installed capacity of 3 GW or above or involving 10 000 residents or above to be displaced are subject to the approval of the State Council. Other projects are subject to the approval of local governments.”</i>

¹⁰²⁵ NDRC and MOFCOM (2022). MA Negative List, p. 2 and p. 47. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 11 August 2023).

¹⁰²⁶ NDRC and MOFCOM. (2022). MA Negative List. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 7 November 2022).

¹⁰²⁷ *Ibid.* The excerpts below are unofficial translations from LexisNexis, available at: https://hk.lexiscn.com/law/content_cn_en.php?eng=0&provider_id=1&isEnglish=Y&origin_id=4211311&keyword=5biC5Zy65YeG5YW16LSf6Z2i5riF5Y2V&t_kw=5biC5Zy65YeG5YW16LSf6Z2i5riF5Y2V&p_rid=20b743d8-5810-4b53-bf09-4742a2bc92ce&crid=57592e37-45c7-47d0-acb6-36e25f02c90f (accessed on 7 September 2023).

<i>Pumped-storage hydropower stations</i>	<i>“[Projects in this category shall be] subject to the approval of provincial governments following the relevant planning of the State.”</i>
<i>Fossil-fuel power stations (including self-powered station)</i>	<i>“[Projects in this category shall be] subject to the approval of provincial governments, among which, coal-fired or gas-fired thermal power projects are subject to approval within total quantity control-based development planning formulated by the State.”</i>
<i>Nuclear power stations</i>	<i>“[Projects in this category shall be] subject to the approval of the State Council.”</i>
<i>Power grids</i>	<i>“± 500 KV or above DC power projects for power transmission across borders or provinces (autonomous regions or municipalities directly under the Central Government), and 500 KV, 750 KV or 1 000 KV AC projects for power transmission across borders or provinces (autonomous regions or municipalities directly under the Central Government) are subject to the approval of the competent investment authority under the State Council, among which, ± 800 KV or above DC projects and 1 000 KV AC projects are to be filed with the State Council for records; ± 500 KV or above DC power projects for power transmission not across borders [and] not across provinces (autonomous regions or municipalities directly under the Central Government), and 500 KV, 750 KV, or 1 000 KV AC [projects] for power transmission not across borders [and] not across provinces (autonomous regions or municipalities directly under the Central Government) are subject to the approval of provincial governments following the relevant planning formulated by the State, while other projects are subject to the approval of local governments following the relevant planning formulated by the State.”</i>
<i>Coal mines</i>	<i>“[N]ew coal development projects with an annual production capacity of 1.2 million tons or above in mining areas planned by the State are subject to the approval of the industry regulatory authority under the State Council, among which, new projects with a[n annual] production capacity of 5 million tons or above are subject to the approval of the competent investment authority under the State Council and are to be filed with the State Council for records; other coal development projects within mining areas planned by the State and general coal development projects are subject to the approval of provincial governments. Projects that are prohibited from development or listed as projects to be eliminated by the State must not be approved.”</i>

Coal-to-fuel	“[C]oal-to-natural gas projects with an annual output of over 2 billion cubic meters and coal-to-liquid projects with an annual output of over 1 million tons are subject to the approval of the competent investment authority under the State Council.”
Imported liquefied natural gas receiving, storage or transportation facilities	“[N]ew development projects (including expansion projects in other regions) are subject to the approval of the industry regulatory authority under the State Council, among which, newly-built projects with a receiving, storage or transportation capacity of 3 million tons or above are subject to approval of the competent investment authority under the State Council and are to be filed with the State Council for records. Other projects are subject to the approval of provincial governments.”
Oil refining	“[P]rojects to build new refineries and projects for expansion of [primary processing] refineries are subject to the approval of provincial governments following the relevant planning approved by the State. Projects to build new refineries and projects for expansion of [primary processing] refineries not included in the relevant planning approved by the State are prohibited from development.”
105. Machinery Manufacturing (revised under the 2022 MA Negative List)	
Automobile	“[W]ith the approval of the State Council, projects of newly-established Chinese-foreign car manufacturing joint ventures, projects of newly-established pure electric passenger vehicle manufacturers (including projects of existing automobile manufacturers switching to the production of pure electric passenger vehicles) and other automobile investment projects subject to the approval of provincial governments as specified in the Catalog of Investment Projects Subject to Government Approval (2016 Version) are no longer subject to administration based on approval but instead administration based on record-filing.” ¹⁰²⁸
106. Light Industry	
Tobacco	“[C]igarette projects and projects of cellulose diacetate fibers and tows for use in cigarettes are subject to the approval of the industry regulatory authority under the State Council.”

¹⁰²⁸ NDRC. (2019). *Regulations on Administration of Investment in Automobile Industry*. http://www.gov.cn/gongbao/content/2019/content_5377111.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2022). *MA Negative List*. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 7 November 2022).

If enterprises(s) invest in fixed assets, a project approval or project filing with NDRC or its local counterparts will be required¹⁰²⁹. There is no explicit definition of ‘fixed-asset investment’, and in general if the investment is for purposes of construction or production of something tangible (such as infrastructure, manufacturing facilities, real estate development or renovation, mining, energy and raw materials), it will be a fixed-asset investment.

In addition to investments in the categories listed above, certain other types of Chinese outbound investments, and foreign investments into China may also be subject to project approval¹⁰³⁰.

8.3.9.2. PROJECT APPROVAL OF FOREIGN INVESTMENT

Foreign investment flows to China must comply with the requirements under the FIL and its implementation regulation as well as with restrictions under the relevant foreign investment negative lists in China (see Section 8.2.3). As stated in Article 4 of the FIL, China applies the administrative system of pre-establishment national treatment plus negative lists to foreign investment¹⁰³¹.

In addition, certain investments that would not be subject to project approval if conducted by domestic investors may nonetheless be subject to project approval if they are carried out by foreign investors. Item 11 of the 2016 Project Approval Catalogue determines which foreign investments are to receive additional project approval scrutiny. The additional project approval requirements give NDRC (or its local counterparts) additional levers to manage where and how foreign investment is used in the Chinese economy.

When a foreign investor seeks approval for a project, NDRC or local DRCs will first review whether the project falls within the scope of Item 11 of the 2016 Project Approval Catalogue. According to Item 11, a foreign investment project with a total investment of USD 300 million or more in the restricted sectors under the FI Negative List shall be subject to approval by NDRC. In addition, projects with a total investment of USD 2 billion or more shall also be subject to record-filing with the State Council. Foreign investment projects with a total investment of less than USD 300 million in the restricted sectors shall only be subject to approval by provincial DRCs¹⁰³².

¹⁰²⁹ State Council. (2017). *Regulations on the Administration of the Approval and Filing of Enterprise-Invested Projects*, Article 2. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0MTMwNjU0NjFiZTA%3D> (accessed on 7 November 2022); see also State Council. (2016). *Notice of State Council on Issuing the Catalogue of Investment Projects Subject to Government Approval*, Article 1. http://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm (accessed on 7 November 2022).

¹⁰³⁰ State Council. (2016). *Catalogue of Investment Projects Subject to Government Approval*, Articles 11, 12. http://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm (accessed on 7 November 2022).

¹⁰³¹ NPC (2020). *Foreign Investment Law*, Article 4. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 30 August 2023).

¹⁰³² State Council. (2016). *Catalogue of Investment Projects Subject to Government Approval*, Article 11. http://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm (accessed on 7 November 2022).

In 2020, NDRC issued the Notice on Further Deepening Reform and Effectively Completing the Work concerning Foreign-Funded Projects in Response to the Epidemic Situation¹⁰³³, emphasising the implementation of the FI Negative List mechanism under the FIL, and harmonising investment volume thresholds with those in Item 11 of the Project Approval Catalogue. This means that foreign investment projects falling under the restricted category of the FI Negative List are still subject to project approval in line with Item 11 of the Project Approval Catalogue.

8.3.10. STEP 3B – PROJECT FILING

Fixed-assets investment projects that are not subject to the project approval are still subject to project filing requirements with local DRCs¹⁰³⁴. Project filing is considered as a reduced burden on project investment, and it shall be completed via online platforms prior to the commencement of project construction¹⁰³⁵. The filed project information shall generally include the profile of the project company, project name, construction location, construction scale, construction details, total project investment and a statement regarding the project's conformity with relevant industrial policies¹⁰³⁶.

8.3.11. STEP 4 – LAND, ZONING, AND CONSTRUCTION¹⁰³⁷

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- ¹⁰³³ NDRC. (2020). *Notice by NDRC of Further Deepening Reform and Effectively Completing the Work Concerning Foreign-Funded Projects in Response to the Epidemic Situation*. https://www.gov.cn/zhengce/zhengceku/2020-03/11/content_5490062.htm (accessed on 7 November 2022); NPC. (2020). *Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYxZDUzMThhZjE0NWU%3D> (accessed on 7 November 2022); State Council. (2020). *Regulations for Implementing the Foreign Investment Law*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NzRjN2EzZDAxNzc2YzUyODAxNDE2MTI%3D> (accessed on 7 November 2022); NDRC and MOFCOM. (2022). *MA Negative List*. <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220325360523452630.pdf> (accessed on 7 November 2022); NDRC and MOFCOM. (2021). *FI Negative List (2021)*. https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2021). *Special Administrative Measures (Negative List) for Access of Foreign Investment in Pilot Free Trade Zones*. https://www.gov.cn/zhengce/2022-11/28/content_5713318.htm (accessed on 7 November 2022); MOFCOM (2021). *Hainan FTP Special Administrative Measures (Negative List) for Cross-Border Service Trade*. https://www.gov.cn/gongbao/content/2021/content_5641344.htm (accessed on 7 November 2022); NDRC and MOFCOM. (2020). *Hainan FTP Special Administrative Measures (Negative List) for Access of Foreign Investment*. <http://big5.www.gov.cn/gate/big5/www.gov.cn/zhengce/zhengceku/2021-01/01/5576049/files/9094cbe2f89b41df8a2ec1cdf36f5f93.pdf> (accessed on 7 November 2022); NDRC and MOFCOM. (2022). *Catalogue of Industries Encouraged for Foreign Investment*. https://www.gov.cn/zhengce/2022-11/29/content_5730383.htm (accessed on 7 November 2022).
- ¹⁰³⁴ State Council. (2017). *Regulations on the Administration of the Approval and Filing of Enterprise-Invested Projects*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0MTMwNjU0NjFiZTA%3D> (accessed on 7 November 2022); NDRC. (2014). *Administrative Measures for the Confirmation and Recordation of Foreign-Funded Projects*. <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/201405/W020190905494928065382.pdf> (accessed on 7 November 2022).
- ¹⁰³⁵ NDRC. (2023). *Measures for the Administration of Approval and Filing of Enterprise-Invested Projects*, Article 39. https://www.gov.cn/zhengce/2021-12/01/content_5752774.htm (accessed on 25 August 2023).
- ¹⁰³⁶ *Ibid.* Article 40.
- ¹⁰³⁷ See, e.g., Standing Committee of the NPC. (2018). *Law of the PRC on Environmental Impact Assessment*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYyMGU4OWVmZjE3MGE>

After the project company obtains the project approval or project filing, usually no approval of the land authority is required for the company to acquire land use rights for construction of manufacturing facilities. But to construct manufacturing facilities is a complex process and the company needs to deal with various authorities in charge of land, zoning, construction, firefighting, environment, etc. on matters such as acquisition of land use rights through a public bidding process, design of the facilities, construction of the facilities, review of environment impact, firefighting, sanitation, etc. and various licenses/approvals could be required in such process. Although many local governments have taken some actions to try to simplify the process, it is still complex. The Lingang Free Trade Zone in Shanghai, where Tesla set up its factory, should be a good example in such regard¹⁰³⁸, but it still takes three phases and nearly 50 steps to obtain the land use rights, construct the facilities, and finally pass inspections of all relevant authorities in order to use the facilities in Lingang.

8.3.12. STEP 5A – POST-REGISTRATION LICENSING

Nearly 500 post-registration license or filing requirements remain. They cover matters such as manufacture and distribution of food and drug, telecommunication, hazardous materials, distribution of processed oil, operations of medical clinics, securities companies, and insurance companies¹⁰³⁹. If a post-registration license or filing is required for certain activities, the company shall not conduct such activities without the license or filing.

8.3.13. STEP 5B – POST-REGISTRATION FILING

The general difference between a license and a filing is that a filing is easier to be achieved, and usually required for matters subject to less scrutiny. To take the distribution of medical devices as an example, a license is required for the distribution of Class 3 medical devices

¹⁰³⁸ <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmIzYzAxNmY0MGYzN2JhMzBkYTc%3D> (accessed on 7 November 2022); State Council. (2017). *Regulation on the Administration of Construction Project Environmental Protection*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYyMTYxMjlkZDFhOTI%3D> (accessed on 7 November 2022); Standing Committee of the NPC. (2019). *Urban and Rural Planning Law of the PRC*. <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjEzNWY0NjAxNmYyMTYxMjlkZDFhOTI%3D> (accessed on 7 November 2022); Ministry of Natural Resources. (2019). *Circular of the Ministry of Natural Resources on Advancing the Reform of 'Combining Multiple Examination into one and Consolidating Multiple Certificates into One' for Land Use Planning Based on the 'Initiative for Synergy of Different Plans'*. http://www.gov.cn/xinwen/2019-09/20/content_5431591.htm (accessed on 7 November 2022); General Office of the State Council. (2019). *Implementation Opinions of the General Office of the State Council on Full-Scale Launch of Reform of the System of Review and Approval of Engineering Construction Projects*. https://www.gov.cn/zhengce/content/2019-03/26/content_5376941.htm (accessed on 7 November 2022); General Office of the State Council. (2018). *Notice of the General Office of the State Council on Launching the Pilot Program of the Reform of the Approval System for Construction Projects*. https://www.gov.cn/zhengce/content/2018-05/18/content_5291843.htm (accessed on 7 November 2022).

¹⁰³⁹ The following was mentioned in a press briefing of the Shanghai government, “[Lingang Area of Shanghai] take the lead in integrating the handling of the permits related to environmental assessment, water and soil conservation, and pollutant discharge [...]. From the Tesla case to the SMIC case, [the authorities in handling administrative formalities] in the engineering construction field in Lingang Area continue to break the record in showing 'Lingang Speed'”. Eastday.com. (2022). *Shanghai government's FAQs*. <https://j.021east.com/p/1641866579049498/4548> (accessed on 11 November 2022).

¹⁰³⁹ State Council. (2021). *Notice of State Council Regarding Deepening the Reform of Separating Permits from Business Licenses and Further Increasing the Development Vitality of Market Participants*. http://www.gov.cn/zhengce/content/2021-06/03/content_5615031.htm (accessed on 7 November 2022).

(medical devices with relatively high risk), a filing is required for the distribution of Class 2 medical devices (medical devices with medium risk), but neither license nor filing is required for the distribution of Class 1 medical devices (medical devices with relatively low risk)¹⁰⁴⁰.

8.3.14. STEP 6 – CYBERSECURITY REVIEW

The Cybersecurity Review Office is responsible for conducting the cybersecurity review. Members of the cybersecurity review working mechanism, as led by the Central Cyberspace Affairs Commission, include CAC together with NDRC, MIIT, MPS, MSS, MOF, MOFCOM, PBOC, SAMR, NRTA, CSRC, NASSP and OSCCA¹⁰⁴¹.

When a critical information infrastructure ('CII') operator purchases cyber products or services, and when an Internet platform operator conducts data handling activities, if such products, services or activities affect or may affect national security, the involved parties must file a cybersecurity review declaration with the Cybersecurity Review Office¹⁰⁴². The cybersecurity review will consider factors including, among others, the risk of CII being controlled by a person without authorization or otherwise in violation of the law, disrupted or damaged after the products or services are used, and the damages posed by the interruption in supply of products or services on the business continuity of CII¹⁰⁴³.

8.4. CHAPTER SUMMARY

Over the past four decades, China has liberalised market access for both domestic and foreign investment. However, the State still maintains significant control and influence over private investment through industrial policies, laws, regulations and approval processes for investment.

Chinese authorities use investment regulation as an important tool for supporting industrial policy goals, such as maintaining state control over key sectors (including by enabling and protecting SOEs through incentives as well as restrictions on private investment), bolstering domestic industry (by fostering indigenous innovation, promoting domestic champion companies and conducting industrial restructuring when the status quo is out of date) and attracting, but keeping in check, foreign investment (to fill gaps in the domestic economy and cultivate domestic industry capabilities).

Industrial policy goals are expressed and implemented during the investment screening process through (i) laws, regulations and policy documents that describe broad policy directions, as well as often in great detail and specificity, the role that different economic actors and resources should play; and (ii) the structure of and substantive criteria applied through the approval processes used to manage private investment. The detail and specificity of written policy

¹⁰⁴⁰ State Administration for Market Regulation. (2022). *Measures for Supervision and Administration of Business Operation of Medical Devices*, Article 4. http://www.gov.cn/zhengce/zhengceku/2022-03/23/content_5680762.htm (accessed on 7 November 2022).

¹⁰⁴¹ Cyberspace Administration of China, *et al.* (2021). *Measures on Cybersecurity Review*, Article 4. http://www.gov.cn/zhengce/zhengceku/2022-01/04/content_5666430.htm (accessed on 7 November 2022).

¹⁰⁴² *Ibid*, Article 2, 5 and 7.

¹⁰⁴³ *Ibid*, Article 10.

prescriptions – as set out in detail in Section 8.3.1 on the investment approval process above – indicate that the Government continues to micromanage the country’s economy.

The formulation of legal, regulatory, and policy measures, and the day-to-day management of approval processes relating to foreign investment are handled by a range of government agencies, including NDRC, SAMR, MOFCOM and other industry regulators charged with granting various licences (together with the local counterparts of these government agencies).

Although the Government is implementing reforms affecting both domestic investment and foreign investment – including an effort to unify the country’s legal regime under the single, comprehensive FIL that codifies recent reform trends – these reforms do not reduce the role of the State in managing private investment. On the contrary, they appear to be used as a means to strengthen the hand of the state by making its influence over the economy more targeted and efficient.

PART II

DISTORTIONS IN THE PRODUCTION FACTORS

9. LAND

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9.1. INTRODUCTION

According to the Constitution, there is no private land ownership in China. The land is divided into urban land belonging to the State and rural or suburban land belonging to the collectives¹⁰⁴⁴. Whereas there is no private land property, individuals and organisations can hold land-use rights ('LUR') which allow their holders to dispose of the land to some extent. LUR of urban land provide for more freedoms with regard to the purpose of use and are more easily transferable, while the rural LUR come with a number of limitations including a prohibition of non-agricultural use without pre-approval. The LUR can be traded under certain conditions.

Even though a number of laws appear to set clear rules with regard to land used for commercial purposes, those laws are in practice often not fully implemented. For example, there are legal provisions on the minimum price for land use and auctions, which could, in theory, ensure market-based prices and fair access to land in China. However, as discussed below, the application and implementation of these laws is far from being coherent: indeed, there is evidence that buyers (in particular SOEs) received their land for free or participated in tenders with only one participant, obtaining the land use rights at a very low price.

9.2. LEGAL FRAMEWORK

The process of nationalisation and collectivisation of land in China began in 1956, when the government institutionalized the collective ownership of rural land. The urban land was owned

¹⁰⁴⁴ Article 10 of the Constitution reads: "Land in the cities is owned by the State. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the State as prescribed by law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives. The State may, in the public interest and in accordance with law, expropriate or requisition land for its use and make compensation for the land expropriated or requisitioned. No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The right to the use of land may be transferred according to law. All organizations and individuals using land must ensure its rational use."

by the State and reallocated to work units, ‘*danwei*’. As from the late 60s, ‘*joint state-private ownership*’ was introduced in order to nationalize also non-land properties such as housing.

Under the Land Policy Reform of 1981, a new policy called Household Responsibility System was adopted in rural areas as of 1982. According to this system, rural collectives maintained the ownership but subcontracted their land out to individual households for a certain period of time in exchange for a percentage of their output¹⁰⁴⁵. Although collective ownership was maintained, the farmers obtained much broader rights to rural land.

The Land Administration Law¹⁰⁴⁶ of 1986 laid down rules for land ownership by the State and the collective as well as rules on land expropriation. In 1988, the Land Administration Law was amended, and provisions were introduced allowing for the transfer of the right to use of both types of land¹⁰⁴⁷.

Legal rules specifying the modalities of the LUR transfer were for the first time set out in the Provisional Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns of 1990. The document specified the rules with respect to duration and conditions of LUR, the procedural aspects of the LUR transfer, as well as requisition by the State¹⁰⁴⁸.

One of the main developments with regard to the rural land was the adoption of the Law on Land Contract in Rural Areas¹⁰⁴⁹, which entered into force in 2003 and was amended in 2018. This law for the first time specified the rights of the farmers in Article 17, among which¹⁰⁵⁰:

(1) in accordance with law, they have the right to use and enjoy benefits from the land covered by the contract as well as the right of autonomous organisation of production and exploitation and of production disposition.

(2) in accordance with law, they have the right to exchange or transfer the right to exploit the land covered by the contract;

(3) in accordance with law, they have the right to circulate the land operation right;

(4) in accordance with law, they have the right to obtain compensation, in cases of legal requisition, expropriation or occupation of the land covered by the contract.

¹⁰⁴⁵ Wong, V. (May 2014), *Land Policy Reform in China: Dealing with Forced Expropriation and the Dual Land Tenure System* Centre for Comparative and Public Law Faculty of Law, The University of Hong Kong, Occasional Paper No. 25, May, p. 14; available at <https://ccpl.law.hku.hk/content/uploads/2018/03/Pub/OP/OP%20No%2025%20Vince%20Wong.pdf> (accessed on 17 November 2022).

¹⁰⁴⁶ Land Administration Law of the PRC of 25 June 1986, as amended, available at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC003560> (accessed on 20 October 2022).

¹⁰⁴⁷ *Ibid.*, Article 2: ‘No units of individuals may encroach on land or illegally transfer it through buying, selling or other means. However, the right to use of land may be transferred in accordance with law’.

¹⁰⁴⁸ Provisional Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns, (original text in Chinese), promulgated on 19 May 1990 and amended on 29 November 2020. See in particular Chapters II – VII of the Regulations, available at: http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-01/07/content_2070250.htm (accessed on 17 November 2022).

¹⁰⁴⁹ Law of the PRC on Land Contract in Rural Areas (2002, last amended 2018).

¹⁰⁵⁰ *Ibid.*, Article 17.

Other main changes included the requirement to produce a written contract (Article 22), the prohibition of land readjustment¹⁰⁵¹ during the 30-year term of contract (Article 28) and an introduction of provisions on dispute resolution (Articles 55-65). The system still prohibited non-agricultural use of land (Articles 11, 18 and 63).

In 2007, the Property Law¹⁰⁵² introduced an explicit distinction between ownership rights and use rights (including *usufructuary* rights, which in turn included the right of possession, the right of use and the right to seek profit from property owned by another party, Article 117). Holders of urban LUR enjoyed preferential treatment compared to rural LUR holders, as they were able to use land for “*constructing buildings, fixtures and their auxiliary facilities*” and to profit from them (Article 135). Urban LUR holders were also entitled to “*transfer, exchange, use as equity contributions, endow or mortgage*” their rights (Article 143). The Property Law was repealed in 2021¹⁰⁵³ and the provisions therein were incorporated into Articles 205-462 of the Civil Code which entered into force in January 2021¹⁰⁵⁴. The Civil Code did not introduce any substantial changes with respect to LUR (see in particular Articles 246, 260-261 and 330-361 of the Civil Code).

In addition to the Civil Code, the LUR in China are governed by a large number of further legislative acts, in particular the above-mentioned Land Administration Law and its implementing regulations¹⁰⁵⁵, as well as the Law on Urban Real Estate Administration¹⁰⁵⁶, the above-mentioned Provisional Regulations on the Assignment and Transfer of the Right to Use

¹⁰⁵¹ Ping Li, J.D. (2003), ‘Rural land tenure reforms in China: issues, regulations and prospects for additional reform’, Land Reform 2003/3, special edition., Land readjustment can refer to comprehensive or ‘large’ readjustments where all farmland in the village is given back to the collective and reallocated again, so farmers are reallocated a different land. ‘Small’ or ‘partial readjustments’ mean adding or taking land from a household when the size of the household changed. available at: <http://www.landesa.org/wp-content/uploads/2011/01/LP-RuralLandTenureReforms.pdf> (accessed on 17 November 2022).

¹⁰⁵² Property Law of the PRC of 16 March 2007, available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471118.htm (accessed on 17 November 2022).

¹⁰⁵³ See Article 1260 of the Civil Code.

¹⁰⁵⁴ Available at: http://english.www.gov.cn/archive/lawsregulations/202012/31/content_WS5fedad98c6d0f72576943005.htm (accessed on 17 November 2022).

¹⁰⁵⁵ Regulation on the Implementation of the Land Administration Law of the PRC of 27 December 1998, as amended, available at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC170451> (accessed on 17 November 2022).

¹⁰⁵⁶ Law of the PRC on Urban Real Estate Administration of 5 July 1994, as amended, available at: <http://www.lawinfochina.com/Display.aspx?LookType=3&Lib=law&Cgid=96792&Id=6353&SearchKey=word=&paycode> (accessed on 17 November 2022). Further rules on the administration and use of land can be found, among others, in the Regulation on the Administration of the Overall Planning of Land Usage of 2 May 2017, available at: <http://extwprlegs1.fao.org/docs/pdf/chn166185.pdf> (accessed on 17 November 2022), Administrative Measures for the Preliminary Examination of Land Use for Construction Projects of 29 November 2008, as amended (Note: these measures were first adopted on 28 June 2001), available at: <http://www.lawinfochina.com/display.aspx?id=7306&lib=law&EncodingName=big5> (accessed on 17 November 2022) and Regulation on the Administration of Annual Planning of Land Usage of 19 December 2006, (Note: this regulation was first adopted on 24 February 1999), as amended, available at: <http://extwprlegs1.fao.org/docs/texts/chn70321.doc> (accessed on 17 November 2022).

State-owned Land in Cities and Towns and the Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation¹⁰⁵⁷.

In addition, LUR are subject to a wider set of planning and policies, in line with Article 4 of the Land Administration Law which stipulates that “[t]he State formulates overall plans for land utilization in which to define the purposes of use of land [...]”. The most significant among those policy documents being the 13th FYP on Land Resources¹⁰⁵⁸, the 14th FYP and the Outline of National Overall Land and Spatial Planning (2016 – 2030)¹⁰⁵⁹ (see Section 9.3.) which set out a number of targets concerning the agricultural land and construction land in specific localities to be in place by 2030. Furthermore, the government controls the supply of land by setting a quota of the land area for which LUR can be sold for industrial or residential purposes, by province and by year¹⁰⁶⁰.

9.3. PLANNING POLICY DOCUMENTS ON LAND RESOURCES

The 13th FYP on Land Resources included a number of provisions strictly controlling the allocation and prices of land use.

According to Chapter 3, Section 6 of this FYP, entitled “*Deepening the reform of land management*”, China would introduce an ‘*experimental*’ allocation of industry land use, reduce the cost of land use and control land supply to certain sectors: “*foster the market allocation experiments for industry land use and effectively reduce the economic cost of land use; [...] strictly control the land supply to steel, coal and other sectors in overcapacity as well as to “zombie enterprises” [...]*”. Furthermore, the plan provided for improvements of the system of payable land use: “*further expand the scope of payable use of state-owned land, reduce transfers to non-public use and improve the management system applicable to transferred use of state-owned land.*”

Chapter 4, Section 13 provided for preferential land supply to a number of strategic industries: “*strengthen the coordination of land use with industry, further adjust the land use structure for industry land use, give priority to providing land for development purposes to emerging strategic industries and modern service business etc.*”

The Chinese authorities have not published a 14th FYP on land resources. However, the 14th FYP contains some provisions on land resources, such as the instruction to: “[a]dhere to

¹⁰⁵⁷ Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation; Order of the Ministry of Land and Resources (No.39) of 28 September 2007, available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=6435&CGid=#> (accessed on 17 November 2022).

¹⁰⁵⁸ 13th FYP on Land Resources (12 April 2016), available at: https://www.mnr.gov.cn/gk/ghjh/201811/t20181101_2324898.html (accessed on 17 November 2022).

¹⁰⁵⁹ Outline of National Overall Land and Spatial Planning 2016—2030 (1 January 2016), available at: <https://leap.unep.org/countries/cn/national-legislation/outline-national-overall-land-and-spatial-planning2016-2030> (accessed on 17 November 2022).

¹⁰⁶⁰ According to a Government’s statement in a Commission trade defence investigation: “*The government of the PRC also controls the supply of land, by restricting by quota the area of land for which land use rights can be sold for industrial or residential purposes, by province and by year.*” See Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the PRC and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the PRC, *OJ L 367*, 23.12.2014, p. 22–81, recital 191.

measures according to local conditions and multiple measures at the same time, consolidate the main responsibility of the urban government, and stabilize land prices, housing prices and expectations. Establish a linkage mechanism for housing and land, strengthen real estate financial regulation and control, give play to the role of housing tax regulation, support reasonable self-occupation demand, and curb investment speculative demand”¹⁰⁶¹.

Moreover, the government interference into land allocation clearly transpires from the Outline of National Overall Land and Spatial Planning (2016 – 2030): *“Ensure the necessary land for economic and social development. Give full play to the overall control role of overall land use planning and land use plans, and rationally arrange the scale, layout, structure and timing of construction land. Priority will be given to ensuring land for people's livelihood projects such as relocation for poverty alleviation and relocation, as well as for projects in strategic emerging industries and modern service industries, and rationally arrange land for key infrastructure projects”¹⁰⁶².*

9.4. ACQUISITION OF LAND-USE RIGHTS

Urban LUR can be ‘assigned’ or ‘allocated’¹⁰⁶³. In both cases, the decision on the transfer of LUR is taken by local government bodies. Assigning the LUR represents the default option for acquiring them. The assigned LUR are subject to payment of assignment fee¹⁰⁶⁴ and the following maximum term limitations¹⁰⁶⁵ apply:

- 70 years for residential purposes;
- 50 years for industrial purposes;
- 50 years for the purpose of education, science, culture, public health and physical education;
- 40 years for commercial, tourist and recreational purposes; and
- 50 years for comprehensive use or other purposes¹⁰⁶⁶.

By contrast, the allocation of LUR is limited to the following situations:

- (1) Land used for state organs or military purposes;
- (2) Land used for urban infrastructure or public utilities;
- (3) Land used for projects of energy, communications or water conservancy, etc. which are selectively supported by the state; and
- (4) Land used for other purposes as provided by laws or administrative rules and regulations¹⁰⁶⁷.

¹⁰⁶¹ See 14th FYP, Chapter 29, Section 4.

¹⁰⁶² See Outline of National Overall Land and Spatial Planning (2016 – 2030), Chapter VIII, Section 2.

¹⁰⁶³ See Chapter II of the Law on Urban Real Estate Administration, as amended.

¹⁰⁶⁴ *Ibid.*, Article 8.

¹⁰⁶⁵ Farmland use is subject to specific term limitation pursuant to Articles 330 - 332 of the Civil Code.

¹⁰⁶⁶ Article 12 of the Provisional Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns.

¹⁰⁶⁷ Article 24 of the Law on Urban Real Estate Administration, as amended.

The allocated LUR may require payment of compensation or a resettlement fee, but can also be granted for free, with the state authorities having the discretion over the payment¹⁰⁶⁸. The right to use allocated land has no time limit¹⁰⁶⁹.

The local government bodies may assign a land-use right by means of an agreement, an invitation to bid or an auction with the exact procedure being decided at the provincial, autonomous region or municipality level¹⁰⁷⁰. Article 347 of the Civil Code provides for a legal obligation to auction or use a bidding process to assign land used for commercial purposes: “*The bidding, auction, or other means of public bidding shall be adopted in assigning a lot of land used for business purposes, such as for industrial, commercial, tourism, recreational, and commercial residential purposes, or where there are two or more intended users competing for the right to use the same lot of land*”. The same provision stipulates that “[t]he creation of a right to use a lot of land for construction purposes by way of gratuitous grant is strictly restricted”.

However, in certain circumstances assignment of LUR can be done by means of a bilateral negotiation. Indeed, Article 13 of the Law on Urban Real Estate Administration repeats the default option to auction land but combines this principle with an exception: “[For] *land used for commercial, [...] purposes, where conditions permit, the means of auction or bidding shall be adopted; where conditions do not permit and it is impossible to adopt the means of auction or bidding, the means of agreement between the two parties may be adopted*”¹⁰⁷¹.

The land use rights can be transferred – as well as mortgaged, contributed into a company’s capital, exchanged etc. - by means of a written contract¹⁰⁷². When the term of LUR expires, the holder can apply for renewal, subject to governmental approval¹⁰⁷³, except for the categories of LUR renewed automatically in line with Article 359 of the Civil Code.

In principle, access to bidding for LUR destined for construction purposes should be open to all natural persons, legal persons and other organisations inside and outside of China¹⁰⁷⁴.

¹⁰⁶⁸ *Ibid.*, Article 23: ‘Allocation of the land-use right refers to acts that the people’s government at or above the county level, after the land user has paid compensation and expenses for resettlement, etc., approves in accordance with the law to allocate the land to the land user or gratuitously allocates the land-use right to the land user.’

¹⁰⁶⁹ *Ibid.*

¹⁰⁷⁰ *Ibid.*, Article 12.

¹⁰⁷¹ Article 13 of the Law on Urban Real Estate Administration, as amended.

¹⁰⁷² See Chapter XII of the Civil Code, in particular Articles 353 and 354.

¹⁰⁷³ Article 41 of the Provisional Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns.

¹⁰⁷⁴ Article 11 of the Provisions on the Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation: “*Unless it is otherwise prescribed by any law or regulation, all the natural persons, legal persons and other organizations inside and outside the territory of the PRC may apply for the participation in the assignment of state-owned construction land use right through bid invitation, auction or quotation*”. Article 3 of the Provisional Regulations on the Assignment and Transfer of the Right to Use State-owned Land in Cities and Towns: “*Any company, enterprise, other organization and individual within or outside the PRC may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations*”.

The reality is, however, different. First, it is common practice that only a number of bidders or participants (in case of auctions) are allowed to participate, instead of accepting all parties that registered¹⁰⁷⁵. Second, access to land can be encouraged or restricted in certain cases. For example, and as set out above in Section 9.3., in the steel sector, the access to industrial land is by law limited only to companies respecting the industrial policies set by the State (see also Section 14.1.1.2). Article 24 of the Development Policies for the Iron and Steel Industry sets out: *“For any project that fails to comply with the iron and steel industry development policies and has not been approved or where its approval breaches relevant provisions, the national land and resources department shall not handle the formalities for land-use rights”*¹⁰⁷⁶.

Similarly, Article 12 of Decision No. 40 (see Section 4.2.9) includes provisions on access to land based on the government investment policy: *“The ‘Guidance Catalogue for the Industrial Structure Adjustment’ is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.”* Article 18 of Decision No. 40 makes clear that industries that are ‘restricted’ will not have access to land use rights¹⁰⁷⁷.

Moreover, some official documents favour SOEs. A typical example represent the Opinions of the Ministry of Land and Resources on Further Control over Land Assets and Promotion of the Reform and Development of State-owned Enterprises¹⁰⁷⁸, which provide that the State may allocate land to pillar SOEs in key industries as state investment. In other words, SOEs even get a better right to land-use, as the Opinions encourage allocation instead of assignment only.

More recently, the Ministry of Land and Resources¹⁰⁷⁹ adopted the Opinions on Expanding the Scope of Paid Use of State-owned Land¹⁰⁸⁰. It did so with the aim of narrowing the scope of land allocation: *“The scope of allocated land shall be gradually narrowed in accordance with the requirements of the reform of the investment and financing system, state-owned enterprises and public institutions, agricultural reclamation and other relevant fields”*. Note, however, that

¹⁰⁷⁵ See the findings in Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037, recital 426.

¹⁰⁷⁶ Development Policies for the Iron and Steel Industry (original text in Chinese), Order No. 35 of the NDRC, promulgated in 2005, available at: http://www.gov.cn/flfg/2006-01/17/content_161597.htm (accessed on 6 December 2022).

¹⁰⁷⁷ *“The new investments project under the restricted category shall be prohibited. The investment administrative department shall not examine, approve, ratify or archive the projects under the restricted category. No financial institution shall grant loans for such projects, and no administrative department of land administration, urban planning, construction, environmental protection, quality inspection, fire prevention, customs, or industry and commerce, etc. shall handle the relevant procedures for such projects”*.

¹⁰⁷⁸ Several Opinions of the Ministry of Land and Resources on Further Control over Land Assets and Promotion of the Reform and Development of State-owned Enterprises (1999).

¹⁰⁷⁹ In 2018, the Ministry of Land Resources has been replaced by the Ministry of Natural Resources.

¹⁰⁸⁰ Opinions of the Ministry of Land and Resources, the National Development and Reform Commission, the Ministry of Finance and Other Departments on Expanding the Scope of Paid Use of State-owned Land, (2016).

the Opinions on Further Control over Land Assets and Promotion of the Reform and Development of State-owned Enterprises have not been repealed.

Last but not least, there are also provisions in place providing for favourable access to land for foreign investors, as long as they comply with the State planning policies: *“Provided economic and social development planning, overall land-use planning and overall urban planning are complied with, priority shall be given to guaranteeing the construction land use quotas needed by the foreign investment projects in national-level development zones, so that all such quotas that should be guaranteed are actually guaranteed”*¹⁰⁸¹.

9.5. LAND-USE RIGHTS PRICING

In principle, the system of bidding and auction should allow the market to judge the price of a particular land-use right, since bidding and auctioning¹⁰⁸² represents the default mechanism for the transfer of LUR, to be used whenever conditions permit¹⁰⁸³. Bilateral negotiations, on the other hand, are only reserved for the remaining situations when the conditions do not allow bidding or auctioning. Nevertheless, even when LUR are granted via bilateral negotiations, the fee may not be lower than the minimum price set by the state regulations¹⁰⁸⁴. In sum, according to generally applicable rules, the price of LUR should be set independently and correspond to their actual market value.

However, in reality, provision of land at lower than market prices remain a consistent policy of the Chinese authorities, particularly when it comes to selected industries of interest to the State. The practice of granting preferential access to land to selected sectors or individual companies is apparent from existing government policies, such as the fourth pillar of SSSR¹⁰⁸⁵, ‘*Lowering corporate costs*’ which includes also provisions on lowering the cost of land. As a practical consequence of this policy, some provinces, for example Guangdong, introduced preferential rules on granting land for specific industries: *“[a]s regards Guangdong's industries to be developed in priority as well as land-use-intensive manufacturing industries, the reduced price of land transfer can amount to 70% of the lowest standard price of land for industrial use, depending on where the piece of land is located”*¹⁰⁸⁶. The Shaanxi implementation of SSSR contains a similar clause: *“[a]s regards the land used by industry projects in the field of strategic emerging industries, advanced manufacturing industries and IT economy and complying with*

¹⁰⁸¹ See Article 3.10 of the Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment (2017), available at: http://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm (accessed on 6 December 2022).

¹⁰⁸² Cai H., Wang Z., & Zhang Q. (2017), To build above the limit? Implementation of land use regulations in urban China. *Journal of Urban Economics*, 98, 223–233., available at: <https://www.sciencedirect.com/science/article/pii/S0094119016000231> (accessed on 6 December 2022).

¹⁰⁸³ Article 13 of the Law on Urban Real Estate Administration.

¹⁰⁸⁴ *Ibid.*, Article 13, paragraph 3: ‘Fees for granting the land-use right by means of agreement between the two parties shall not be lower than the lowest price determined in accordance with the regulations of the State.’

¹⁰⁸⁵ Echoed also in Section I.2.1 of the 14th national FYP.

¹⁰⁸⁶ Notice of the Guangdong Province People's Government on issuing Several Policies and Measures in Guangdong Province to Reduce the Cost of Manufacturing Enterprises and Support the Development of the Real Economy 2017/90, available at: www.jieyang.gov.cn/attachment/0/19/19224/166997.pdf (accessed on 16 January 2023).

*the Shaanxi Province industry orientations, the minimum price benchmark for land used for industry purposes may be applied”*¹⁰⁸⁷.

To date, the authorities set the land-use right prices according to the Urban Land Evaluation System¹⁰⁸⁸, which instructs them, among other criteria, to consider also industrial policy when setting the price of industrial land¹⁰⁸⁹.

Also findings in the Commission’s past trade defence investigations (*‘TDI investigations’*)¹⁰⁹⁰ (see further Section 9.7) confirmed that the land prices tracked by the urban land price dynamic monitoring system¹⁰⁹¹ operated by the Ministry of Natural Resources are higher than the minimum benchmark prices set by the Urban Land Evaluation System. This is because the benchmark prices set by the urban land evaluation system are updated only every three years, while the dynamic monitoring system updates prices quarterly. However, the prices paid for the transfer of land use rights are not based on the dynamic monitoring system¹⁰⁹². According to the Government, the urban land price dynamic monitoring system is designed to assess the evolution of land prices, not serve as a benchmark for starting prices in biddings and auctions¹⁰⁹³. The considerable difference between the prices indicated by the dynamic monitoring system (which indicates the up-to-date prices) and the prices set by the urban land evaluation system shows that the minimum prices set by the State are below market value of the land-use-rights. Thus, any transactions that actually proceed on the basis of the minimum prices set by the State will likely be at less than market value.

The inadequacies of setting the price for land-use price have not escaped the Government’s attention. In fact, the Government, recognising already in 2014 that China might be in breach of its international legal obligations and in particular the WTO rules, introduced a prohibition on preferential land pricing¹⁰⁹⁴:

It is necessary to focus on current situations, set clear priorities, resolutely abolish preferential policies that are in violation of laws and regulations to ensure that they

¹⁰⁸⁷ See Article 28, Shaanxi People's Government Notice as to preparing an action plan for supply-side structural reforms and cost reduction, Shaanxi Government 2016/38, 22 September 2016, available at: http://www.shaanxi.gov.cn/zfxxgk/fdzdgknr/zcwj/szfwj/szf/201609/t20160922_1668315_wap.html (accessed on 29 March 2023).

¹⁰⁸⁸ See Article 3 of the Circular of the State Council on Strengthening the Asset Management of State-Owned Lands, Guo Fa [2001] No. 15, (original text in Chinese), available at: http://www.gov.cn/gongbao/content/2001/content_60846.htm (accessed on 7 December 2022)..

¹⁰⁸⁹ See the findings in Council Implementing Regulation (EU) No 215/2013 of 11 March 2013, imposing a countervailing duty on imports of certain organic coated steel products originating in the PRC.

¹⁰⁹⁰ Commission Implementing Regulation (EU) 2017/366 of 1 March 2017 imposing definitive countervailing duties on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC following an expiry review pursuant to Article 18(2) of Regulation (EU) 2016/1037 of the European Parliament and of the Council and terminating the partial interim review investigation pursuant to Article 19(3) of Regulation (EU) 2016/1037, recital 425.

¹⁰⁹¹ Land prices are published on a quarterly basis for 105 Chinese cities.

¹⁰⁹² Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the PRC and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the PRC, recital 190.

¹⁰⁹³ Ibid., recitals 424-425.

¹⁰⁹⁴ See Sections II.2.2. and III.2. of the State Council Notice on Cleaning up and Standardising Tax and Other Preferential Policies; State Council Legal Affairs Office 2014/62.

are in line with the rules of the World Trade Organisation and China's commitments to the international community, and gradually standardise other preferential policies.

The following activities are strictly prohibited: reducing, waiving or deferring the levy of administrative and institutional fees and contributions to government funds to be paid by enterprises, or transferring land parcels to enterprises at discounted prices or zero land price in violation of applicable provisions.

However, a subsequent State Council notice issued in 2015 refers to the 2014 notice and indicates that it should be “*carried out subject to separate future arrangements*”, thus effectively postponing this effort to prohibit preferential land pricing¹⁰⁹⁵.

9.6. RURAL LAND

In addition to the non-transparent and often inadequately implemented rules concerning use of non-agricultural land described in the previous two sections, the specific regulations governing the ownership, use and conversion of farmland add another layer of complexity to the administration of land-related rights in China.

Farmland is owned by the village collectives and an overall principle of protecting farmland is in place: “[t]he State protects cultivated land and strictly restricts conversion of cultivated land to non-cultivated land”¹⁰⁹⁶. The village collectives enter into land-use agreements with individuals. The duration of such contracts ranges from 30 to 70 years depending on the type of farmland and they can be renewed upon expiry¹⁰⁹⁷. The permitted uses include crop cultivation, forestry or animal husbandry¹⁰⁹⁸.

By contrast, the collectives cannot contract the land out for non-agricultural purposes, as only state-owned urban land can be assigned for non-agricultural use and, correspondingly, non-agricultural use of rural land is prohibited unless there is a governmental approval¹⁰⁹⁹. Thus, collectively owned land first has to be converted to state-owned land before the LUR can be granted for non-agricultural purposes.

A specific expropriation procedure is foreseen for such land-use conversion. Pursuant to Article 2 of the Land Administration Law, “[t]he State may, in the interest of the public, lawfully expropriate or requisition land and give compensation accordingly.” The ‘interest of the public’ was initially not defined in the law and was introduced only in the 2019 amendment, specifying public interest as government infrastructure, public services, affordable housing and similar¹¹⁰⁰. The compensation for the expropriated land “*shall be paid in full in a timely manner in accordance with law*”¹¹⁰¹. Further provisions regulating the expropriation and compensation can be found in the Civil Code, the Law on Urban Real Estate Administration, and the Land

¹⁰⁹⁵ State Council Notice on Issues concerning Taxation and Other Preferential Policies (2015).

¹⁰⁹⁶ Article 30 of the Land Administration Law, as amended.

¹⁰⁹⁷ Article 332 of the Civil Code.

¹⁰⁹⁸ Article 331 of the Civil Code and Article 13 of the Land Administration Law.

¹⁰⁹⁹ Article 13, as well as Chapter IV of the Land Administration Law and Article 334 of the Civil Code.

¹¹⁰⁰ See Amendment to the Land Administration Law 2019, available at: <https://perma.cc/V5SS-KJHP> (accessed on 7 December 2022).

¹¹⁰¹ Article 243 of the Civil Code.

Administration Law. However, in the past, the application of the rules on expropriation and compensation has been riddled with problems and, rather than providing a clear-cut framework for conversion between categories of land, contributed to widely reported social tensions and financial irregularities, in particular at the provincial administration level.

To begin with, the largest part of the compensation, the land compensation fee, was set in the Land Administration Law at 6-10 times the average annual agricultural output value of the expropriated land¹¹⁰², which in many cases was far below the market value that the private developers are willing to pay for the plot. Also, the compensation has reportedly been minimal in many cases, leading at times to land grabs and forced evictions causing social unrest. For example, the majority of ‘*mass incidents*’ that occurred in China in the early 2000s were due to land disputes with the local governments¹¹⁰³, in particular expropriation of farmland¹¹⁰⁴. According to some estimates, 6-7 million hectares of farmland were expropriated for urban or commercial use, and 50-60 million rural residents were affected by land expropriation. A large proportion of farmers were not receiving any compensation and the rest receiving just a small percentage (2.5%) of the market value of the land¹¹⁰⁵. The 2019 Land Administration Law no longer contains such provision. The Civil Code just generally requires that “*the compensations for the land expropriated, subsidies for resettlement and compensations for rural villagers’ residence, other attachments, young crops on land, etc. shall be paid in full and in time according to law*”¹¹⁰⁶.

Moreover, the restrictions in LUR led to the development of the so-called ‘*minor property rights*’. This term is used to describe situations when the rural land-use owners sell their LUR to private developers, even though formally this is not legal, or construct buildings on their land in order to rent out units (doing this on their own or in conjunction with a private developer)¹¹⁰⁷. Since sale of rural LUR for construction of rental property violates the restriction on the use of rural land as explained above, the agreements are legally void. The buyers of those rights risk that at any moment the land might be taken away from them or the buildings demolished. However, it seems that the economic incentive of revenues from rental still outweighs the legal risks, as there are a large number of such semi-legal transfers of LUR. According to an estimate from 2014, this type of housing remained common, especially around major cities such as Beijing, Shanghai and Shenzhen, going even up to half of all housing around some of the larger cities in China¹¹⁰⁸. In 2017, the housing area of all cities and towns in the country, including minor property rights houses, was 29.8 billion square meters, of which the area of minor property rights houses was estimated at 7.3 billion square meters, accounting for 24%, second

¹¹⁰² Article 47 of the Land Administration Law, See further Article 338 of the Civil Code.

¹¹⁰³ Wong, V. (2014), *Land Policy Reform in China: Dealing with Forced Expropriation and the Dual Land Tenure System*, Centre for Comparative and Public Law Faculty of Law The University of Hong Kong, Occasional Paper No. 25, May 2014, page 3.

¹¹⁰⁴ Ping L. (7 October 2021), How China’s landmark law changes help protect farmland and farmers’ rights, available at: <https://www.scmp.com/comment/opinion/article/3151321/how-chinas-landmark-law-changes-help-protect-farmland-and-farmers> (accessed on 7 December 2022).

¹¹⁰⁵ Wong, V., page 3

¹¹⁰⁶ See Article 234 of the Civil Code.

¹¹⁰⁷ Wong, V., page 41.

¹¹⁰⁸ *Ibid.*, page 3, p. 43.

only to the area of commercial housing, which accounted for 38%¹¹⁰⁹. According to some sources, there were a total of 50 million ‘*minor property rights houses*’ in China in 2018¹¹¹⁰.

All these issues are ultimately related to the institutional model in which various levels of administration heavily depend on the transformation of rural land into construction plots given the enormous increase in value associated with such conversion. Sales of LUR to private developers and businesses constitute a large proportion of local governments' income. In 2013, land revenue (including LUR transfer fees, property-related taxes, etc.) accounted for 87.5% of local government's total income, and 61% of local government revenue could be attributed to the LUR transfer fees¹¹¹¹. For 2020, a figure of 55% of the central and local governments' fiscal income originating from land transactions has been reported¹¹¹², as well as a figure of 84% of total revenue for local governments¹¹¹³. For 2021, sources indicate the proportion of land transfer revenue to local government revenue as high as 41.5%¹¹¹⁴. The reliance on income from land transactions differs however significantly from province to province¹¹¹⁵.

The dependency of local governments on income from land transaction is, as of writing of this Report, attracting much attention of Chinese authorities, not least in view of the recent tax reforms and the turmoil on the real estate market in China since 2021¹¹¹⁶. The 2021 Government announcement that proceeds from land sales at local level should be collected by national taxation bureaus, rather than by land and resources bureaus in local governments¹¹¹⁷, appears intended to strengthen the central authorities' control over land resources and the income, as well as possible financial imbalances, generated by this sector of economy. All this shows that

¹¹⁰⁹ See at: http://www.xinhuanet.com/legal/2020-06/23/c_1126147757.htm (accessed on 28 March 2023).

¹¹¹⁰ ‘Will small-ownership houses be “orderly regularized” or “completely demolished”? The voice of the country is huge’, available at: <https://new.qq.com/omn/20210927/20210927A08S9800.html> (accessed on 7 December 2022).

¹¹¹¹ See at: http://finance.cnr.cn/jjgd/20150902/t20150902_519745033.shtml (accessed on 13 December 2022).

¹¹¹² Kawate I. - Real estate is king for China's cities as tax revenues stumble (21 February 2021), available at: <https://asia.nikkei.com/Economy/Real-estate-is-king-for-China-s-cities-as-tax-revenues-stumble> (accessed on 8 December 2022).

¹¹¹³ Qiao L. and Chingman - China's Central Government Moves to Take Back Leased Rural Land (31 August 2021), available at: <https://www.rfa.org/english/news/china/rural-land-08312021093341.html> (accessed on 26 January 2022).

¹¹¹⁴ See at: https://pdf.dfcfw.com/pdf/H3_AP202204061557634061_1.pdf?1649272115000.pdf (accessed on 28 March 2023).

¹¹¹⁵ Woo R. and Liangping G., China's land sales slump for second month as property chill bites, available at: <https://www.reuters.com/world/china/chinas-land-sales-slump-second-month-developers-stay-away-2021-10-22/> (accessed on 8 December 2022).

¹¹¹⁶ See, for example, China Land Sales Remain Sluggish Even as Bidding Rules Eased, 29 December 2021, available at: <https://www.bloomberg.com/news/articles/2021-12-29/china-land-sales-remain-sluggish-even-as-bidding-rules-eased> (accessed on 18 January 2022); It's not just Evergrande. Smaller Chinese real estate developers are also wobbling as the cash crunch spreads (23 December 2021), available at: <https://www.businessinsider.com/evergrande-crisis-other-china-property-developers-in-trouble-outlook-2021-12> (accessed 8 December 2022); Tang F., China property: tax authorities' enhanced oversight of land-sale revenue seen as ‘mixed bag’, and runaway prices may drop (8 June 2021), available at: <https://www.scmp.com/economy/china-economy/article/3136504/china-property-tax-authorities-enhanced-oversight-land-sale> (accessed on 8 December 2022).

¹¹¹⁷ See Qiao, L. and Chingman.

the Chinese system of LUR continues to be in flux, in particular when it comes to transferring rural land into the urban land pool¹¹¹⁸.

9.7. FINDINGS IN PAST TDI INVESTIGATIONS

The inconsistencies in the transfer of LUR as described above have also been mirrored in the findings of past TDI investigations.

Firstly, some SOEs received the LUR for free¹¹¹⁹. Moreover, the Commission found that the while some enterprises paid for the land-use right, those fees were subsequently refunded by the local authorities¹¹²⁰, or needed to be paid only after a long period of time: *“Moreover, the Commission also found that some companies received refunds from local authorities to compensate for the prices, which they paid for the [LUR]. Furthermore, some of the [LUR] obtained by companies in the CNBM Group only had to be paid several years after the land had been put into use”*¹¹²¹.

Secondly, in a number of cases it was questionable whether an auction actually took place, as the only participant was the company who was granted the contract at the auction starting price. In one case, the Commission was also not able to find any proof of an actual auction taking place, including the procedural step of publishing the formal public notice¹¹²². In the instances where the Commission was able to find public bid notices, there were considerable discrepancies with the legal requirements¹¹²³:

During the verification of sampled exporting producers, the Commission obtained some notices issued by relevant authorities concerning [LUR] available for

¹¹¹⁸ See The China Dashboard, Winter 2021 – The Final Quarter: Land, Land Policy Reform.

¹¹¹⁹ See, for example, Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the PRC, recital 287. Free provision of land to enterprises in order to attract investment is also confirmed by additional sources, see Ahuja A.; Chalk, N.A.; Porter N.; N'Diaye P. and Nabar M. (2012), *An End to China's Imbalances?* IMF Working Papers, Working Paper No. 12/100.

¹¹²⁰ *“It was also found that some sampled exporting producers received refunds from local authorities to compensate for the (already low) prices which they paid for the [land-use rights].”* Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC, recital 365.

¹¹²¹ Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt, recital 498.

¹¹²² Council Implementing Regulation (EU) No 1239/2013, recital 357: *“During the verification the Commission requested from the government evidence to support its claims concerning the transfers of LUR in China is assigned through bidding, quotation or auction. It is noted that according to Article 11 of Provisions on Assignment of the State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation the responsible state authority issues public notice whenever the bidding/auction/quotation process takes place. On this basis, the Commission requested all public notices for the transactions which were subject to these procedures in order to collect and verify information requested in the questionnaire. The government did not provide any of these notices as it claimed that ‘they do not exist anymore’”.*

¹¹²³ Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the PRC, recital 364.

transfer. While one notice specifically limits the potential buyers of the [LUR] to the photovoltaic industry, another sets limits to the price initially set by the authorities and does not allow the market to determine the price. The auctions themselves were not seen to provide a real competition because in many of the examples viewed during the on spot verifications of exporting producers only one company made a bid (only the sampled PV producer) and therefore their opening bid (the value set by the local Land Bureau) formed the final price per square metre.

The TDI investigation on certain filament glass fibre products found that: “[...] *for each and every land use right purchase by the sampled exporting producers, the Commission found no evidence of an auction process that independently set the price of the land use right. The exporting producer [...] was the only bidder, [and] was awarded the land use right*”¹¹²⁴.

Lack of bidding process and arbitrary initial price setting was also found in a TDI investigation on certain steel products in 2013, confirmed in an expiry review in 2019¹¹²⁵.

In another case, the Commission found similar types of distortions, with the findings of distortions being further supported by the statements of the involved companies¹¹²⁶:

[...] for each and every land use right purchase by the sampled exporting producers, the Commission found no evidence of an auction process that independently set the price of the land use right. The company awarded the land either bid the starting price, or 5 CNY per square metre more than the starting price, and, as it was the only bidder, it was awarded the land use right.

[...] The government then stated that the floor prices are there to ensure that the final price does not fall below ‘the basic market value’ for the land use right. No evidence was provided to support this statement, which is in itself circular, as the amount of money paid for the land use right (which the government has fixed) is supposed to be the market price (on which the floor is then based). [...]

The government, despite requests, has not provided evidence of one single land use right being priced by competitive auction, and therefore the effect of the process is

¹¹²⁴ Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the PRC and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the PRC, *OJ L 367*, 23.12.2014, p. 22–81, recital 192.

¹¹²⁵ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the PRC, *OJ L 73*, 15.3.2013, p. 16–97, recitals 112–117, and Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the PRC following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, *OJ L 116*, 3.5.2019, p. 39–74, recitals 80–90.

¹¹²⁶ Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the PRC, *OJ L 142*, 14.5.2014, p. 23–67, recitals 176–181. The findings were confirmed in an expiry review investigation in 2020. See Commission Implementing Regulation (EU) 2020/1081 of 22 July 2020 imposing definitive countervailing duties on imports of solar glass originating in the PRC following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council, *OJ L 238*, 23.7.2020, p. 43–81, recitals 108–118.

that the government sets the price and the company pays this price. While multiple bidders may not be an absolute requirement in every instance in order to establish the existence of a market-based system, the complete lack of multiple bidders, which was found to be the case with regard to all sampled companies, is a strong indication of the absence of true market prices. [...]

[...] In the case where one sampled company paid 5 CNY per square metre more than the price set by the government, the company stated to the Commission that they were told to do so by the competent authority simply to make it look as if an auction had taken place.

Similar findings were made in the investigation concerning certain woven and/or stitched glass fibre fabrics, where the following was established: *“For the plots of land that were provided through bidding, the Commission found that in each case, there was only one bidder for the land, and the price paid corresponded to the starting price of the bidding process. In the absence of additional detailed information concerning the actual process of the auction, it was uncertain that the initial price as set independently and corresponded to the market value of the land-use right”*¹¹²⁷.

Another type of distortion concerns land-use right valuation. A previous TDI investigation found that the price paid for the land-use right was below market value:¹¹²⁸

[...] a property valuation report established by an independent auditor. [...] shows that there is marked difference between the price paid by the exporting producer for its land use right and the market value.

Concerning the valuation of the land-use rights, the Commission disclosed to the interested party the detailed methodology used to estimate the difference between the fair market value and the actual costs. [...] The difference of + 35 % was found significant and can be only explained by a transfer price well under a fair market value at the time of the transaction between the company and the local authorities.

Most of the above irregularities continue to be commonplace, as confirmed in the 2021 investigation of the aluminium converter foil¹¹²⁹, which established the following:

[...] the authorities set the prices according to the urban land evaluation system, which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.

¹¹²⁷ Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the PRC and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the PRC and Egypt, *OJ L* 189, 15.6.2020, p. 1–170, recital 496.

¹¹²⁸ Commission Implementing Regulation (EU) 2016/1247 of 28 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aspartame originating in the PRC, *OJ L* 204, 29.7.2016, p. 92–111, recitals 24 and 56.

¹¹²⁹ Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the PRC and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the PRC, *OJ L* 458, 22.12.2021, p. 344–458, recitals 540–545.

The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that most of the sampled companies obtained their [LUR] through allocation by local authorities and not through a bidding procedure.

For the plots of land that were provided through bidding, the Commission found that in each case, there was only one bidder for the land, and the price paid corresponded to the starting price of the bidding process. In the absence of additional detailed information concerning the actual process of the auction, it was uncertain that the initial price was set independently and corresponded to the market value of the [LUR].

Moreover, the Commission also found that some companies received refunds from local authorities to compensate for the prices which they paid for the [LUR]. Furthermore, some of the [LUR] obtained only had to be paid several years after the land had been put into use.

[,,] the findings of this investigation show that acquisition of [LUR] in the PRC was non-transparent and the prices were arbitrarily set by the authorities.

These findings were confirmed also in the investigation concerning the optical fibre cables sector which was concluded in 2022 and in which the Commission found that “most of the sampled companies obtained their [LUR] through allocation by local authorities and not through a bidding procedure”¹¹³⁰.

In certain instances, however, the Commission did find that the LUR were traded at a market value price¹¹³¹. Nevertheless, a significant number of the Commission’s TDI investigations established notable distortions with regard to the LUR, as elaborated above. Other authorities investigating the situation in China also found distortions with regard to preferential supply of land¹¹³². Therefore, it seems that the application of the law varies from case to case, with a majority of investigated cases, however, finding considerable distortions.

9.8. CHAPTER SUMMARY

The system of land property and LUR is still under development. Even though a comprehensive set of legislation governs the acquisition, transfer and pricing of LUR for commercial purposes, which in principle should ensure impartiality and equal opportunities for different economic players, those rules are often not implemented in practice, as systematically established in the Commission’s TDI investigations: a number of buyers (in particular SOEs) received their land for free or participated in tenders with only one participant, obtaining the land use rights at a

¹¹³⁰ See Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the PRC and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the PRC, *OJ L* 12, 19.1.2022, p. 34–147, recital 539.

¹¹³¹ See Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the PRC and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd, *OJ L* 33, 10.2.2016, p. 14–37, recital 60.

¹¹³² See Canada Border Services Agency, Statement of Reasons Concerning the making of final determinations with respect to the dumping and subsidizing of certain stainless-steel sinks originating in or exported from the PRC. Decision in case number AD/1392 and CV/129, available at: <http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/ad1392/ad1392-i11-fd-eng.html> (accessed on 8 December 2022).

very low price. There are also significant discrepancies between different regions and individual cases. A number of distortions were established at the level of implementation: the rules on land provision and acquisition in China are often unclear and non-transparent, and the prices are often set by the authorities on the basis of non-market considerations, such as industrial policies.

However, the issues with land allocation in China go much beyond the insufficient enforcement of existing laws. An underlying reason is the fact that all land is owned by the State (collectively owned rural land and state-owned urban land), making the allocation of land dependent solely on the State, which may pursue specific political goals and put in place and maintain corresponding procedures to ensure that land is allocated in line with such political priorities rather than in line with free market principles.

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10.1. ENERGY MARKET OVERVIEW

In line with China's economic growth trends, the growth in electricity consumption in China in recent years has been very rapid, with demand in 2021 around 10% higher than in 2019¹¹³³.

China is currently the world's largest electricity producer with a total installed generation capacity (data for 2021) of some 2 376 gigawatt ('GW'), of which thermal power capacity accounts for 1 297 GW (55%), hydro for 391 GW (16%), nuclear for 53 GW (2%), wind for 328 GW (14%) and solar for 307 GW (13%). Total electricity generation in 2021 was 8 376

¹¹³³ IEA (2021). World Energy Outlook 2021, p. 88, available at: <https://www.iea.org/reports/world-energy-outlook-2021> (accessed on 2 June 2023).

terawatt-hour ('TWh'), of which 5 646 TWh by thermal power plants (67%), 1 340 TWh by hydro (16%), 407 TWh by nuclear (5%), 655 TWh by wind (8%) and 327 TWh by solar (4%)¹¹³⁴.

10.1.1. CURRENT STATE OF THE POWER SECTOR

In 2002, China began a series of reforms to the electric power sector with the release of the 'Electric power sector reform plan' (commonly known as '*Document no. 5 on electric power sector reform*')¹¹³⁵. The plan intended to introduce more competition in both power generation and electricity distribution. According to Article 5 of the document, the goal was "*to break monopoly, introduce competition, improve efficiency, reduce costs, improve the electricity price mechanism, optimize resource allocation, promote the development of electricity, promote nationwide networking, and build an electricity market system with separation of government and enterprises, fair competition, openness and healthy development under government supervision.*" While progress was made in various target areas, the reform largely failed to generate significant competition in the country's energy markets. On the contrary, it also led to the creation of a power generation system dominated by SOEs, including the country's two primary transmission grid operators (State Grid and China Southern Power Grid) and five major power generation corporations: China Datang Corporation, Huadian, China Huaneng Corporation, China Energy Investment Corporation ('CEIC')¹¹³⁶ and State Power Investment Corporation ('SPIC')¹¹³⁷.

In March 2015, the CCP Central Committee and State Council published *Several opinions on further deepening electric power system reform*¹¹³⁸, followed by the publication of six other supporting documents in November 2015 by NDRC and the NEA, which included initiatives such as the following:

- orderly opening up of electricity generation and consumption plans¹¹³⁹;

¹¹³⁴ China Energy Portal, available at: <https://chinaenergyportal.org/en/2021-electricity-other-energy-statistics-preliminary/> (accessed on 2 June 2023).

¹¹³⁵ State Council: Electric power sector reform plan, available at: http://www.gov.cn/zhengce/content/2017-09/13/content_5223177.htm (accessed on 11 August 2023).

¹¹³⁶ PRC's biggest coal producer Shenhua Group Corp was merged with one of the top five state power companies, China Guodian Corp, creating CEIC, the world's largest power company by installed capacity and with assets worth USD 271 billion (RMB 1.8 trillion). See: Paraskova, T. Business Insider: *Chinese merger creates the world's biggest power group with \$271 billion in assets*, available at: <https://www.businessinsider.com/china-largest-power-company-shenhua-group-merger-2017-8?r=US&IR=T> (accessed on 11 August 2023).

¹¹³⁷ Huaneng Group, Huadian Group, CEIC, SPIC and Datang Group accounted for 44% of China's total installed generating capacity by the end of 2020. See China's Big 5 power producers face uphill battle in meeting peak emissions targets, available at: <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/coal/060721-chinas-big-5-power-producers-face-uphill-battle-in-meeting-peak-emissions-targets> (accessed on 11 August 2023).

¹¹³⁸ Opinions Regarding the Deepening of the Electric Power System's Reform issued in March 2015 by the CCP Central Committee and the State Council, available at: https://www.ndrc.gov.cn/fggz/tzgg/ggkx/201504/t20150409_1077736.html and at: <https://news.bjx.com.cn/html/20150410/606700-1.shtml> (accessed on 16 August 2023).

¹¹³⁹ NDRC: Implementation opinions on orderly opening up of electricity generation and consumption plans, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506464677986.pdf> (accessed on 2 June 2023).

- pushing forward the development of electricity markets¹¹⁴⁰;
- setting up electricity trading institutions and regulating their operations¹¹⁴¹;
- reforming power transmission and distribution pricing¹¹⁴²;
- pushing forward electricity retail side reform¹¹⁴³;
- enhancing regulations on coal-fired captive power plants¹¹⁴⁴.

Those documents were part of the ‘*controlling the middle and opening up two ends*’ strategy, meaning opening up power generation and sale, while maintaining state control of power transmission and distribution¹¹⁴⁵. This strategy sought to deepen the reform of the power sector in several keyways:

- relaxing government planning¹¹⁴⁶:
 - gradually reducing the proportion of electricity subject to generation and consumption plans;
 - retaining planning for electricity related to public welfare, including power for households, agriculture and key public services, and ensuring stability of their power supply;
 - retaining planning and quota allocation for renewable energy (including wind, solar and biomass) to ensure its purchase by grids;
- pushing forward market-based electricity trading¹¹⁴⁷:
 - allowing qualified power generation companies, electricity retail firms and selected end users to participate in market-based trading, with electricity prices and generation volumes determined by negotiation among market participants;
 - promotion of market-oriented reforms while simultaneously strengthening government supervision;
 - introduction of safeguard and restrictive measures to prevent market failures;
- strengthening cost and pricing supervision for grids¹¹⁴⁸:
 - transforming the function of grid operators to act solely as power transmission service providers and charge service fees verified by the Government based on ‘*approved cost-*

¹¹⁴⁰ NDRC: Implementation opinions on pushing forward development of electricity markets, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506464110649.pdf> (accessed on 2 June 2023).

¹¹⁴¹ NDRC: Implementation opinions on setting up electricity trading institutions and regulating their operations, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506464409167.pdf> (accessed on 2 June 2023).

¹¹⁴² NDRC: Implementation opinions on reforming power transmission and distribution pricing, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506463783577.pdf> (accessed on 2 June 2023).

¹¹⁴³ NDRC: Implementation opinions on pushing forward electricity retail side reform, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506465014964.pdf> (accessed on 2 June 2023).

¹¹⁴⁴ NDRC: Guiding opinions on strengthening the supervision and regulation on coal-fired captive power plants, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/201511/W020190905506465303962.pdf> (accessed on 2 June 2023).

¹¹⁴⁵ Fitch Ratings: *China's New Power Tariff Mechanism Enhances Cost Pass-Through*, available at: <https://www.fitchratings.com/research/corporate-finance/china-new-power-tariff-mechanism-enhances-cost-pass-through-14-10-2021> (accessed on 2 June 2023).

¹¹⁴⁶ NEA: Main content of planned electricity liberalisation, available at: http://www.nea.gov.cn/2015-12/11/c_134907464.htm (accessed on 2 June 2023).

¹¹⁴⁷ NDRC: Interpretations of electric power sector reform supporting documents, available at: http://www.gov.cn/zhengce/2015-12/11/content_5022775.htm (accessed on 16 August 2023).

¹¹⁴⁸ *Ibid.*

plus reasonable profits', instead of using their monopoly to influence power generation and retail prices for profit.

Despite the ongoing market orientation reform described above, China's power sector still retains many features of state control and a planned economy.

To start with, the prices relevant for the energy system are still not market based, with the State setting on-grid power tariffs and controlling retail electricity prices. The government recognised that the prices are largely controlled by the state: “[...] *It should be said that the coal power price formation mechanism of "basic price + fluctuation" has a positive effect on fostering the introduction of a competition mechanism in China's power generation sector as well as on other aspects. But one must also see that the market-oriented reform of China's power industry has not been completed yet, and it cannot be achieved overnight*”¹¹⁴⁹.

Furthermore, the electricity market in China is characterised by strong involvement of SOEs in various stages of the supply chain as described above. It is worth noting that the strong state presence does not only concern the electricity market but extends to the entire energy sector. The energy market is greatly controlled by both centrally and provincially owned energy SOEs, hence both the national and provincial governments influence the energy market. Out of 96 centrally owned SOEs currently being overseen by SASAC, 18 are in the energy sector (down from 21 in 2017, when the previous version of this report was published): China National Nuclear Corporation, China National Petroleum Corporation, China Petrochemical Corporation, China National Offshore Oil Corporation, China Oil & Gas Pipeline Network Corporation, State Grid Corporation of China, China Southern Power Grid, China Huaneng Group Co., Ltd., China Datang Corporation Ltd., China Huadian Corporation Ltd, State Power Investment Corporation Limited, China Three Gorges Corporation, China Energy Investment Corporation, China Energy Conservation and Environmental Protection Group, China National Coal Group Corporation, China Coal Technology & Engineering Group, China Energy Engineering Group Co. Ltd. and China General Nuclear Power Corporation.¹¹⁵⁰ With the government's push for the creation of large ‘champion’ state-owned companies, the trend to further diminish the number of energy enterprises through mergers and reorganisations is likely to continue in the future, while maintaining – or even facilitating – the governmental influence on the energy market¹¹⁵¹.

State influence goes far beyond controlling prices and dominating the corporate structure of the power sector. Indeed, the State (both on central and provincial level) is responsible for the approval of power generation projects, and controls the total amount of electricity generation, based on yearly plans and quotas¹¹⁵².

¹¹⁴⁹ See at: http://www.nea.gov.cn/2021-10/15/c_1310247093.htm (accessed on 2 June 2023).

¹¹⁵⁰ List retrieved from the SASAC directory on 21 October 2022, available at: http://en.sasac.gov.cn/n_688.htm (accessed on 16 August 2023).

¹¹⁵¹ See for example consolidation in the oil sector: <https://www.caixinglobal.com/2020-06-04/china-takes-first-step-in-consolidating-energy-infrastructure-101563248.html> (accessed on 16 August 2023).

¹¹⁵² Examples of such detailed annual electricity production targets include the Inner Mongolia's Notice on Adjusting the Expected Regulation Target of Power Generation in Western Inner Mongolia in 2020,

10.1.2. REGULATORY AGENCIES

Energy-related issues are mostly managed by the NEA, which was established in 2008, within NDRC. The functions of NEA include formulating and implementing energy development plans and industrial policies, promoting institutional reform in the energy sector, and administering energy sectors including coal, oil, natural gas, power (including nuclear power), and new and renewable energy¹¹⁵³.

Another body important for the management of energy issues is the National Energy Commission, which is an overarching authority in charge of energy strategy (and chaired by the Premier)¹¹⁵⁴. Furthermore, a number of other authorities have certain competencies with regard to the energy sector, including SASAC (see Section 2.2.3.3), the Ministry of Environmental Protection ('MEP'), MOFCOM and the Ministry of Natural Resources.

10.2. PRICING

China's electricity supply is split into three systems, each having their own pricing mechanism:

- planned electricity sold at government-designated prices (see Section 10.2.1);
- market-based electricity with prices negotiated between selected power producers and industrial consumers (see Section 10.2.2);
- captive power, where users generate their own electricity (see Section 10.2.3).

10.2.1. CENTRAL PRICE-SETTING

Given that in certain industries electricity is a very important or even the main production cost input, electricity pricing represents an essential question of industrial policy. As an example, the share of electricity costs in China in the final production cost is at the level of 33% for aluminium smelters¹¹⁵⁵ and around 30-40% for silicon metals¹¹⁵⁶. China's electricity prices are not homogenous and there are considerable price differences among provinces. In 2022, the average electricity price was the highest in Shanghai, reaching RMB 0.8012 per a kilowatt-hour (kWh), and the lowest electricity prices were in Qinghai, at RMB 0.1954 per kWh¹¹⁵⁷. With such differences, the cost of energy is often decisive when selecting a location for new industrial

available at: http://gxt.nmg.gov.cn/zwgk/fdzdgknr/tzgg/202105/t20210511_1454023.html (accessed on 16 August 2023); The Shanxi Province 2020 Adjustment Plan for the Power Generation Regulation Targets Applicable to Power Generation Enterprises (Draft for Comments), available at: <https://solar.in-en.com/html/solar-2351641.shtml> (accessed on 8 September 2023); The Zhejiang Province 2020 Electric Power Balance Plan, available at: <http://www.czguangfu.org/PolicyLaws/5584.html> (accessed 8 September 2023); The Anhui Province Three-Year Action Plan for Electricity Supply Guarantee (2022-2024), available at: <http://www.chic.org.cn/Home/index/detail?id=1123> (accessed on 16 August 2023).

¹¹⁵³ List of NEA's responsibilities as listed on NEA's website <http://www.nea.gov.cn/gjnyj/index.htm> (accessed on 16 August 2023).

¹¹⁵⁴ *Ibid.*

¹¹⁵⁵ See <https://www.spglobal.com/commodityinsights/en/market-insights/blogs/metals/031723-southeast-asia-may-hold-the-key-to-chinese-aluminum-smelters-production-woes> (accessed on 21 August 2023).

¹¹⁵⁶ See <https://news.metal.com/newscontent/102121461/silicon-costs-vary-a-lot-due-to-different-electricity-prices-silicon-prices-move-at-lows-and-close-to-break-even-point> (accessed on 21 August 2023).

¹¹⁵⁷ Weixin: *Summary of industrial and commercial electricity prices in various provinces across the country in May 2022* (with electricity price list), available at: https://mp.weixin.qq.com/s?_biz=MzUxMzI4NDg3Ng==&mid=2247501704&idx=2&sn=c77ecef873cd bff8f79386ad8abd07d6&chksm=f95509ebce2280fd99bf526ab29cf971e0977e0b4992ceb1519ea5751112 4eee588fdc58304c&scene=27 (accessed on 16 August 2023).

projects in China and the provinces are often competing for new projects by offering various types of incentives, as will be evidenced below.

China is currently using a dual-track electricity price system, meaning that the state-set and market-based prices coexist at the same time. In principle, it means that the electricity produced within the government set targets is sold at prices fixed by the government, however any extra production can be sold at market-based prices, after fulfilling certain criteria. In 2021, 44.6% of total electricity consumption was market-based¹¹⁵⁸.

Under the planned part of the electricity system, power generation market and the retail market are based on government-set benchmark prices and the fixed catalogue prices. The grid companies purchase power from power-generation companies at regulated fixed prices and resell power to customers at regulated fixed prices.

Within the Government, the State Council Department of Price, which is an NDRC department, is responsible for overseeing prices in China, including price setting for items included in the Catalogue of Pricing. The items included in the Catalogue, are ‘*subject to government-fixed price and government-guided price*’. The Catalogue of Pricing includes prices of electricity transmission and distribution as well as the prices for gas transport and oil¹¹⁵⁹. In addition, according to point 3 of the Catalogue of Pricing:

The price of electricity determined through market-based trading is formed by the market. The electricity price mechanism for coal-fired power generation and the on-grid electricity price for nuclear power that are not yet formed through market-based trading shall be temporarily set by the State Council’s department in charge of prices and, prices shall be formed by the market when time comes, depending on the market-oriented reform process of the electricity sector. The electricity price that has not yet been formed through market transactions is temporarily managed in accordance with the current measures, and it shall be formed by the market in a timely manner depending on the process of power market reform. The pricing principle and overall level of the electricity sales price of priority electricity for residents, agriculture, etc. shall be established by the competent price department of the State Council, and specific price levels shall be formulated by the competent price department at the provincial level.

The ongoing electricity sector reform, in line with the ‘*controlling the middle and opening up two ends*’ strategy (see Section 10.1.1), fixed electricity transmission and distribution prices at an NDRC-approved rate in all 32 provinces as from 2016. NDRC issued the Pricing Measures for Provincial Power Grid Transmission and Distribution Prices (For Trial Implementation) in 2016 to formalise the mechanism and issued the formal measures in 2020¹¹⁶⁰. NDRC remains

¹¹⁵⁸ See http://www.gov.cn/zhengce/2022-03/15/content_5679030.htm (accessed on 16 August 2023).

¹¹⁵⁹ See https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202003/t20200316_1223371.html?code=&state=123 (accessed on 16 August 2023).

¹¹⁶⁰ NDRC: Pricing Measures for Provincial Power Grid Transmission and Distribution Prices, January 2020, available at: https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202002/t20200205_1219961.html (accessed on 16 August 2023).

responsible for approving electricity transmission and distribution prices based on the principle of '*permitted revenue = permitted cost + permitted profit + tax*'¹¹⁶¹.

The electricity price reform is also listed as one of the targets in the NDRC's Notice of the Action Plan for the Reform of the Price Mechanism, which stipulates in point 7 the following¹¹⁶²:

Continue to deepen the electricity price reform. Further improve the price formation mechanism of provincial power grids, regional power grids, special projects across provinces and regions, and incremental distribution networks, and accelerate the rationalization of the transmission and distribution price structure. Continue to deepen the market-oriented reform of on-grid electricity prices for coal-fired power generation, gas-fired power generation, hydropower, nuclear power, etc., improve the price formation mechanism for wind power, photovoltaic power generation, and pumped storage, and establish a new energy storage price mechanism. Steadily promote the reform of sales electricity prices, orderly promote commercial electricity users to enter the electricity market and improve the tiered electricity price system for residents.

Currently, most on-grid tariffs are set by the government¹¹⁶³. Different benchmark prices are adopted for power generated from different sources, with the final prices being subject to further adjustments, such as the price differentiation described in Section 10.2.1.2 below). Benchmark on-grid tariffs for hydropower and coal power are lower than nuclear, wind and solar power¹¹⁶⁴.

- Coal-fired power: In 2004, the NDRC introduced a coal-power price linkage scheme, aiming to reflect coal price fluctuations in on-grid tariffs. This scheme was revised in 2012 in the 'Guiding opinions on deepening thermal coal market reform'¹¹⁶⁵ and then in 2015 in NDRC's 'Notice on further improving coal-power price linkage mechanism'¹¹⁶⁶. The system was changed as from 2020 into the 'base price + float', based on the '*Guiding Opinions on Deepening the Reform of the On-grid Tariff Formation Mechanism for Coal-Fired Power*'¹¹⁶⁷ issued by the NDRC. According to this document, the base price is set at the same level as the benchmark tariff it replaced, and it can deviate upwards or

¹¹⁶¹ Other documents in the electricity transmission and distribution pricing reform include: NDRC Interim measures for regional power transmission pricing; NDRC Interim measures for setting prices for transmitting electricity for cross-province and cross-region projects; NDRC Guiding opinions on local and incremental power distribution pricing (all three documents issued on 29 December 2017) and NDRC Notice on approving 2018-19 regional power transmission pricing (issued in February 2018).

¹¹⁶² NDRC Action Plan for the Reform of the Price Mechanism, available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202105/t20210525_1280785.html?code=&state=123 (accessed on 16 August 2023).

¹¹⁶³ Whereas the prices of oil, coal and pipeline-imported natural gas have been to some extent liberalised and are no more centrally regulated.

¹¹⁶⁴ Energy Observer (16 August 2016). *Six facts about China's electricity prices* (original text in Chinese), available at: https://mp.weixin.qq.com/s/m2_FFT3PYWS5CiEXbDPGA (accessed on 17 August 2023).

¹¹⁶⁵ State Council: Guiding opinions on deepening thermal coal market reform, available at: http://www.gov.cn/zwggk/2012-12/25/content_2298187.htm (accessed on 17 August 2023).

¹¹⁶⁶ NDRC: Notice on further improving coal-power price linkage mechanism, available at: <http://fgcx.bjcourt.gov.cn:4601/law?fn=chl526s560.txt> (accessed on 17 August 2023).

¹¹⁶⁷ Full text available at: <https://zfxxgk.ndrc.gov.cn/web/iteminfo.jsp?id=16530> (accessed on 17 August 2023).

downwards, with final prices set through negotiations between power generators and electricity users bilaterally or via centralised bidding. The document clarifies that the NDRC is responsible for regularly setting both the benchmark price and the allowed float range (Article 3.1 of the document). In 2020, the floating range was set at 10% upwards and 15% downwards¹¹⁶⁸. In the aftermath of the COVID-19 pandemic, the prices were allowed to fluctuate even further (see Section 10.2.1.1).

- Hydropower: in 2014 the NDRC set up a new hydropower pricing mechanism in the *Notice on Improving On-grid Tariffs for Hydropower*. The document lays out a system for setting inter-provincial hydropower prices. Cross-provincial hydropower on-grid tariffs are calculated by subtracting cross-province electricity transmission costs from the receiving province's on-grid tariffs. The on-grid tariffs are negotiated between the hydropower supplying province and receiving province, taking into account the average on-grid tariff of the receiving province (regardless of the power source) minus the transmission price¹¹⁶⁹. Cross-provincial transmission costs are reviewed and approved by the central government. Intra-provincial hydropower on-grid prices, on the other hand, consider factors including average on-grid tariffs within the province (regardless of power source), overall power supply and demand, and project development costs. For instance, in Henan, the on-grid electricity price of newly built hydropower units connected to the grid is tied to the benchmark on-grid electricity price standard of RMB 0.32 per kWh¹¹⁷⁰.
- Nuclear power: In 2013, the NDRC set the national benchmark on-grid price for nuclear power projects constructed after 1 January 2013 at RMB 0.43 per kWh, ending the 21-year practice of approving individual prices for each plant. On-grid tariffs remain unchanged for electricity generated from old plants. The new tariff is based on the average cost of generating nuclear power and power supply-demand conditions. Local on-grid tariffs are allowed to fluctuate by taking into account on-grid tariffs for local coal-fired plants¹¹⁷¹. A new trial for on-grid tariff for the 3rd generation nuclear power projects approved in 2019 set the benchmark prices for the Taishan project in Guangdong province at RMB 0.435 per kWh, the Sanmen project in Zhejiang province at RMB 0.4203 per kWh and Haiyang project in Shandong province at RMB 0.4151 per kWh, based on the NDRC's *Notice on Issues Concerning Improving the On-grid Electricity Price Mechanism for Nuclear Power*.
- Wind power: the NDRC set up four tiers of on-grid tariffs for wind power in 2009. The policy classifies wind power prices into four categories based on project construction

¹¹⁶⁸ Hao, F., *New pricing could spell trouble for China's coal sector*, China Dialogue, available at: <https://chinadialogue.net/en/energy/11759-new-pricing-could-spell-trouble-for-china-s-coal-sector/> (accessed on 17 August 2023).

¹¹⁶⁹ See NDRC: The state further improves the hydropower price formation mechanism, available at http://www.gov.cn/govweb/gzdt/2014-01/22/content_2573273.htm (accessed on 17 August 2023).

¹¹⁷⁰ See Henan DRC, Notice on improving the provincial hydropower on-grid tariff policy, available at: <https://fgw.henan.gov.cn/2020/12-10/1966170.html> (accessed on 17 August 2023).

¹¹⁷¹ NDRC on improving Notice on Issues Concerning Nuclear Power On-grid Tariff Mechanism, available at: http://www.gov.cn/zwggk/2013-07/08/content_2442397.htm (accessed on 17 August 2023).

conditions and availability of wind resources¹¹⁷², with regions rich in wind resources receiving low on-grid tariffs. In 2019, the NDRC's *Notice on Improving the Policies on On-grid Tariffs for Wind Power* changed the benchmark price into a guidance price and set the values, depending on the four areas, to the following for 2020: RMB 0.29, RMB 0.34, RMB 0.38, RMB 0.47 per kWh respectively¹¹⁷³. The notice stipulates in Article 1(1) and Article 2(1) that newly approved centralized onshore wind power projects and newly approved offshore wind power projects should determine on-grid tariffs through competition, and the tariffs cannot be higher than the guidance in the resource area where the project is located.

- Solar power: Similar to wind power, there are three tiers of on-grid tariffs for solar power¹¹⁷⁴. Tariffs were based on construction costs and local solar resources availability, with regions rich in solar power receiving lower tariffs. In 2018, the price per kWh was set at RMB 0.55 in Region I, RMB 0.65 in Region II and RMB 0.75 in Region III¹¹⁷⁵.
- Natural gas: Despite an increase in natural gas consumption because of the Government's push to move from coal to cleaner energy sources, natural gas accounted for only around 3.2% of total energy generation in China in 2020¹¹⁷⁶. Constrained by tight gas supply, the Government has been prioritising natural gas for residential heating rather than electricity generation. The Government has yet to develop a unified benchmark on-grid tariff scheme for electricity generated from natural gas; as of writing of this Report the price is determined by provincial governments, based on the NDRC's *Notice on Regulating the Management of On-grid Electricity Price for Natural Gas Power*¹¹⁷⁷. The document introduced an electricity linkage mechanism according to which the maximum gas-generated electricity price cannot exceed the local benchmark electricity price for coal-

¹¹⁷² Region I includes: Inner Mongolia (excl: Chifeng, Tongliao, Hulunbuir and Hinggan league), Xinjiang (incl: Urumchi, Ili Kazakh Autonomous Prefecture, Changji Hui Autonomous Prefecture, Karamay, Shihezi); Region II includes: Hebei (incl: Zhangjiakou, Chengde), Inner Mongolia (incl: Chifeng, Tongliao, Hulunbuir and Hinggan league), Gansu (incl: Zhangye, Jiayuguan, Jiuquan); region III includes: Jilin (incl: Baicheng, Songyuan, Suihua, Yichun, Daxing'anling), Gansu (excl: Zhangye, Jiayuguan, Jiuquan) Xinjiang (Urumchi, Ili Kazakh Autonomous Prefecture, Changji Hui Autonomous Prefecture, Karamay, Shihezi) Ningxia; regional IV includes all regions excluding type I, II and III.

¹¹⁷³ Full text available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/201905/t20190524_962453.html?code=&state=123 (accessed on 17 August 2023).

¹¹⁷⁴ Region I: Ningxia, Qinghai (incl: Haixi), Gansu (incl: Jiayuguan, Wuwei, Zhangye, Jiuquan, Dunhuang, Jingchang) Xijiang (Incl: Hami, Tacheng, Altay, Karamay) Inner Mongolia (excl: Chifeng, Tongliao, Hinggan League, Hulunbuir); Region II: Beijing, Tianjin, Heilongjiang, Jilin, Liaoning, Sichuan, Yunnan, Inner Mongolia (Chifeng, Tongliao, Hinggan League, Hulunbuir) Hebei (Chengde, Zhangjiakou, Tangshan, Qinhuangdao) Shanxi (incl: Datong, Shuozhou, Xinzhou) Shaanxi (Incl: Yulin, Yan'an) Qinghai, Gansu, Xinjiang (excluding those areas in region I); Other regions. See at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/201712/W020190905495692766509.pdf> (accessed on 17 August 2023).

¹¹⁷⁵ *Ibid.*

¹¹⁷⁶ The Oxford Institute for Energy Studies : *Natural gas in China's power sector: Challenges and the road ahead*, December 2020, available at: <https://a9w7k6q9.stackpathcdn.com/wpcms/wp-content/uploads/2020/12/Insight-80-Natural-gas-in-Chinas-power-sector.pdf> (accessed on 17 August 2023).

¹¹⁷⁷ The Notice was issued in 2014 and took effect on 1 January 2015.

fired power generation or the average electricity purchase price of local power grid enterprises by RMB 0.35 per kWh.

10.2.1.1. POST COVID-19 CRISIS INTERVENTIONS INTO THE ENERGY MARKET

In the second half of 2021, China faced serious electricity supply problems due to heatwaves and drought, affecting highly populated areas and leading to power cuts and forcing production breaks in factories¹¹⁷⁸. In addition, a push to limit emissions and coal mining led to instable coal supply, driving coal prices up. The relatively low caps on electricity prices led to a situation where the electricity producers were forced to sell below cost and consequently cut their power output in order to minimise losses. Since the cuts happened during a period of rapidly growing demand after the Covid pandemics, China suffered from serious power cuts and supply shortages in many regions of the country. Some provinces introduced power rationing to meet the ‘dual control’ targets which limit total energy consumption and energy intensity (total energy consumption is capped without distinguishing between energy sources)¹¹⁷⁹.

In result, NDRC issued a statement in which it allowed higher fluctuations of power prices as from October 2021. Power prices were allowed to fluctuate within 20% of the base price (fixed by the government), up from the previous limits of a 10% increase and 15% decrease during peak and off-peak demand hours, respectively. The statement also clarified that high energy-consuming industries are not subject to a price ceiling for electricity prices (i.e. the caps on fluctuations do not apply to them), while electricity prices for household, agricultural and public good use will be kept stable¹¹⁸⁰:

Orderly release the on-grid electricity price for all coal-fired power generation. In principle, all coal-fired power generation enters the electricity market, and the on-grid electricity price is formed through market transactions within the range of "base price + fluctuation". The current benchmark price of coal-fired power generation continues to be the benchmark for the formation of new energy power generation prices. (2) Expand the range of up and down the market transaction electricity price. The floating range of the coal-fired power generation market transaction price will be expanded from the current floating range of no more than 10% to no more than 15% in principle and expanded to a floating range of no more than 20% in principle, and the market transaction price of high energy-consuming

¹¹⁷⁸ DW (29 September 2021). *China: Power cuts hit households, businesses.*; available at: <https://www.dw.com/en/china-widespread-power-outages-hit-households-businesses/a-59355022> (accessed on 17 August 2023).

¹¹⁷⁹ Dual control means that there are targets set for both total energy consumption as well as energy intensity, which the provinces need to meet. According to NDRC’s Plan for Improving the Dual Control System of Energy Consumption Intensity and Total Volume, the goal of those controls is the reduction in energy consumption and improvement in energy efficiency. For more details see NDRC website on dual control: https://www.ndrc.gov.cn/xxgk/jd/jd/202109/t20210922_1297199.html?code=&state=123 (accessed on 17 August 2023).

¹¹⁸⁰ NDRC Notice on Further Stepping up the Market-oriented Reform of On-grid Tariffs for Coal-fired Power Generation, October 2021; available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202110/t20211012_1299461_ext.html (accessed on 17 August 2023).

enterprises is not subject to a 20% increase limit. The spot price of electricity is not limited by the above range.

As of writing of this Report, it is not clear whether this measure is only temporary or whether it will remain valid also in the future. According to the current rules, it is valid until further notice.

The COVID-19 crisis has also pushed individual provinces to introduce measures lowering the cost of electricity for enterprises. As an example, Shenzhen introduced an electricity subsidisation programme detailed in the *Work plan for electricity subsidy for industrial and commercial users in Shenzhen from April to May 2022*. The Shenzhen province offered a 10% subsidy for electricity bills settled by power supply companies from April 1 to May 31, 2022, to electricity users who meet the requirements of the work plan¹¹⁸¹.

10.2.1.2. PRICE DIFFERENTIATION

The differentiation by customer category not only follows the line of residential vs. industrial customers¹¹⁸², but also extends to differentiation between customers using modern energy-saving technologies vs. customers using outdated energy-intensive machinery. Three-tiered electricity pricing is applied by the government to phase out outdated production and promote industrial restructuring more rapidly¹¹⁸³.

10.2.1.2.1. Increased Electricity Prices for Certain Industries

In addition to the (basic) price setting mechanisms described in Section 10.2.1, the electricity prices are further adjusted depending on the customer category. Companies belonging to certain sectors pay higher prices than those normally applicable. In this respect, the Government applies a three-tiered electricity pricing mechanism. This three-tiered pricing applies to a number of industries¹¹⁸⁴ and represents a tool in pursuing the industrial policies reflected in the catalogue contained in Decision No. 40 (see Section 4.2.9. Users falling in the 'encouraged' sectors according to the NDRC catalogue pay the basic electricity rate, whereas users falling in the 'outdated' or 'prohibited' sectors pay a surcharge on top of the basic rate. Users not falling

¹¹⁸¹ See at: <https://news.bjx.com.cn/html/20220706/1238849.shtml> (accessed on 17 August 2023).

¹¹⁸² The price differentiation between residential and industrial customers serves cross-subsidisation of resident users by industrial/commercial customers. Retail electricity prices are regularly adjusted at provincial level (see G20. (2016). *China's efforts to phase out and rationalise its inefficient fossil-fuel subsidies. A report on the G20 peer review of inefficient fossil-fuel subsidies that encourage wasteful consumption in China.*).
¹¹⁸³ Zhang, Z.X. (2014). *Energy prices, subsidies and resource tax reform in China*, Asia and the Pacific Policy Studies, 1(3): 439–454.

¹¹⁸⁴ For example, according to an NDRC rule introduced in December 2013, as from the beginning of 2014, power tariffs were to remain unchanged for aluminium smelters using less than 13 700 kWh per tonne of electrolytic aluminium. Smelters using between 13 700 kWh and 13 800 kWh paid an additional surcharge of RMB 0.02 per kWh and smelters using above 13 800 kWh per tonne paid a surcharge of RMB 0.08 per kWh. Moreover, smelters consuming more than 13,700 kWh per tonne or whose energy saving target assessment was not completed, were not allowed to purchase electricity directly from the power plants (see NDRC MIIT, Notice on the implementation of a multiple-tier-pricing of electricity used by electrolytic aluminium enterprises, NDRC 2013/2530, 13 December 2013, Article I.i). The NDRC Notice of Tiered Electricity Price Policy (NDRC 2021/1239) limited the threshold even further: the standard was set at 13 650 kWh per ton and enterprises consuming more will pay a surcharge of RMB 0.01 per kWh, while as from 2023, the grading standard is set at 13 450 kWh per tonne of molten aluminium and from 2025 it is further lowered to 13 300 kWh per tonne.

into any category listed in the catalogue fall in the default category of 'allowed' enterprises and also pay the basic rate without surcharges.

One such example are electricity prices in the Gansu province, which since 2021 are increased for the energy-intensive industries - such as iron and steel, ferroalloy, electrolytic aluminium, zinc smelting, calcium carbide, caustic soda, yellow phosphorus, and cement - which exceed the approved production capacity¹¹⁸⁵. The electricity price increase for these industries should amount to RMB 0.30 per kWh. The electricity price increase for the production of cement clinker production capacity is set at RMB 0.40 per kWh. Finally, the price increase for production by obsolete capacity in iron and steel¹¹⁸⁶ is set at RMB 0.50 per kWh. According to Article 12 of the Measures, the purpose of electricity price differentiation is: “to support the technological transformation, transformation and upgrading of the industry, and promote the adjustment of the economic structure”.

Another example of punitive electricity pricing is the 2022 *Notice on Adjusting and Implementing Differential Electricity Prices in Eight High Energy-consuming Industries such as Ferroalloys*¹¹⁸⁷ issued by the Baiyin municipality in the Gansu province, which explains in Article 3 the exact modalities of price increases in the following way: “The production capacity of enterprises listed in the “allowed” category shall be subject to the normal electricity price for large industries; the production capacity of enterprises listed in the “restricted” category and “elimination” category shall be increased by RMB 0.10 and RMB 0.30 per kWh respectively on the basis of the normal electricity price of large industries (including the cement and steel industries). For the production capacity of obsolete enterprises, the price will be increased by RMB 0.40 and RMB 0.50 per kWh respectively).”

Similarly, the *Guangdong Province 2022 Work Plan for Promoting the Withdrawal of Backward Production Capacity*¹¹⁸⁸ aims to promote the withdrawal of backward production capacity¹¹⁸⁹ by “strictly implementing differentiated energy resource prices such as differential

¹¹⁸⁵ Measures for the Implementation of Differential Electricity Price Management in High Energy-consuming Industries in Gansu Province. Full document, available at http://fgw.pingliang.gov.cn/ywgz/jgsf/art/2022/art_ccc69c43839f46c29b9ece2f4dfc580c.html (accessed on 15 June 2023).

¹¹⁸⁶ Capacity which should be eliminated according to the Guiding Catalogue for Industrial Structure Adjustment in connection with the Notice of the Ministry of Industry and Information Technology of the NDRC on the Use of Price Means to Promote the Supply-side Structural Reform of the Iron and Steel Industry (see Article 11 of the Measures for the Implementation of Differential Electricity Price Management in High Energy-consuming Industries in Gansu Province).

¹¹⁸⁷ Full text available at: https://www.baiyin.gov.cn/ywdt/tzgg8181/art/2022/art_5d78b1d5768f4206b3bcfccfed13802.html (accessed on 17 August 2023).

¹¹⁸⁸ Full text available at: <https://www.zhigoudian.com/news/3101.html> (accessed on 17 August 2023).

¹¹⁸⁹ The Guangdong Province Work Plan envisages differentiation in electricity rates in the following cases: “For the production capacity in key industries whose energy consumption and power consumption do not meet the mandatory standards and those that belong to the phase-out category of the ‘Industrial Structure Adjustment Guidance Catalogue (2019 Edition)’ (Order No. 29 of the NDRC of the PRC in 2019), differentiated energy resource prices such as differential electricity prices, tiered electricity prices, and punitive electricity prices shall be strictly implemented in accordance with the ‘Notice on the Implementation of Ladder Electricity Price Policy for Electrolytic Aluminum Enterprises’ ([2013] No. 2530) and ‘Notice on Matters Concerning the Use of Price Means to Promote Industrial Structure

electricity prices, tiered electricity prices, and punitive electricity prices". The plan targets certain energy intensive or polluting industries such as steel, cement, electrolytic aluminium, and flat glass.

10.2.1.2.2. Preferential electricity prices

In parallel to the differentiation described above, it was established in a number of instances that selected industries receive at the provincial level special electricity tariffs which are lower than electricity tariffs paid by other industrial users. The previous edition of this report mentioned that in 2017 some provinces offered cheaper electricity rates to specific industries. This included special rates for energy intensive industries in Chongqing, Zhejiang, Fujian and Yunnan. This report includes more recent evidence of preferential pricing in a number of locations in China. For example, in 2018 Yunnan fixed a specific price for its aluminium industry in the *Notice on Printing and Distributing the Special Electricity Consumption Plan to Promote the Integrated Development of Hydropower and Aluminium Materials*¹¹⁹⁰. The document sets electricity prices for electrolytic aluminium producers as well as electricity prices for alumina producers. The document specifies in point 3.1 that: "*Yunnan Wenshan Aluminium Co., Ltd. is the only alumina production enterprise in our province*" and further sets electricity prices for the alumina producers in the province, thereby in fact granting individual price rates to a specific company. The plan stipulates in point 3.3.2 the following: "*appropriate subsidies will be given by the local government where the electrolytic aluminium production capacity is located to ensure that when the electrolytic aluminium price is lower than 13,500 yuan/ton, electricity consumption price is not higher than 0.30 yuan/kWh*" and then in point 3.4.: "*The electricity price for deep processing of aluminium materials in the aluminium industrial park is 0.20 yuan/kWh, which is subsidized by the local government where the deep processing enterprises of aluminium materials are located.*"

As from 2015, Xinjiang also introduced preferential electricity pricing for the benefit of several industries. The beneficiaries include the textile and garment manufacturing industry as well as some other labour-intensive industries, including electronic assembly, footwear, toys, and wigs. This is applicable in the whole province. Those price cuts result in an annual reduction of electricity power costs for enterprises in the above sectors of more than RMB 1.5 billion¹¹⁹¹. The subsidies are still in force as of writing of this report.

In Shanxi, 14 strategic and emerging industries benefit from reduced electricity prices based on the '*Implementation Plan of the Electricity Price Mechanism for Strategic Emerging Industries*'. Owing to this initiative, between October 2020 and June 2021 a total of 609 SEI

Adjustment in the Cement Industry' ([2014] J No. 880), '*Notice on Issues Concerning the Implementation of Tiered Electricity Price Policy for Cement Enterprises*' ([2016] No. 75)', '*Notice on Issues Concerning the Use of Price Means to Promote the Steel Industry and Supply-side Structural Reforms (Development and Reform Price [2016] No. 2803)*', '*Energy Consumption Limits for Glass and Cast Stone Products*' (GB 21340-2019) and other requirements."

¹¹⁹⁰ See at: https://www.ynepdt.com/static/tinymce/20201202_2244631125.pdf (accessed on 8 September 2023).

¹¹⁹¹ Chinanews: *Since 2015, Xinjiang textile and labour -intensive industries have reduced electricity costs exceeding 1.5 billion yuan*, available at: <http://www.xj.chinanews.com.cn/jingji/2020-11-20/detail-ihaeasqx2464132.shtml> (accessed on 19 September 2022).

enterprises in the province with the cumulative transaction volume of electricity of 13.755 billion kWh, could reduce their electricity costs by about RMB 2.68 billion¹¹⁹². With the final electricity price target of RMB 0.3 per kWh, the average reduction in electricity price for the participating enterprises was of RMB 0.195 per kWh in 2021¹¹⁹³.

There are also several economic zones granting preferential prices and subsidies to companies located in the zone. For example, in Xinjiang, the subsidies are still provided to companies located in the Hefeng Industrial Park of the Tacheng District. According to point 3 of the document ‘Preferential policies’ published on 9 August 2021 by the Tacheng District Commerce Bureau¹¹⁹⁴: “*The National Energy Administration of the National Development and Reform Commission has identified Hefeng Industrial Park as the second batch of incremental power distribution business reform pilots, which can provide preferential electricity prices and electricity subsidies for enterprises located in Hefeng Park.*” “*Subsidies for electricity used for production: On the basis of the household comprehensive electricity price of 0.38 yuan/kWh determined by the autonomous region, for an actual electricity price for users at 0.35 yuan/kWh, the finance administration cover the electricity price difference of 0.03 yuan/kWh as a subsidy.*”

These elements show that the official prohibition of preferential electricity prices suffers many exceptions.

The attempts to stop preferential pricing included a 2011¹¹⁹⁵ NDRC Notice on correcting and regulating electricity pricing¹¹⁹⁶:

Any management policy related to unauthorized price adjustments, any preferential electricity price measures spontaneously taken without prior NRDC approval and exceeding the price management competence of local governments and their related departments, any experimentation of direct electricity supply to large users or any other price reduction for electricity used by enterprises that have been developed without authorization and without prior approval of NRDC, the State Electricity Regulatory Commission, the National Energy Administration, shall be stopped immediately.

A specific NDRC’s Notice prohibiting preferential electricity pricing was issued with regard to aluminium in 2013¹¹⁹⁷:

¹¹⁹² Taiyuan Evening News, available at: <https://baijiahao.baidu.com/s?id=1707115530265744205&wfr=spider&for=pc> (accessed on 17 August 2023).

¹¹⁹³ Shanxi Provincial People's Government Portal website: *Shanxi increases the support for fiscal and taxation of advanced manufacturing industries*, published on 30 December 2021, available at: <https://news.sina.cn/gn/2021-12-30/detail-ikyakumx7220326.d.html> (accessed on 8 September 2023).

¹¹⁹⁴ Preferential Policies published by Tacheng District Commerce Bureau, 9 August 2021, available at: http://www.xjtc.gov.cn/zfxgk/xgkzl/tcdqhsjg/tcdqhzgszzjg1/swj/gksx18/zcfg7/content_217 (accessed on 7 February 2023).

¹¹⁹⁵ Repealed in 2016.

¹¹⁹⁶ NDRC, Notice on correcting and regulating electricity pricing, NDRC 2011/1311, Article 1, available at: http://www.gov.cn/zwgk/2011-06/23/content_1891300.htm (accessed on 17 August 2023).

¹¹⁹⁷ NDRC MIIT, Notice on the implementation of a multiple-tier-pricing of electricity used by electrolytic aluminium enterprises, NDRC 2013/2530, 13 December 2013, Article 2.I., available at: http://www.gov.cn/zwgk/2013-12/26/content_2554621.htm (accessed on 17 August 2023).

Prohibition of spontaneous introduction of preferential price measures applicable to electricity. All provinces and places shall strictly implement the national electricity pricing policy, they may not spontaneously reduce the electricity price applicable to electrolytic aluminium enterprises. Preferential electricity prices applicable to electrolytic aluminium enterprises that are already in force shall be corrected immediately.

The 2021 NDRC's Notice on improving tier-electricity prices for electrolytic aluminium sector yet again banned the practices of singling out the aluminium sector in electricity pricing¹¹⁹⁸:

No preferential electricity pricing policy shall be launched. Local governments shall strictly carry out national electricity policies. No local government may offer preferential electricity prices for the electrolytic aluminium industry or organize special trade in the electricity market for electrolytic aluminium enterprises. Those already in place shall be terminated immediately. It is strictly prohibited to include preferential electricity price policy as an index for the responsibility appraisal of the 'double control' of power consumption (energy consumption intensity and total energy consumption) by the people's governments at the provincial level.

China also explicitly recognised in a Notice of the State Council, released in 2014, that the practice of offering preferential electricity rate to specific industries in individual provinces 'may breach China's international commitments', including WTO rules¹¹⁹⁹. According to this Notice, some preferential policies should be cancelled or standardised to ensure compliance: "Other preferential policies, either payments of the social security contributions or other operating costs on behalf of enterprises, electricity and water preferential prices, in the form of fiscal incentives or subsidies so as to attract enterprises from other regions or so as to keep or increase local fiscal revenues from enterprises in the areas where these policies are implemented shall gradually be standardised"¹²⁰⁰. In other words, China recognized that there were distortions that need addressing.

In short, despite the fact that in general the preferential pricing is not allowed as such in China, such practices still remain widespread, as explained above. This lack of enforcement of central rules may be due to a number of reasons, not least that because the goals at the central level, for example greening of the economy, might be in conflict with local targets, such as keeping the high level of employment by supporting the largest employers in the region. The position of the central government is however also not free of contradictions, as the policy document released by the Tacheng district mentioned above, indicates that there are pilot incremental power distribution business reforms, applicable to certain areas, such as the Hefeng Industrial

¹¹⁹⁸ Announcement of the NDRC on Improving the Tiered Electricity Pricing Policy of Electrolytic Aluminium Industry, NDRC Pricing [2021] No. 1239, Article 2.I.; available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202108/t20210827_1294888.html?code=&state=123 (accessed on 17 August 2023).

¹¹⁹⁹ State Council, Notice on cleaning up and standardising tax and other preferential policies. State Council Legal Affairs Office 2014 No 62: "[...] some tax and other preferential policies have disrupted the market order, impacted the effectiveness of the national economic macro-control and may breach China's international commitments giving rise to international trade disputes", available at: http://www.gov.cn/zhengce/content/2014-12/09/content_9295.htm (accessed on 17 August 2023).

¹²⁰⁰ *Ibid.*, Article 3.

Park, which allows granting preferential electricity prices and electricity subsidies to enterprises located therein.

10.2.2. MARKET-BASED ELECTRICITY TRADING: DIRECT POWER PURCHASE

10.2.2.1. INTRODUCTION

The so-called 'market-based' trading can be split into two categories¹²⁰¹:

- bilateral negotiated trading (direct electricity supply):
 - original form of market-based trading, which entails direct negotiation on price and volume between one power generation company and one user, often on an annual basis. The scheme was initiated in 2004 but saw little development until 2013, when the pilot approval procedure was simplified for traditional energy sources. Since September 2021, China started a new initiative to promote direct trading in renewable energies. As a first step, a pilot direct trading of green power between corporate consumers and renewable energy generators was launched with the aim to broaden its application to other areas in China¹²⁰².
- centralised trading:
 - centralised bidding: the first centralised bidding scheme was launched in 2013, in Guangdong¹²⁰³. Under this scheme, sellers and buyers can submit proposed volumes and prices on trading platforms, and platforms match sellers with buyers. In October 2021, the total transaction volume in Guangdong was 2.87 billion kWh¹²⁰⁴.
 - listed transactions: electricity sellers and buyers make offers via power trading platforms to sell or purchase electricity at certain prices and volumes. Sellers and buyers can see their counterparts' offers, and transactions are declared successful if both sellers and buyers agree on the offers.
 - rolling matching transactions: market players can participate within a specified start and end time of the transaction; the electricity trading platform then gives priority to different users depending on requested price and time.

The Government promotes direct power purchase by large end-users, with the goal of enhancing competition in the energy market by bringing additional buyers to the market other than the two power grid companies. The *Opinions Regarding the Deepening of the Power Sector's Reform*

¹²⁰¹ See Article 33 and 34 of the NDRC Interim rules on mid- to long-term marketised electricity trading (2020), available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202007/P020200701615033180814.pdf> (accessed on 17 August 2023).

¹²⁰² See http://english.www.gov.cn/statecouncil/ministries/202109/08/content_WS6137ee2bc6d0df57f98dfd3d.html (accessed on 17 August 2023).

¹²⁰³ Caixin: *Guangdong initiated centralised bidding for electricity trading*, available at: <http://m.companies.caixin.com/m/2014-01-07/100626020.html> (accessed on 17 August 2023).

¹²⁰⁴ See https://stock.finance.sina.com.cn/stock/go.php/vReport_Show/kind/search/rptid/686311403987/index.html (accessed on 17 August 2023).

provide for an expansion of provincial-level pilot programs which allow large end users to bypass grid companies and negotiate prices directly with generators¹²⁰⁵.

Whereas the system of auctioning ensures a certain degree of fairness to the process, direct bilateral negotiations provide much less transparency. Therefore, the analysis below will concentrate on the direct power purchase. However, there are also distortions present in the centralised trading part of the market-based electricity trading listed above, allowing certain selected enterprises to benefit from the market-based trading policies.

For example, in a previous Commission countervailing investigation into optical fibre cables, it was found that companies within one of the sampled groups benefitted from specific refunds/adjustments of their electricity cost because these companies were allowed to participate in a pilot programme for ‘market-oriented electricity transactions’. These companies did not have a contract with a power generator for direct electricity supply. The refunds/adjustments were received because the companies concerned communicated in advance their power demand to the power plants. The Commission found that this constituted a subsidy (financial contribution in the form of revenue foregone by the Chinese government, i.e. the operator of the grid) that conferred a benefit to the companies concerned. The benefit for the recipients was equal to the electricity cost saving through refunds/adjustments because of the participation in a pilot programme for ‘market-oriented electricity transactions’, since the electricity was provided at a price below the normal grid price paid by other large industrial users that were not allowed by the State to participate in ‘market-oriented transactions’ for the supply of electricity¹²⁰⁶.

10.2.2.2. DIRECT POWER PURCHASE: ELIGIBILITY CRITERIA

Originally, the criteria for participating in the direct electricity supply were based on the conditions set out in the Basic Rules for Medium- and Long-term Electricity Trading (provisional)¹²⁰⁷ issued by the NDRC and NEA in December 2016. The precise eligibility criteria could vary from one territorial authority to another. For example, in Beijing, eligible electricity users had to be included in the Guidance Catalogue for Industrial Structure Adjustment (see Section 4.2.9) and comply with the national and provincial (municipal) energy-saving and environmental protection standards¹²⁰⁸.

¹²⁰⁵ According to Article 3(2)5 of the CCP Central Committee and the State Council, Opinions Regarding the Deepening of the Power Sector's Reform, the market entities (electricity generators, sellers and users) negotiate directly, and the users need to pay the corresponding grid fee to the power grid enterprise according to the transmission and distribution fee stipulated by the state. Full text available at: http://fjb.nea.gov.cn/pufa_view.aspx?id=31434 (accessed on 17 August 2023).

¹²⁰⁶ See recitals 520 and 528 of the Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the PRC and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the PRC.

¹²⁰⁷ Available at: <https://www.waizi.org.cn/law/16217.html> (accessed on 17 August 2023).

¹²⁰⁸ For detailed rules concerning Beijing, see: http://zfxgk.nea.gov.cn/auto92/201607/t20160729_2280.htm (accessed on 14 November 2022).

The 2016 Basic Rules were replaced by the *Notice of Issuing the Basic Rules for Medium- and Long-Term Electricity Trading* enacted by the NDRC and NEA in 2020¹²⁰⁹, which modified the rules concerning direct electricity trading. Also, according to this document, the possibility to enter into direct contracts is limited to those industrial consumers which comply with certain criteria. At national level, the legislation specifies for example that “enterprises that do not conform to the national industrial policy and whose products and processes are eliminated should not participate in direct transactions”¹²¹⁰.

In practice, direct electricity trading is executed by the provinces. Companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil the eligibility criteria which usually involve technical elements - such as voltage levels - and compliance with environmental regulations. However, in the past some local governments allowed enterprises to participate even after they failed to meet standards¹²¹¹.

The conditions applicable in various provinces echo the rules at national level. In Jiangsu, direct electricity contracts are established via a centralized Internet bidding platform. However, only companies which are “in line with the national industrial policy guidelines such as the *Guiding Catalogue for the Industry’s Structural Adjustment*” are allowed to participate¹²¹². Similar provisions are included in the Gansu province Notice on Printing and Distributing the *Implementation Rules for Direct Transactions between Electricity Users and Power Generation Enterprises in Gansu Province in 2021* and Relevant Work Arrangements which envisages in Article 5: “Access conditions. (1) Electricity users. 1. Large industrial power users who comply with industrial and environmental protection policies. 2. General industrial and commercial users who comply with industrial, environmental protection and other policies [...]”¹²¹³. The Shaanxi 2022 implementation plan for electricity direct transactions also stipulates in Article 3(1) that: “All industrial and commercial power users [must] comply with national industrial policies”¹²¹⁴. The Shandong Energy Administration’s *Notice on relevant work concerning electricity market transactions in the whole province in 2021* also provides in Article 1(1): “Electricity users who do not conform to the national industrial policy will not participate in market-oriented transactions for the time being. Electricity users whose products and processes

¹²⁰⁹ Notice of Issuing the Basic Rules for Medium- and Long-Term Electricity Trading Development and Reform Energy Regulation [2020] No. 889, available at: http://www.gov.cn/gongbao/content/2020/content_5532632.htm (accessed on 17 August 2023).

¹²¹⁰ Notice of Issuing the ‘Basic Rules for Medium- and Long-Term Electricity Trading Development and Reform Energy Regulation’ [2020] No. 889, article 14(2)2.

¹²¹¹ As an example, in 2017, the Hubei provincial government cancelled voltage requirements for high-tech companies which consumed large amounts of electricity. See: Government administrative intervention is the largest problem holding power sector reform back, available at: <http://www.es.cn.com.cn/news/show-405289.html> (accessed on 14 November 2022).

¹²¹² See Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or re-treaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the PRC and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or re-treaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the PRC and repealing Implementing Regulation (EU) 2018/163, *OJ L* 283, 12.11.2018, p. 1–124, rec. 407.

¹²¹³ See at: <https://www.gsei.com.cn/html/1668/2020-11-06/content-300004.html> (accessed on 17 August 2023).

¹²¹⁴ See at: <https://news.mysteel.com/21/1207/14/5437F998346F1250.html> (accessed on 14 November 2022).

belong to the eliminated and restricted categories in the 'Industrial Structure Adjustment Guidance Catalogue' will strictly implement the existing differential electricity price policy"¹²¹⁵.

Apart from specifying which enterprises are eligible for the direct electricity trading, the rules also clarify that there are a number of industries not eligible to participate. Those industries should be subject to the standard rules, including the differentiated price policy in case of capacities which should be eliminated. As an example, the notice released by the Chongqing Economic and Information Commission on Printing and Distributing the *Implementation Plan for Reducing Electricity Costs of Related Enterprises in 2020* lists the industries excluded from the direct electricity trading in Article 2(3): *"The key industrial enterprises in the above implementation scope must comply with national industrial policies, environmental protection policies, and energy consumption limits per unit of product. Industries or enterprises that the state clearly stipulates that cannot be subsidized with financial funds, such as steel, cement, electrolytic aluminium, and flat glass, are not included in the implementation scope"*¹²¹⁶.

The eligibility criteria in Hebei for electricity users include the following provision: *"Among the users, the power users that do not comply with national industry policies temporarily cannot participate in the market transactions. Power users whose products and technologies are among the restricted or prohibited category of the "Guiding catalogue for the Industrial structural adjustment" shall strictly implement the differentiated power price policy"*¹²¹⁷.

The process of the verification of participating enterprises in Chongqing is as follows¹²¹⁸:

- Enterprise declaration. All industrial enterprises that fall under the scope of the rules stipulated in the document and meet the relevant conditions can report to the local county economic information committee.
- Review by the regional authorities. The relevant district and county economic information committees shall take the lead in reviewing whether the declared enterprises comply with the national industrial policies, environmental protection policies and the authenticity of materials.
- Municipal review. The relevant Municipal Commission reviews compliance with national industrial policies, with environmental protection policies, as well as the requirements for energy consumption per unit product.
- Online publicity. The Municipal Economic Information Commission publicises on the Internet the list of enterprises that they found to be eligible.

Direct electricity trading is economically important, both in terms of volume of trade and enterprises participating and the cost savings they achieved.

¹²¹⁵ See at: http://nyj.shandong.gov.cn/art/2020/11/25/art_100393_10054187.html (accessed on 17 August 2023).

¹²¹⁶ Available at: <https://news.bjx.com.cn/html/20200903/1101663.shtml> (accessed on 17 August 2023).

¹²¹⁷ See the 2020/1356 Notice of the Hebei DRC as to organising the registration of participants to the power direct transaction market in Hebei's South part, available at: <http://hbdrc.hebei.gov.cn/web/web/xxgkzhzwtztg/2c947384745e347c01746bd1acfb59a7.htm> (accessed on 8 September 2023).

¹²¹⁸ Full text of the plan available at: <https://news.bjx.com.cn/html/20200903/1101663.shtml> (accessed on 17 August 2023).

According to official statistics, in 2021, the total amount of medium- and long-term electricity direct trade in the national electricity market was 3 040.5 billion kWh, an increase of 22.8% compared with the previous year¹²¹⁹.

The number of participating companies is also growing substantially. In Hebei province, 119 new user entities were added to the list of eligible users, along with 2 electricity providers in 2019 (while in 2016 the numbers of new direct electricity trading users for Hebei were 123 and 50, respectively)¹²²⁰. The selected users included enterprises from the pharmaceutical sector, mining sector, steel and aluminium industry, automotive industry, and chemical industry, among others.

The Commission found during its pneumatic tyres investigation that although prices are supposed to be negotiated directly between the power generators and the power user, the final contract was also signed by the local state grid company, and the invoices to the companies were actually still issued by the state grid company. In addition, all signed direct purchase contracts needed to be submitted to the local government for the record¹²²¹. All this strongly suggests that the lower prices offered via the direct electricity trading are only available to a group of companies, which follow the official governmental economic agenda. In those circumstances, the possibility of direct electricity trading constitutes a considerable advantage as compared to the remaining companies, which have to purchase electricity from the grid at a higher cost.

The findings of another past Commission investigation revealed that the group of enterprises allowed to enter into the direct contracts was expanded in 2018, however the procedure is still highly regulated and benefitting only specific companies or industries. Specifically, the investigation found the following:

In 2018, the Government of China issued the Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism (Fa Gai Yun Xing [2018] No. 1027). However, the Commission notes that this legislation was issued during the investigation period and has not been implemented yet. Furthermore, although the Circular aims to increase the number of direct transactions on the electricity market it specifically mentions certain industries, including the building materials industry and high-tech industries, as supported and benefitting from liberalization of the electricity market. In particular, the circular provides that ‘supporting users with annual electricity consumption of more than 5 million kWh to conduct direct electricity transactions with power generation enterprises. In 2018, electricity generation plans for coal, iron and steel, non-ferrous metals, building materials and other four industries will

¹²¹⁹ China Electricity Council, 2021 Economic Operation Report of China's Power Industry available at: <http://lwzb.stats.gov.cn/pub/lwzb/tzgg/202205/W020220511403033990320.pdf> (accessed on 17 August 2023).

¹²²⁰ See the full 2019 list: <https://news.bjx.com.cn/html/20181205/946587.shtml> (accessed on 17 August 2023) and the 2016 list: <http://info.hebei.gov.cn/eportal/ui?pageId=1966210&articleKey=6601777&columnId=330035> (accessed on 8 September 2023).

¹²²¹ See Commission Implementing Regulation (EU) 2018/1690, rec. 468.

be liberalized'. In addition, the Circular points out that 'supporting emerging industries with high added value, such as high-tech, internet, big data and high-end manufacturing industries, as well as enterprises with distinct advantages and characteristics and high technology content, to participate in transactions, free from voltage levels and power consumption restrictions'. Therefore, the legislation provides for a selective application of direct transactions on the electricity market to certain industries such as the building materials and high-tech industries. This selective application has the result of applying cheaper prices for electricity by the State to companies from these industries¹²²².

10.2.2.3. FINANCIAL BENEFITS TO PARTICIPATING ENTERPRISES

Savings made by individual companies are considerable, for example:

- Tianshan Aluminium and Tianfu Thermal Power signed the Power Cooperation Agreement, which stipulated that Tianfu Thermal Power would guarantee 3 billion kWh of power supply to Tianshan Aluminium every year to ensure the power consumption other than the power generated by Tianshan Aluminium's own power plant (the captive electricity production accounts for 87% of Tianshan Aluminium's consumption). According to estimates, the combined electricity cost of own electricity and electricity purchased via direct power supply contract of the enterprise was RMB 0.1581 per kWh (including tax), while in December 2019, the weighted electricity price of China's electrolytic aluminium industry was RMB 0.3109 per kWh (tax included), so the total savings were considerable¹²²³.
- Qinghai Branch of Aluminium Corporation of China Limited (Chinalco – the largest state-owned aluminium producer in China) secured a considerable reduction of costs thanks to direct power purchase. According to the CEO of the company, Chinalco Qinghai was facing the risk of a production reduction. It is thanks to the considerable price cuts due to direct power trading that the company could reach full production and even make some profit¹²²⁴.
- Anyang Steel received 900 million kWh of direct electricity supply from power plants, reducing utility expenses by RMB 60 million. This was done under the coordination of the Anyang Government¹²²⁵.
- Jiyuan Jinli Group and Wanyang Group, two non-ferrous metal smelting enterprises in Henan concluded electricity deals for 100 million kWh and 115 million kWh,

¹²²² See Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the PRC and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the PRC and Egypt, OJ L 189, 15.6.2020, p. 1–170, recitals 529 and 530.

¹²²³ See Sinolink Securities. *Specific report on aluminium 2020*, page 15, available at: http://pdf.dcfw.com/pdf/H3_AP202005181379889815_1.pdf (accessed on 17 August 2023).

¹²²⁴ Chinanews (13 January 2017). *Direct electricity trade in Qinghai exceeds 20 bn kWh for the first time*; available at: <http://www.chinanews.com/m/cj/2017/01-13/8123137.shtml> (accessed on 17 August 2023).

¹²²⁵ Caixin (2016), available at: http://m.weekly.caixin.com/m/2016-01-29/100905030_2.html (accessed on 17 August 2023).

respectively. The direct trading deals cut their costs by RMB 3.61 million and RMB 4.15 million, respectively¹²²⁶.

- China Resources Textile (Hefei) Limited Corp. made savings of RMB 3 million and Hefei BOE Photoelectric Technology Limited Corp. made savings of 32 RMB million in 2016 thanks to direct trading and government concessions¹²²⁷.

It can be concluded that in their current configuration and with still a limited number of participants, direct electricity trading is a phenomenon leading to considerable distortions with regard to electricity costs for individual companies.

10.2.3. CAPTIVE POWER PLANTS

In case of some very energy intensive energy industries, such as aluminium, the smelters might operate captive power plants, allowing them to reduce their energy cost.

A captive power plant is a power generation facility dedicated to providing localised power for a single energy user, such as a large factory. The number of captive power plants has grown rapidly in China since the 1980s, when the State realised that electricity shortages, poor infrastructure and government-exclusive power supply was stalling economic growth¹²²⁸. They expanded quickly in high-energy consumption industries such as aluminium, chemicals, pulp and paper, steel and cement, etc. In China, two types of captive power plants are typically operated: coal-fired and those using excess heat and waste. The latter is very clean, but relatively uncommon. The government is encouraging the development of power generators using excess heat or other waste, while curbing the expansion of coal-fired captive power plants.

As of end 2016, captive power capacity exceeded 142 GW (of which 115 GW was coal-fired), accounting for 8.6% of the national total in that year, according to the NDRC¹²²⁹. Xinjiang and Shandong have the largest installed captive power capacity, mainly as a result of their aluminium industries. As of end 2016, Xinjiang's captive power capacity was 24.93 GW. Though captive power plants only make up 30% of Xinjiang's power capacity, they generate over 63% of electricity consumed in the region¹²³⁰. As of end 2015, Shandong had 30.43 GW of installed captive power plant capacity, making up 31.12% of the provincial total¹²³¹.

In addition, according to a 2017 report, two major aluminium smelters started important projects as from 2010: Weiqiao Group constructed or began constructing 24 GW of captive coal power plants and, at the same time, Xinfu Group added 14 GW of built or under construction capacity. In addition, both companies built those plants using inefficient technologies, without authorisation and in violation of environmental laws. For example, the

¹²²⁶ See Henan government website (2016), available at: <http://www.henan.gov.cn/jrhn/system/2016/09/11/010671121.shtml> (accessed on 17 August 2023).

¹²²⁷ Zhong-An Anhuai Online Daily (23 January 2017): *What does direct electricity trade bring?*.

¹²²⁸ Beijixing : *"Is it too difficult to program a self-powered power plant?"*, available at: <https://news.bjx.com.cn/html/20211122/1189355.shtml> (accessed on 17 August 2023).

¹²²⁹ *Ibid.*

¹²³⁰ Sina Finance: *Xinjiang's self-provided power plant blowout development risk*, available at: <http://finance.sina.com.cn/roll/2017-02-20/doc-ifyarrcc8045364.shtml> (accessed on 17 August 2023).

¹²³¹ NDRC: *Comprehensively clean up government funds and additional owed by self-provided power plants*, available at: <https://news.sina.com.cn/o/2017-07-25/doc-ifyihmmm8640414.shtml> (accessed on 17 August 2023).

coal power generators of Weiqiao in the Binzhou prefecture, with a capacity of about 14.4 GW, are 16% less efficient than modern plants in terms of CO₂ emissions per kWh¹²³². The core motivation for aluminium producers' development of captive power plants is their low-cost electricity. Producing one tonne of electrolytic aluminium requires a lot of electricity. While traditionally producing one tonne required more than 14 000 kWh, some enterprises managed to reduce the electricity consumption per tonne to below 13 500 kWh¹²³³, which however still constitutes a very large proportion of the total production cost. According to the International Energy Institute, 85.4% of aluminium smelters in China had a captive power plant in 2015¹²³⁴. The proportion of captive power capacity in the electrolytic aluminium industry reached about 75%¹²³⁵ at the end of 2015 and remained above 70% for two consecutive years. Due to the impact of production restrictions and environmental regulation, the proportion of captive power capacity in the sector dropped to about 67% by the end of 2018¹²³⁶. According to estimates, it was at the level of about 65% by the end of 2020¹²³⁷.

In November 2021, the *Opinions of the Central Committee of the Communist Party of China and the State Council on Deepening the Battle of Pollution Prevention and Control* envisaged that in principle, no new self-provided coal-fired units would be added and the 14th FYP for National Cleaner Production Implementation stated that self-provided coal-fired power plants should actively promote clean and low-carbon energy and industrial waste heat replacement¹²³⁸.

However, other developments in 2021 have also shown that this trend could be reversed. Notably, in November 2021, the General Department of the NEA issued the *Notice on Strengthening Market Supervision, Effectively Playing the Role of Market Mechanisms, and Promoting Power Supply Guarantee this Winter and Next Spring*, urging the closed captive power plants to resume activities¹²³⁹. Article 16 of the document provides the following:

Urge the self-provided power plants to be fully opened. All dispatched agencies should urge relevant local government departments to strengthen the supervision and management of self-provided power plants. During the period of energy supply guarantee, power dispatching agencies and power grid enterprises should supervise

¹²³² Slater, H. – Captive Power Plants: Navigating Regulatory Grey Areas (2017); available at: <https://chinadialogue.net/zh/4/43721/> (accessed 8 March 2024)

¹²³³ Sina Finance: *The proportion of self-provided electricity production capacity in electrolytic aluminium operation capacity shows a downward trend*, available at: <https://finance.sina.com.cn/money/future/indu/2020-12-02/doc-iiznezxs4833671.shtml> (accessed on 18 August 2023).

¹²³⁴ Fickling, D. (2016). *China isn't the reason U.S. Aluminium is suffering*, Bloomberg, available at: <https://www.bloomberg.com/gadfly/articles/2016-10-10/china-isn-t-the-reason-u-s-aluminum-is-suffering> (accessed on 14 November 2022).

¹²³⁵ Only the major aluminium smelters have fully independent electricity grids, the other enterprises purchase from the grid and add some more from their own captive plants.

¹²³⁶ Sina Finance : *The proportion of self-provided electricity production capacity in electrolytic aluminium operation capacity shows a downward trend*, available at: <https://finance.sina.com.cn/money/future/indu/2020-12-02/doc-iiznezxs4833671.shtml> (accessed on 18 August 2023).

¹²³⁷ Reuters: <https://www.reuters.com/business/sustainable-business/china-aluminium-sector-must-shut-inefficient-coal-power-meet-climate-goals-2021-02-07/> (accessed on 18 August 2023).

¹²³⁸ See Article 2.6 of the document. Full text available at: https://www.mee.gov.cn/zcwj/zyygwj/202111/t20211108_959456.shtml (accessed on 18 August 2023).

¹²³⁹ Available at: http://zfxgk.nea.gov.cn/2021-11/10/c_1310306675.htm (accessed on 18 August 2023).

and urge coal-fired self-provided power plant units to start up no less than the average utilization hours of the previous three years. Enterprises with standby power plants shall not purchase more than the average amount of electricity purchased from the power grid in the previous three years, and the purchase price of electricity shall strictly comply with national policies and regulations.

According to Article 18:

Strengthen the management of self-provided power plants in high energy-consuming industries. For self-provided power plants in high-energy-consuming industries that violate relevant regulations, the power dispatching agency may, in the event of an emergency, on the premise of maintaining normal security power consumption, in accordance with the Regulations on the Management of Power Grid Dispatching and the Measures for the Management of Orderly Power Consumption, etc. take relevant measures for users in industries with high energy consumption.

Captive power plants' electricity generation costs can be considerably lower than grid prices (see the example of Taishan Aluminium in Section 10.2.1 above). According to press statements, other aluminium producers also benefit from very low self-generated electricity prices: *"The cost of electricity generation in Shandong Weiqiao Group's self-provided power plant in 2016 was less than RMB 0.35. According to the electricity price level of RMB 0.6 to RMB 0.64 per kWh of local large industrial enterprises in Shandong, the annual self-provided power plant can save RMB 100 million in electricity costs"*¹²⁴⁰. In Xinjiang, where coal resources are abundant, electricity generation is even cheaper. Therefore, captive power plants ownership is core to firms' ability to compete and survive in the market.

Captive power plants are subject to a number of rules and regulations, require special permissions for construction and are required to contribute to various financial funds. However, as will be described below, the local governments have given a lot of leeway to enterprises by allowing them to default on these commitments.

In 2013, the State Council released the *Air pollution prevention and control action plan* (more commonly known as the *Ten guidelines on air pollution*), which banned the emergence of new captive coal power plants in the Beijing–Tianjin–Hebei Region, Yangtze River Delta and Pearl River Delta. However, captive power plants still emerged in these regions after 2013, as established in 2018 by the Central Environmental Inspection Group, which found evidence of local governments providing leeway to illegally constructed captive plants¹²⁴¹. For instance, Hongqiao (the largest aluminium producer in the world) constructed 45 illegal new coal-fired captive power units (generators) in Binzhou since the ban on construction in 2013, with a total

¹²⁴⁰ Beijixing: *"Is it too difficult to program a self-powered power plant?"*, available at: <https://news.bjx.com.cn/html/20211122/1189355.shtml> (accessed on 18 August 2023).

¹²⁴¹ Shaerer, C., Yu, A., Nace, T. (2018). *Tsunami warning - can China's central authorities stop a massive surge in new coal plants caused by provincial overpermitting?*, Global Energy Monitor, p. 11; available at: <https://globalenergymonitor.org/wp-content/uploads/2021/01/TsunamiWarningEnglish.pdf> (accessed on 18 August 2023).

installed capacity of 16.895 million kilowatts¹²⁴². Xinfu, another major aluminium producer in Binzhou, Shandong, was also found to have constructed nine illegal captive power plants under local government consent since 2013, with a total installed capacity of nearly 6 million kilowatts¹²⁴³. As a result, in May 2018, Shandong published its first *Shandong Province Implementing the Rectification Plan of the Central Environmental Protection Supervision Group Inspector Feedback*, aiming at rectifying the illegalities¹²⁴⁴.

Following State Council's 2015 release of *Several opinions on further deepening the power sector reform*, which set out general rules for the energy reform in China, a set of six documents was published, aiming to regulate selected areas of energy supply. It included a document titled *Guiding opinions on strengthening the supervision and regulation on coal-fired captive power plants*, which was released in November 2015. It set out a number of criteria for the construction and operation of the captive power plants, including a requirement that the plant undertake their social responsibilities and pay various fees¹²⁴⁵.

In May 2017, NDRC and NEA released the *Notice on organising special inspections on coal captive power plants and regulating their operations* and began with MIIT, MOF and the Ministry of Ecology and Environment (at that time the Ministry of Environmental Protection) joint supervision in Xinjiang, Shandong, Inner Mongolia, Jiangsu, Guangxi and Gansu. Guangxi, Jiangsu and Shandong¹²⁴⁶. As a result of the inspections, it became apparent that there are a number of irregularities. Consequently, on 22 March 2018, NDRC called for comments on '*Regulations on coal-fired captive power plants' construction and operation*'¹²⁴⁷. The document identified a number of problems relating to captive power plants; furthermore, it stipulated that the construction of power plants lacking necessary approvals or not included in the plan should be suspended and, secondly, obliged the enterprises running captive power plants to pay the outstanding fund debts. In October 2021, NDRC and NEA released the *Notice on Carrying Out Nationwide Retrofitting and Upgrading of Coal-fired Power Units*, where point 7.1 includes the following provisions: '*Seriously investigate and deal with violations of laws and regulations, such as illegal approval, construction without approval, non-conformity*

¹²⁴² Weiqiao was named again for building 45 generating units in violation of regulations due to its own power plant, available at: <https://baijiahao.baidu.com/s?id=1601971521896665057&wfr=spider&for=pc> (accessed on 18 August 2023).

¹²⁴³ *Ibid.*

¹²⁴⁴ Full text of the plan: https://www.mee.gov.cn/xxgk2018/xxgk/xxgk15/201805/t20180529_630199.html (accessed on 18 August 2023).

¹²⁴⁵ Full text available at: <http://nyj.jl.gov.cn/zcfg/201904/W020190417316353553379.pdf> (accessed on 18 August 2023).

¹²⁴⁶ Sina Finance: The NDRC and 4 ministries and commissions inspected self-owned power plants, focusing on random inspections in 6 provinces including Xinjiang, Inner Mongolia, Guangxi, and Shandong, available at: <http://finance.sina.com.cn/money/future/indu/2017-06-15/doc-ifyhfp4841504.shtml> (accessed on 18 August 2023), the Notice of the General Office of the NDRC and the General Department of the National Energy Administration on carrying out special inspections on the standardized construction and operation of coal-fired self-provided power plants (document 2017/329 from 13 June 2017) and NDRC Guiding Opinion on strengthening supervision and management of coal-fired captive power plants (document 2015/9).

¹²⁴⁷ Available at: <https://news.bjx.com.cn/html/20180328/888343.shtml> (accessed on 18 August 2023).

with approved construction, unauthorized changes, or power supply beyond the supporting projects of self-provided units.’¹²⁴⁸

A number of strict rules govern also the construction of new captive power plants, which set out a number of criteria, obligations and fees for the companies operating their own coal-fired power plants. As an example, the 2017 Shanxi *Notice on the Measures for the Administration of the Construction and Operation of Coal-fired Power Plants in Shanxi Province*¹²⁴⁹ required that the new plants should implement unified planning, unified management, and unified responsibilities and obligations (Article 4). The captive plants need to fit into the provincial planning (Article 13), need to strictly enforce energy efficiency and environmental requirements (Article 14), plants should be of high efficiency (Article 15), all documentation must be obtained before the construction (Article 16), there must be a power generation plan applicable for the captive power plants which must be included in the annual power generation control target management of the provincial and municipal electric power operation departments (Article 24), it needs a safety management system (Article 26), install desulfurization, denitrification, dust removal and other environmental protection facilities in accordance with the ultra-low emission standards (Article 27). In addition, according to Article 28: ‘The operation of self-provided power plants shall comply with the requirements of energy efficiency standards stipulated by relevant industrial policies’. The enterprises running captive plants also need to pay towards the cross-subsidies and for a number of government funds (Article 31).

Apart from being illegally constructed, coal-fired captive power plants do not necessarily respect all relevant standards that apply to power plants that supply electricity to the public, especially in terms of environmental rules. Some producers were reported to have used inferior and more environmentally damaging cheap coal for power production to lower costs, an option not available for normal coal-fired power plants. The massive ultra-low emission reform and campaign eliminating small-scale coal fired power units has yet to reach the majority of coal-fired captive power plants¹²⁵⁰. According to estimates, China would need to shut down 47 GW of coal power capacity relating to aluminium production (including captive power plants) in the next decade to achieve the environmental goal of carbon neutrality by mid-century¹²⁵¹.

¹²⁴⁸ Notice on Carrying Out Nationwide Retrofitting and Upgrading of Coal-fired Power Units issued by NDRC and NEA on 29 October 2021, available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202111/t20211103_1302856_ext.html (accessed on 18 August 2023).

¹²⁴⁹ Available at: http://www.lishi.gov.cn/zwgk/sjwj/201706/t20170629_579535.shtml (accessed on 18 August 2023).

¹²⁵⁰ In the case of the most stringent self-provided power plant rectification plan in history, Shandong Weiqiao faces operational risks: https://www.sohu.com/a/228782071_249929 (accessed on 18 August 2023).

¹²⁵¹ See Reuters: <https://www.reuters.com/business/sustainable-business/china-aluminium-sector-must-shut-inefficient-coal-power-meet-climate-goals-2021-02-07/> (accessed on 5 July 2023). Aluminium production is a main producer of CO₂ in China, some 82% of the energy used in domestic primary aluminium production came from coal in 2021 (more than 75% of CO₂ emissions from China's metals industry came from the aluminium industry). See at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/china-delays-metals-sector-s-climate-target-amid-slow-shift-to-renewables-73247390> (accessed on 21 August 2023).

Local governments can also facilitate the illegal operation of captive power plants. For example, in 2015, Huozhou Coal Electricity Group's captive power plants both operated without official approval and discharged excessive pollutants. Though there have been multiple reports on the Group's illegal activities since 2012, it has managed to escape severe punishment. Industry insiders attribute this to negligence by the local environmental protection bureau, and the fact that Huozhou is a provincial SOE¹²⁵².

There is also evidence of local governments reducing various fees for industrial producers. For instance, Tianshan Aluminium's captive power plants use the Shihezi regional grid for power transmission. In 2017, the grid signed a deal with Tianshan Aluminium promising that as long as Tianshan purchases over 300 million kWh of electricity from Tianfu Energy (the state-owned power generation company that owns and operates the Shihezi regional grid), Tianshan's captive power plants will be exempt from grid transmission fees¹²⁵³.

Governments can also subsidise coal-fired captive power plants by ensuring their access to cheap coal. This practice is most common in regions with abundant coal. For example, in 2012, Xinjiang adopted a project-oriented coal strategy, which would guarantee adequate coal supply for Xinfu's aluminium production project in Xinjiang. Media quotes suggested that this coal was either supplied for an extremely low price or granted for free¹²⁵⁴.

Finally, it was shown that certain enterprises falsify carbon emissions data to pay lower fees in the framework of carbon emissions trading scheme, to which the captive power plants also participate¹²⁵⁵. In 2022, the MEE announced a list of outstanding environmental issues pertaining to the carbon emissions trading scheme. The list included carbon emission data falsification by Erdos High-Tech Materials (located in Inner Mongolia) for its captive coal fired power plants: two sets of 50 megawatts, four sets of 135 megawatts and two sets of 330 megawatts self-provided coal-fired units¹²⁵⁶. Similar problems had been encountered in other regions. For example, according to the 2022 *Baise City Implementing the Ministry of Ecology and Environment's Rectification Work Plan for Special Supervision, Assistance and Feedback on the Quality of Carbon Emission Reports of Power Generation Industry Control Enterprises*, the municipality needed to rectify 65 problems existing in nine enterprises, including Guangxi

¹²⁵² Sina Finance: *Two companies from Huozhou Coal and Electricity Group are listed on the Shanxi Environmental Protection Black List*, available at: <https://finance.sina.cn/chanjing/gsxw/2015-05-22/detail-ichzzmnf0460648.d.html> (accessed on 18 August 2023).

¹²⁵³ See Hua Chuang Securities Report: *Cost-leading aluminum companies are not afraid of cyclical fluctuations in aluminum prices*, available at: http://pdf.dfcfw.com/pdf/H3_AP202006111384211412_1.pdf (accessed on 18 August 2023).

¹²⁵⁴ Energy Magazine: *Xinfu betting on Xinjiang and developing circular modes*, available at: <http://finance.sina.com.cn/chanjing/gsnews/20120806/113012768139.shtml> (accessed on 18 August 2023).

¹²⁵⁵ According to the *2019-2020 National Carbon Emissions Trading Quota Total Setting and Allocation Implementation Plan (Power Generation Industry)*, power generation enterprises that emit 26,000 tons of carbon dioxide equivalent or more in any year from 2013 to 2019 are included in the key emission units in the national carbon market. Self-provided power plants in other industries that meet this threshold are treated as power generation enterprises.

¹²⁵⁶ Will the self-provided power plants become a "dead corner" again this time?, available at: https://www.peopleweekly.cn/html/2022/rmrm_0328/117905.html (accessed on 8 September 2023).

Tiandong Jinsheng Chemical Co., Ltd., Guangxi Xinfa Aluminium Electricity Co., Ltd., Tianyang Nanhua Paper Co., Ltd. and other six captive power plants¹²⁵⁷.

10.3. COAL AS THE MAIN SOURCE OF ENERGY IN CHINA

10.3.1. OVERCAPACITY

Substantial subsidies for the production of coal in early 2000s (see Section 10.3.3) resulted in serious overcapacity in coal production, which in turn drove prices down. Low coal prices created an incentive for the creation of a new coal-fired power generation, as coal-fired power plants were cheap to run and profitable because of depressed coal prices. In 2022 China relied on coal for 60% of its electricity production¹²⁵⁸, followed by hydropower (15%), wind (9%), solar (5%), nuclear energy (5%), gas (3%) and smaller amounts of biofuels (2%) and oil (0,14%)¹²⁵⁹ (see also Section 10.1. for 2021 figures).

The 12th FYP on Coal Industry Development explained the following reasons for the existence of this overcapacity in energy production: *“Though the coal industry has gone a long way, in the course of the development process some problems related the lack of coordination, imbalances, unsustainability have arisen. [...]”*

Overcapacity in turn led to depreciated prices and lack of profitability of the coal production sector. In 2015, 80% of coal firms in China incurred losses¹²⁶⁰. The State therefore continuously sets targets to lower coal production capacity. In early 2017, the NDRC announced the plan to cut the coal mines capacity by 300 million tonnes by 2020. The 13th FYP on the Coal Industry Development repeated the language of the 12th FYP regarding the reasons for the overcapacity, and then added additional details:

Though the coal industry has gone a long way, in the course of the development process some problems related the lack of coordination, imbalances, unsustainability have arisen. Coal production overcapacities: because of the impact of the economic slowdown, of the structural adjustment in the field of energy and other factors, the demand for coal has gone down, and the supply capacity has become excessive.

The 13th FYP furthermore stated that: *“There are coal production overcapacities and the supply/demand ratio is severely imbalanced.”*

Downstream, there is also serious overcapacity in coal-fired power generation. Even though utilisation rates of coal-fired power plants are falling rapidly with the efforts to replace the old polluting technologies with renewable energy sources, over 110 GW of additional coal-fired power plants were still in construction in 2016 and there were still new investment proposals to

¹²⁵⁷ *Ibid.*

¹²⁵⁸ Weerasekara, P. (2023). *China approves coal power surge despite emissions pledge: Greenpeace*; available at: <https://phys.org/news/2023-04-china-coal-power-surge-emissions.html> (accessed on 15 November 2023).

¹²⁵⁹ Our World in Data: Electricity production by source, China (2022); available at: <https://ourworldindata.org/energy/country/china#what-sources-does-the-country-get-its-energy-from> (accessed on 15 November 2023).

¹²⁶⁰ IEA, (2016). *World Energy Outlook 2016*, IEA, Paris.

add additional capacity¹²⁶¹. The China Electric Council forecasts that 150 GW of coal capacity will be added between 2020 and 2025, and another 30 GW by 2030¹²⁶². Maintaining positive returns despite significant overcapacity was possible due to low coal prices, low capital costs, attractive financing, and generous power tariffs¹²⁶³.

The 13th FYP repeated the call for reduction in excess coal production capacity. The resulting reforms eliminated 2.5 million coal mining jobs (around 50% reduction) between 2013 and 2019 without however significantly affecting production but concentrating production geographically: 70% of output in 2019 came from three regions: Inner Mongolia, Shanxi and Shaanxi¹²⁶⁴. The *Key Points of Coal Resolving Overcapacity in 2020* published by the NDRC confirmed that the problem of overcapacity was still not solved and envisaged several measures to tackle the overcapacity problem. It set, among others, the target to achieve the goals of the 13th FYP by the end of 2020, to continue closing coal mines, to eliminate the ‘*zombie enterprises*’ in the coal sector, to close mines producing less than 300 000 tonnes annually, to speed up closures of coal mines that don’t meet environmental standards, develop large-scale coal bases in Shanxi, Inner Mongolia, Shaanxi, Xinjiang and other areas, stabilise prices, accelerate mergers and reorganizations, speed up structural adjustment, accelerate transformation and upgrading and promote clean coal production, transportation and utilisation.

The 14th FYP on Modern Energy System Planning also includes a number of targets and measures concerning coal, including a production capacity target of more than 4.6 billion of standard coal, gradual phasing out of coal, promotion of clean and efficient utilisation of coal, strict control of coal consumption in major coal-consuming industries such as iron and steel, chemical industry, cement, etc¹²⁶⁵.

With the coal price increases in 2021 (caused by multiple factors including government decarbonization policies, a ban on coal from Australia, and weather events, specifically, flooding) and the subsequent energy crisis, the progress in coal mines closures achieved by that time was reversed with a governmental decision to intervene into the coal market and a permission to reopen previously closed coal mines. At least 53 coal mines were reopened in 2021 in order to boost production and in result bring the coal prices down¹²⁶⁶. Furthermore, in 2022, China announced it would keep on building extra coal mine capacity¹²⁶⁷.

Despite the cut in its coal mine capacity, China also continuously adds coal-fired power plant capacity. According to estimates, China put 38.4 GW of new coal-fired power capacity into

¹²⁶¹ *Ibid.*, p. 226.

¹²⁶² Climate Transparency (2022) China: Climate Transparency Report: comparing G20 Climate Action; available at: <https://www.climate-transparency.org/wp-content/uploads/2022/10/CT2022-China-Web.pdf> (accessed on 17 August 2023).

¹²⁶³ *Ibid.*, p. 227.

¹²⁶⁴ *Ibid.*, p. 243.

¹²⁶⁵ The Plan for a Modern Energy System during the 14th FYP Period, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202203/P020220322582066837126.pdf> (accessed on 17 August 2023).

¹²⁶⁶ See at: <https://www.france24.com/en/live-news/20210805-china-restarts-coal-mines-to-meet-surg-ing-power-demand> (accessed on 17 August 2023).

¹²⁶⁷ See at: <https://www.bloomberg.com/news/articles/2022-04-21/china-confirms-it-will-build-extra-coal-mine-capacity-this-year?leadSource=verify%20wall> (accessed on 19 September 2022).

operation in 2020 and in the same year approved the construction of a further 36.9 GW of coal-fired capacity, three times more than a year earlier, bringing the total capacity under construction to 88.1 GW. In mid-2021 China had 247 GW of coal power under development¹²⁶⁸. China further increased the number of coal-fired power plants under construction in 2022 in a bid to speed economic recovery and promote energy security¹²⁶⁹. The target of the Government is to keep the annual domestic coal production at 4.1 billion tons and the annual coal consumption should stay at about 4.2 billion tons by the end of the 14th FYP¹²⁷⁰.

It seems that China's constant growth in coal power is not necessarily driven by a need for more coal power¹²⁷¹, but rather a consequence of the political set up and system of promotions, which is based on local officials meeting the planned targets and setting up new coal fired power plants, even if economically not viable, is the easiest means to achieve those targets¹²⁷². Overcapacity in coal powered plants in 2019 was estimated at approximately 170 GW, with the most serious problems in North, Northwest, and South China¹²⁷³.

As to the coal prices in China, the NDRC issued in 2022 the *Notice on further improving coal market price formation mechanism*, guiding coal prices to float within an approximate range of RMB 570-770 per tonne for medium and long-term trading of benchmark 5 500 kilocalorie thermal coal at Qinhuangdao Port¹²⁷⁴. Also, in February 2022, the Chinese authorities asked the major state-owned miners, China Shenhua Energy Co. and China Coal Energy Co. among them, to cap their prices once more below RMB 700 a ton to keep pushing the prices down¹²⁷⁵. With the measures undertaken by the Government, coal prices fell rapidly and gradually remained within a required range, while the profitability of coal companies fluctuated¹²⁷⁶.

10.3.2. DECARBONISATION

China is the world's largest energy consumer and at the same time the largest carbon emitter. Even though China's main energy source is still coal-powered power plants. In September

¹²⁶⁸ Stanway, D. (3 February 2021). *China's new coal power plant capacity in 2020 more than 3 times rest of World's - study*. Reuters; available at: <https://www.reuters.com/business/energy/chinas-new-coal-power-plant-capacity-2020-more-than-3-times-rest-worlds-study-2021-02-03/> (accessed on 21 August 2023).

¹²⁶⁹ See at: <https://www.reuters.com/markets/commodities/china-starts-building-33-gw-coal-power-2021-most-since-2016-research-2022-02-24/> (accessed on 21 August 2023).

¹²⁷⁰ Xinhuanet (2021), available at: http://www.xinhuanet.com/2021-03/03/c_1127163835.htm (accessed on 21 August 2023).

¹²⁷¹ Bahr, A. (25 November 2020): *China's coal capacity surge need not be at odds with ambitious climate action*; available at: <https://chinadialogue.net/en/energy/chinas-coal-capacity-surge-need-not-be-at-odds-with-ambitious-climate-action/> (accessed on 21 August 2023).

¹²⁷² Dupuy, M. (11 May 2021). *Guest post: Why would anyone finance another coal power plant in China?* Carbon Brief; available at: <https://www.carbonbrief.org/guest-post-why-would-anyone-finance-another-coal-power-plant-in-china/> (accessed on 21 August 2023).

¹²⁷³ Chi, J., Wang, B., Zhang, H., Kang, J., Lu, T., Huang, Y., Yang, W., Zhang, H., Sun, L. (2021). *Regional coal power overcapacity assessment in China from 2020 to 2025*. Journal of Cleaner Production, 303, 127020; available at: <https://doi.org/10.1016/j.jclepro.2021.127020> (accessed on 21 August 2023).

¹²⁷⁴ See at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202202/t20220225_1317003.html?code=&state=123 and https://en.ndrc.gov.cn/news/mediarresources/202202/t20220225_1317146.html (accessed on 21 August 2023).

¹²⁷⁵ See at: <https://www.bloomberg.com/news/articles/2022-02-16/china-stops-coal-price-reporting-to-crack-down-on-rally> (accessed on 21 August 2023).

¹²⁷⁶ See at: https://pdf.dfcfw.com/pdf/H3_AP202212291581489919_1.pdf?1672341243000.pdf (accessed on 17 August 2023).

2020, the Chinese president announced China's aim to have CO₂ emissions peak before 2030 and to achieve carbon neutrality before 2060. The 2060 climate target was officially submitted in a nationally determined contribution ('NDC') to the United Nations Framework Convention on Climate Change ('UNFCCC') in October 2021 with the title 'China's Achievements, New Goals and New Measures for Nationally Determined Contributions'.

An important element which will have an impact on the use of coal in China was the launch of the national emissions trading system ('ETS') in 2021. It is the largest ETS globally and as from mid-2021 the Chinese national ETS started trading on the trading platform operated by the Shanghai Environment and Energy Exchange ('SEEE'). The purpose of the ETS is to limit emissions, which fits into the general policy target of China moving from the fossil fuels towards renewable energy.

The average carbon price in 2022 was at CNY 55.30/tCO₂ (USD 8.20 / EUR 7.04)¹²⁷⁷. Although it is expected to go up to CNY 87/tCO₂ by 2025 and to CNY 139/tCO₂ by 2030¹²⁷⁸ this is still significantly lower than the carbon price in the EU. At the same time, China's carbon market covers three times the amount of emissions traded in the EU, with the likelihood to more than double upon inclusion of aluminium and cement as well as other heavy industry and manufacturing¹²⁷⁹.

10.3.3. COAL SUBSIDIES

Even though China intends to gradually diminish the share of coal, there are still considerable subsidy programmes to support coal extraction and coal-fired electricity generation¹²⁸⁰. According to estimates by the International Institute for Sustainable Development ('IISD'), the subsidies to coal-fired generation in China was at least RMB 252 billion in 2014 and RMB 120 billion in 2015¹²⁸¹, and the subsidies to coal production amounted to RMB 35.7 billion, excluding credit support worth between RMB 3.5 and 35.7 billion¹²⁸². The IISD identified 14 subsidies to coal-fired power generation and 18 subsidies to coal production. The most significant subsidies to coal production included: temporary tax and fee relief from provincial and local governments; investment in fixed assets from the State budget; compensations for the coal mines that are shut down in the coal phase-out plan; value-added tax ('VAT') rebates; direct subsidies to listed coal companies; coal-bed methane production subsidies; research and development support from the State budget and a special fund for risky exploration of overseas

¹²⁷⁷ See at: <https://icapcarbonaction.com/en/ets/china-national-ets> (accessed on 15 November 2023).

¹²⁷⁸ See at: <https://www.statista.com/statistics/1175780/china-estimated-average-prices-in-the-ets/> (accessed on 15 November 2023).

¹²⁷⁹ See at: <https://www.forbes.com/sites/energyinnovation/2022/04/18/chinas-emissions-trading-system-will-be-the-worlds-biggest-climate-policy-heres-what-comes-next/?sh=1a03ce42d594> (accessed on 15 November 2023).

¹²⁸⁰ See Section 10.3.1.

¹²⁸¹ Denjean, B., Su, T., Attwood, C., Bridle, R., Duan, H. and Gerasimchuk, I. (2016). *Subsidies to Coal Power Generation in China*. Geneva: GSI, available at: <https://www.iisd.org/sites/default/files/publications/subsidies-coal-power-generation-china.pdf> (accessed on 17 August 2023).

¹²⁸² Xu, H., Wang, H., Bridle, R., Garasimchuk, I. and Attwood, C. (2015). *Subsidies to Coal Production in China*, Geneva: IISD, 2015. <https://www.iisd.org/sites/default/files/publications/subsidies-coal-production-in-china.pdf> (accessed on 17 August 2023).

mine resources¹²⁸³. Support to coal-fired electricity production includes mergers and acquisitions support, subsidies to ‘zombie’ companies, subsidies for investment in emissions abatement equipment, power grid investment, as well as credit support¹²⁸⁴. In 2020, the subsidies for coal in China were estimated at USD 1.55 billion¹²⁸⁵ (ca. EUR 1.41 billion). In 2022 China announced it would inject additional RMB 10 billion into its coal-fired power plans to provide financial relief and improve power supply¹²⁸⁶.

10.4. CHAPTER SUMMARY

China is currently the world's largest power producer. Around 50% of the power generation capacity is state-owned as well as the entire transmission grid. 18 SOEs controlled by the central SASAC are active in the energy sector.

The energy market has undergone several changes and reforms and as part of these reforms, with the aim to create competition in the energy market. Central price setting and planning was gradually limited, and the electricity prices were to some extent marketised. However, despite those efforts, the energy prices in China are still not fully market based, but still controlled by the state to a high degree.

One of the most important issues is the way in which prices are differentiated for various industrial users. Price differentiation is a common practice, for instance there are usually different electricity tariffs for customers consuming large quantities, or energy used in off-peak periods is usually cheaper, or the residential and industrial consumers are subject to different rates. However, the price differentiation observed in China appears to favour certain encouraged industries (or even individual enterprises) and discourage others, and the report provides some examples at the provincial level.

The problem is aggravated by the policy of promoting direct power purchase. Participation in this scheme is linked to meeting certain eligibility criteria which pursue policy objectives. These criteria in themselves are already problematic because they provide cheap energy only to a subset of industries. The aim of energy saving, and environmental protection is misplaced in this context. Moreover, the available documents suggest that the purpose of the provision of cheap energy goes beyond promoting energy saving and the protection of the environment, but in some cases simply aims at reducing the electricity costs of certain sectors.

Many enterprises in the most energy-intensive industries operate their own captive coal-fired power plants, which are often constructed or operating in breach of the legal requirements. Local governments, by not implementing the strict rules pertaining to the construction and

¹²⁸³ *Ibid.*

¹²⁸⁴ Denjean, B., Su, T., Attwood, C., Bridle, R., Duan, H. and Gerasimchuk, I. (2016). *Subsidies to Coal Power Generation in China*. Geneva: GSI, available at: <https://www.iisd.org/sites/default/files/publications/subsidies-coal-power-generation-china.pdf> (accessed on 17 August 2023).

¹²⁸⁵ Climate Transparency (2022) China: *Climate Transparency Report: comparing G20 Climate Action*, available at: <https://www.climate-transparency.org/wp-content/uploads/2022/10/CT2022-China-Web.pdf> (accessed on 17 August 2023).

¹²⁸⁶ See at: <https://www.nasdaq.com/articles/china-to-inject-%241.5-bln-to-help-state-coal-fired-power-firms> (accessed on 21 August 2023).

operation of the captive power plants, contribute to the fact that those enterprises benefit from distorted electricity prices.

Finally, it is noted that China provided in the past considerable subsidies to coal production, which in turn triggered the construction of coal-fired power plants to an extent leading to serious oversupply of electricity from this source.

Given the significant State presence and intervention into energy production, pricing and planning, the overall picture emerging is one where normal market considerations do not prevail on the Chinese market for energy.

11. CAPITAL

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11.1. INTRODUCTION

This chapter examines distortions in relation to capital. For this purpose, it assesses differences in access to and cost of capital for different groups of Chinese economic operators, notably SOEs and private businesses, as well as the handling of debt-at-risk. The examination of the handling of debt-at-risk covers a broad range of issues; in particular, it identifies the extent of bad or non-performing loans in the Chinese banking system and the government's response to such loans.

11.2. ACCESS TO CAPITAL

As explained in Chapter 6, the Chinese financial system is characterised by a strong state presence and regulatory controls. As a result, access to capital in China is not equally available to all market participants and is biased in favour of enterprises with ready access to the formal

financial system. SOEs and private businesses with close ties with government, as well as businesses in encouraged sectors, are best placed to take advantage of available capital¹²⁸⁷, thus crowding out other players in the market, who are forced to turn to so-called shadow banking products to satisfy their financing needs¹²⁸⁸.

11.2.1. DISPROPORTIONATE ALLOCATION TO SOEs

A range of studies has found that state ownership in China is positively associated with leverage and access to long term debt, thus creating a positive loan bias¹²⁸⁹. The OECD noted, as recently as 2022, that SOEs hold most of China's corporate debt due to better access to borrowing relative to private firms¹²⁹⁰. The availability of political connections to help in obtaining bank loans is also a factor for private firms¹²⁹¹.

This bias in favour of SOEs is visible, inter alia, in statistics on the share of loans by ownership type. In 2010-2014, the share of credit going to private enterprises in China has expanded,

¹²⁸⁷ See, for example, Bai, C.E., Hsieh, C.T., Song, Z., *The long shadow of a fiscal expansion*, Brookings, Fall 2016, p. 3; available at: <https://www.brookings.edu/wp-content/uploads/2017/02/baitextfall16bpea.pdf> (accessed on 30 August 2023).

¹²⁸⁸ See, for example, Allen F., Gu, X., *Shadow banking in China compared to other countries*, The Manchester School, Volume 89, Issue 5, 2020, pp. 407-419, arguing that, without sufficient access to capital due to a bias in favour of the state-owned sector, the private sector has turned in recent years to nonbank financial institutions and shadow banking; available at: <https://doi.org/10.1111/manc.12331> (accessed on 30 August 2023).

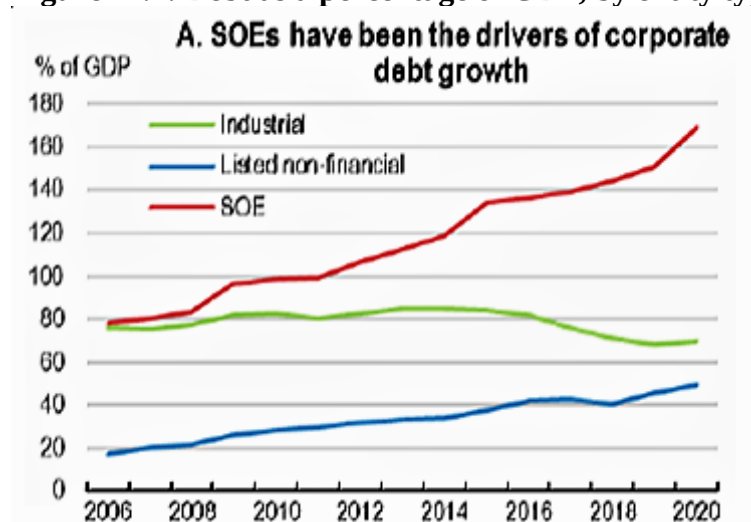
¹²⁸⁹ Firth, M., Lin, C., Wong, S., *Leverage and investment under a state-owned bank lending environment: Evidence from China*, Journal of Corporate Finance, Volume 14, Issue 5, December 2008, pp. 642-653; available at: <https://doi.org/10.1016/j.jcorpfin.2008.08.002> (accessed on 31 August 2023); Li, K., Yue, H., Zhao, L., *Ownership, institutions and capital structure: Evidence from China*, Journal of Comparative Economics, Volume 37, Issue 3, September 2009, pp. 471-490; available at: <https://doi.org/10.1016/j.jce.2009.07.001> (accessed on 31 August 2023); Garcia-Herrero, A., Gavila, S., Santabarbara, D., *What explains the low profitability of Chinese Banks?*, Journal of Banking and Finance, Volume 33, Issue 11, November 2009, pp. 2080-2092; available at: <https://doi.org/10.1016/j.jbankfin.2009.05.005> (accessed on 31 August 2023); Poncet, P., Steingress, W., & Vandenbussche, H., *Financial constraints in China: Firm level evidence*, China Economic Review, Volume 21, Issue 3, September 2010, pp. 411-422; available at: <https://doi.org/10.1016/j.chieco.2010.03.001> (accessed on 31 August 2023); Guariglia, A., Liu, X., Song, L., *Internal finance and growth: Micro-econometric evidence on Chinese firms*, Journal of Development Economics, Volume 96, Issue 1, September 2011, pp. 79-94; available at: <https://doi.org/10.1016/j.jdevco.2010.07.003> (accessed on 31 August 2023); He, D., Wang, H., *Monetary policy and bank lending in China – evidence from loan level data*, Hong Kong Institute for Monetary Research, Working Paper No.16/2013, October 2013; available at: <http://dx.doi.org/10.2139/ssrn.2346181> (accessed on 31 August 2023); Molnar, M., Lu, J., *State-owned firms behind China's corporate debt*, OECD Economics Department Working Papers No. 1536, OECD Publishing, 7 February 2019; available at: https://www.oecd-ilibrary.org/economics/state-owned-firms-behind-china-s-corporate-debt_7c66570e-en (accessed on 31 August 2023).

¹²⁹⁰ OECD Economic Surveys: China 2022, OECD, 2022, p. 78.

¹²⁹¹ Firth, M., Lin, C., Liu, P., Wong, S., *Inside the black box: Credit allocation in China's private sector*, Journal of Banking and Finance, Volume 33, Issue 6, June 2009, pp. 1144-1155; available at: <https://doi.org/10.1016/j.jbankfin.2008.12.008> (accessed on 31 August 2023); Li, H., Meng, L., Wang, Q., Zhou, L., *Political connections, financing and firm performance: Evidence from Chinese firms*, Journal of Development Economics, Volume 87, Issue 2, October 2008, pp. 283-299; available at: <https://doi.org/10.1016/j.jdevco.2007.03.001> (accessed on 31 August 2023); Du, J., Bian, C., Gan, C., *Bank competition, government intervention and SME debt financing*, China Finance Review International, Volume 7, Issue 4, 2017, pp. 478-492; available at: <https://www.emerald.com/insight/content/doi/10.1108/CFRI-02-2017-0007/full/pdf> (accessed on 31 August 2023).

though a very significant share continued to go to SOEs¹²⁹². Since 2014, SOEs have continued to be drivers of corporate debt growth as shown in Figure 11.1 below, which charts debt as a percentage of GDP for different entity types. By 2020, SOEs debt had reached approximately 170% of China's GDP, far outstripping debt held by industrial and listed non-financial firms and growing at faster rate. The results of the regulatory push, back in 2017-2018, to decrease the SOEs' level of indebtedness – which entailed, inter alia, a requirement that all SOEs cut leverage by 2 percentage points from 2017 levels by the end of 2020 – therefore fell short of expectations, perpetuating the systemic risks related to the leverage of (local) SOEs¹²⁹³.

Figure 11.1: Debt as a percentage of GDP, by entity type¹²⁹⁴



In addition, the IMF has found a negative correlation between firm productivity and leverage ratio as measured by the debt-to-asset ratio (i.e. firms with low revenue productivity have higher leverage ratios), which suggests misallocation of credit across the economy¹²⁹⁵. The IMF noted that “[t]his likely reflects the distortions from the implicit guarantees that make SOEs more credit-worthy”¹²⁹⁶. Due to implicit state guarantees, the IMF found that banks are more likely to lend to SOEs because they are perceived to be protected from default¹²⁹⁷. While the role of implicit guarantees cannot be overstated in relation to allocation of credit in favor of SOEs, other factor as play have also been highlighted: “SOEs face soft budget constraints [...] lending to SOEs is therefore seen as entirely safe because the state must support these borrowers regardless of the level of debt they accrue. [...] Even if the borrower cannot repay its debt, the state will presumably ensure the company’s solvency. Loan officers also face personal incentives for lending to state firms. A loan officer could be personally blamed for

¹²⁹² *People’s Republic of China: Selected Issues*, IMF Country Report No. 16/271, IMF, 2016, p.38; available at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16271.pdf> (accessed 31 August 2023).

¹²⁹³ See Wright, L. – Grasping Shadows, p. 67-68.

¹²⁹⁴ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 79

¹²⁹⁵ *People’s Republic of China: Selected Issues*, IMF Country Reports 21(12), IMF, 2021, p. 13; available at: <https://doi.org/10.5089/9781513566528.002> (accessed on 31 August 2023).

¹²⁹⁶ *Ibid.*

¹²⁹⁷ *People’s Republic of China: Selected Issues*, IMF Country Report No. 19/274, IMF, August 2019, p. 37; available at: <https://www.imf.org/en/Publications/CR/Issues/2019/08/15/Peoples-Republic-of-China-Selected-Issues-48593> (accessed on 31 August 2023).

losses incurred by lending to private firms, whereas lending to SOEs would be viewed as a job requirement.”¹²⁹⁸

Given this dynamic, the mechanisms at work in the banking system are not based only on commercial responses. Indeed, SOEs appear to have been repeatedly pressed into boosting investment when the cyclical position of the Chinese economy has weakened. This was most evident during the financial crisis in 2007-2008, and again in early 2016, as can be seen in the sharp increases in state investment in those years¹²⁹⁹. From 2016 to 2021, the softening of private investment has continued; as a share of total investment, private investment has decreased by 8-9% points to around 56%¹³⁰⁰. This trend has been exacerbated by the Government’s economic response to COVID-19, where SOEs have played a leading role. As noted by the OECD, China’s recovery has been ‘investment-led’ and “financed by debt, fuelled by interest subsidies and implicit guarantees for state-owned enterprises (SOEs) and other public entities”¹³⁰¹ (see also Section 11.4.1). This manifests in the figures from the first half of 2022, which show stronger fixed-asset investment by SOEs than by private businesses with 9.6% year-over-year growth versus 2.7%¹³⁰² (see further Section 5.2).

It should be noted that China has made some efforts to encourage financing for SMEs, which include many private businesses. The IMF 2023 Article IV report acknowledged the use of credit policies to increase financing for SMEs¹³⁰³. The OECD likewise noted, in March 2022, that SMEs’ share in total loans had increased recently¹³⁰⁴. In particular, the government has put forward three ‘not-lower-than’ principles in relation to bank lending to SMEs, whereby the growth rate of SME loans should not be lower than that of total business loans, the number of SMEs receiving loans should not be lower than the number of SMEs receiving loans in the prior year and the percentage of SME loan applications accepted should not be lower than the percentage of SME loan applications accepted in the prior year¹³⁰⁵. Nonetheless, as shown above, SOEs still dominate, and many SMEs lack access to formal bank loans¹³⁰⁶. In fact, the IMF maintained its recommendation that China should focus on creating a level playing field

¹²⁹⁸ See Wright, L. – Grasping Shadows, p. 15.

¹²⁹⁹ Lardy N. and Solomon M.A., *State Resurgence in China?*, Peterson Institute for International Economics, 7 February 2017, p. 3; available at: <https://www.piie.com/sites/default/files/documents/lardy20170207ppt.pdf> (accessed on 31 August 2023).

¹³⁰⁰ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 50.

¹³⁰¹ *Ibid*, p. 15.

¹³⁰² Huang T., Lardy N., *China’s private firms are trailing the state-owned sector on several key indicators in 2022*, Peterson Institute for International Economics, 1 September 2022; available at: <https://www.piie.com/research/piie-charts/chinas-private-firms-are-trailing-state-owned-sector-several-key-indicators> (accessed on 31 August 2023).

¹³⁰³ See *People’s Republic of China: 2022 Article IV Consultation*, IMF Country Report No. 23/67, IMF, 2022, p. 1; available at: <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1CHNEA2023001.ashx> (accessed on 31 August 2023).

¹³⁰⁴ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 30.

¹³⁰⁵ *Guiding Opinions of the China Banking Regulatory Commission on the Financial Services for Small and Micro Enterprises in 2015*, CBIRC, 2015; available at: https://www.gov.cn/zhengce/2016-02/18/content_5042979.htm (accessed on 31 August 2023).

¹³⁰⁶ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 30; *People’s Republic of China: Selected Issues*, IMF Country Reports 21(12), IMF, 2021, p. 13; available at: <https://doi.org/10.5089/9781513566528.002> (accessed on 31 August 2023).

for the private sector by giving private players (including foreign firms) equal access to resources such as credit¹³⁰⁷.

11.2.2. POLICY-ORIENTED SECTORAL PREFERENCES

Beyond bias toward SOEs, the government also intervenes to direct capital toward strategic sectors. As noted in the IMF 2023 Article IV report, “[c]redit allocation is becoming less market-determined, as credit policies increasingly use lending targets to support specific sectors”¹³⁰⁸. Key planning documents, such as the Made in China 2025 and the 14th FYP (see Chapter 4), identify the encouraged sectors and the government accordingly seeks to direct investment into those sectors by, inter alia, offering loan interest subsidies, loan guarantees and other means of reducing capital costs. For example, Made in China 2025 sets the goal of promoting traditional manufacturing industries to transition towards high-end or high-tech manufacturing, and it identifies loan interest subsidies as a type of financial support to be provided to enterprises. To implement such financial support, China’s central ministries and departments have issued a series of documents to guide financial support to the manufacturing industry, including the Several Opinions on Financial Sector’s Support for Steady Growth, Structural Adjustment, and Performance Improvement in the Industrial Sector¹³⁰⁹, the Guiding Opinions on Financial Sector’s Support for Building A Strong Manufacturing Country¹³¹⁰, and the Measures on the Administration of the Fund for Industrial Transformation and Upgrading (the Made in China 2025)¹³¹¹.

Moreover, banks and other lenders are supposed to support these policies by giving loans to companies active in such sectors¹³¹². In this respect, the PBOC meets regularly with large banks to align lending strategies with government objectives and issues industry-specific ‘window guidance’ to direct credit¹³¹³. As explained in Chapter 6, this underlying policy is also visible in various other pieces of legislation at the national level (the Banking Law, the Securities Law or Decision No. 40). Such measures generate a further lending bias.

11.2.3. OTHER CAPITAL MARKET INTERVENTIONS

¹³⁰⁷ “Reforms securing competitive neutrality between SOEs and privately owned firms have been lacking”. See *People’s Republic of China: 2022 Article IV Consultation*, IMF Country Report No. 23/67, IMF, 2022, p. 1; available at: <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1CHNEA2023001.ashx> (accessed on 31 August 2023).

¹³⁰⁸ *Ibid*, p. 5.

¹³⁰⁹ Article 1.2 of the *Several Opinions on Financial Sector’s Support for Steady Growth, Structural Adjustment, and Performance Improvement in the Industrial Sector*, PBOC, 2016; available at: http://www.gov.cn/xinwen/2016-02/16/content_5041671.htm (accessed on 31 August 2023).

¹³¹⁰ Available at: https://www.gov.cn/xinwen/2017-03/30/content_5181983.htm (accessed on 31 August 2023).

¹³¹¹ Available at: <http://xjq.nc.gov.cn/xjqrmzf/xjbmgfxwj17/201911/5a5f1c981bdb43d2ab5cc8af4018b663.shtml> (accessed on 31 August 2023).

¹³¹² *Ibid*.

¹³¹³ Shevlin, A., Wu, L., *China: The path to interest rate liberalization*, J.P. Morgan Asset Management, July 2015, p. 7; available at: http://cdn.haymarketmedia.asia/corporate-treasurer%2Fcontent%2FWP_GL_China_Interest_Rate_Liberalization_r21.pdf (accessed on 31 August 2023); PRC Macro. (2016). *Bailing China in to the great state refinancing*, p. 31.

Finally, as explained in Sections 6.4.2. and 6.4.3, state intervention and restrictions on access to capital not only extend to bank loans, but also to the Chinese bond market and stock market. Concerning the bond market, Section 6.4.2 explained that access to the market is tightly regulated by governmental institutions, and the major players in the market are mainly state-owned entities.

Concerning the stock market, Section 6.4.3 explained that access to Chinese stock exchanges is heavily regulated by the state and that many of the firms listed on the stock exchanges are state-owned. In addition, there are restrictions on a substantial number of shares issued (since they are either non-tradable or not accessible to foreign investors).

As a result, neither bond nor stock markets in China have been effectively allocating resources in the economy. Their functioning should rather be seen as an extension of the loan/capital bias of the banking market to other areas of the formal financial system.

11.3. COST OF CAPITAL

Historically, China maintained caps on loan rates and deposit rates in order to guarantee interest margins for banks and limit competition for both loans and deposits. This had the effect of eroding the relationship between risk and return, which is key to commercial banking, capital market development, and access to finance¹³¹⁴. However, caps on loan rates were finally abolished in 2013, while caps on deposit rates were abolished in October 2015.

China has more recently continued the process of interest rate liberalisation. In August 2019, the PBOC introduced the loan prime rate ('LPR'), which is linked to rates set during open market operations (the PBOC's medium-term lending facility)¹³¹⁵. The LPR is published monthly and is the 'yardstick' for new corporate loan pricing¹³¹⁶.

While credit pricing better reflects funding conditions, interest rates have been guided downward in response to COVID-19 and the share of loans at or below the benchmark has increased¹³¹⁷. In August 2019, 16% of loans were made below the benchmark, whereas by September 2022 this had grown to 34%¹³¹⁸. This trend, through September 2021, is reflected in Figure 11.2 below which shows at left the downward trend line of the one-year LPR and at right in blue the upward trend line of the percentage of loans made below the LPR.

¹³¹⁴ *China 2030: Building a modern, harmonious, and creative society*, The World Bank and Development Research Centre of the State Council of the People's Republic of China, 2013, p. 119; available at: <https://documents1.worldbank.org/curated/en/781101468239669951/pdf/China-2030-building-a-modern-harmonious-and-creative-society.pdf> (accessed on 31 August 2023).

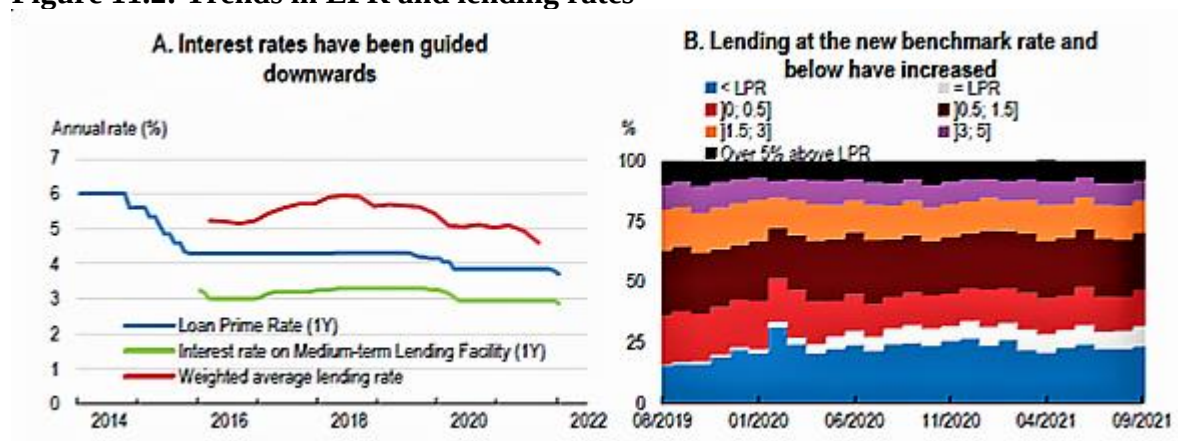
¹³¹⁵ *Announcement No. 15 [2019] of the People's Bank of China*; available at: https://www.gov.cn/xinwen/2019-08/18/content_5422048.htm (accessed on 31 August 2023). See also *Announcement of the People's Bank of China on LPR Formation Mechanism*; available at: <http://www.pbc.gov.cn/en/3688229/3688335/3883798/19e15ae1/index4.html> (accessed on 31 August 2023).

¹³¹⁶ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 28.

¹³¹⁷ *Ibid.*

¹³¹⁸ *China interval ratio of lending rate: Below LPR*, CEIC Data 2019-2023; available at: <https://www.ceicdata.com/en/china/rediscount-and-lending-rate/cn-interval-ratio-of-lending-rate-below-lpr> (accessed on 31 August 2023).

Figure 11.2: Trends in LPR and lending rates¹³¹⁹



There remain some other distinctive features. In particular, China has made use of selective liquidity support. This influences both the pattern and level of lending rates to specific sectors. For example, in April 2022, the PBOC established a scientific and technological relending facility of up to RMB 200 billion¹³²⁰. According to the OECD, the facility is available to 21 financial institutions, has an interest rate of only 1.75%, and provides financial support up to 60% of the principal amount of loans to scientific and technological enterprises¹³²¹.

Beyond measures to explicitly reduce the cost of capital, implicit measures also play a role in artificially reducing borrowing costs. The IMF 2023 Article IV report found that ‘*implicit guarantees*’ effectively translated into a 4-5 notch upgrade in credit ratings, which in turn lowered borrowing costs by 1-2% points¹³²². In 2016, the IMF put the effect slightly lower, at 2-3 credit notches and 0.5-1% interest rate advantage for enterprises with an implicit guarantee¹³²³. These figures apply to the Chinese economy in general and not to specific enterprises. In comparison, findings made in various EU trade defence investigations suggest that the upgrade in credit ratings and the corresponding savings in borrowing costs are much higher in certain industrial sectors and for specific companies¹³²⁴.

In addition, several EU anti-subsidy investigations over the past years have concluded that loans had been provided to Chinese companies under investigation below normal commercial market

¹³¹⁹ OECD Economic Surveys: China 2022, OECD, 2022, p. 29.

¹³²⁰ Press release of the People’s Bank of China, 28 April 2022; available at: <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4541178/index.html> (accessed on 31 August 2023).

¹³²¹ OECD Economic Surveys: China 2022, OECD, 2022, p. 71.

¹³²² People’s Republic of China: Selected Issues, IMF Country Report No. 16/271, IMF, 2016, p.38; available at: <https://www.imf.org/external/pubs/ft/scr/2016/cr16271.pdf> (accessed 31 August 2023).

¹³²³ Maliszewski, W. et al., *Resolving China’s corporate debt problem*, IMF Working Paper WP/16/203, October 2016; available at: <https://www.imf.org/external/pubs/ft/wp/2016/wp16203.pdf> (accessed on 31 August 2023).

¹³²⁴ See, amongst others, Commission Implementing Regulation (EU) 2017/969 (OJ L 146, 8.6.2017, p. 17) (*Hot rolled flat steel products*); Council Implementing Regulation (EU) No 452/2011 (OJ L 128, 14.5.2011, p. 18) (*Coated fine paper*); Council Implementing Regulation (EU) No 215/2013 (OJ L 73, 15.3.2013, p. 16) (*Organic coated steel*); Commission Implementing Regulation (EU) 2017/366 (OJ L 56, 3.3.2017, p. 1) (*Solar panels*); Commission Implementing Regulation (EU) No 1379/2014 (OJ L 367, 23.12.2014, p. 22) (*Filament glass fibre*); Commission Implementing Decision 2014/918/EU (OJ L 360, 17.12.2014, p. 65) (*Polyester Staple Fibers*).

rates regardless of the companies' financial and credit risk situation¹³²⁵. Each of these investigations concerned products or sectors that were considered to be 'key' or 'encouraged' areas by the Government.

11.4. HANDLING OF DEBT-AT-RISK

Beyond the price charged for new loans discussed in the prior section, actual interest costs also depend on how the existing stock of loans is turned over. For existing loans on the books there may be an incentive for banks to defer or lower interest rates charged to increase viability and reduce write-offs ('*evergreening*'). The counterpart is a high level of estimated non-performing loans ('*NPLs*'). Such practices will be further discussed in this section.

11.4.1. SYSTEMIC ISSUES RELATED TO CORPORATE DEBT

China's economic growth became increasingly credit-intensive after the 2008-2009 financial crisis, to which China responded with a large stimulus package to meet the country's economic growth target, sourced largely through local government and SOEs, with financing provided by a large credit expansion by the banking system. Despite the '*deleveraging campaign*' in 2017 and 2018 (see Section 6.3.1.5), the trend of credit expansion resumed in 2019 and exploded in 2020 due to the economic response to COVID-19¹³²⁶.

As a result, according to data from the Bank of International Settlements, by the end of 2021 China's non-financial sector debt had reached nearly 290% of GDP, far above the average for emerging markets¹³²⁷. This rise in leverage has been very abrupt, since the debt-to-GDP ratio only stood at 141.3% at the end of 2008. Corporate sector debt, which accounts for the largest segment, was equivalent to approximately 153% of GDP at the end of 2021¹³²⁸. For the period from June 2000 until May 2023, China's credit growth averaged around 15.4% per year, with a high of 33.4% year-on-year growth in November 2009 and a low of 7.8% year-on-year growth in May 2005¹³²⁹. In May 2023, China's year-on-year credit growth stood at 10.7%¹³³⁰.

This growth of credit has raised systemic risks. Following the global financial crisis, a pattern has become embedded in the Chinese economic structure: investment by local government and SOEs is used to boost demand when the economy falters, so as to keep pace with annual growth targets. Despite regulatory efforts to address the systemic risks in the financial sector (see in

¹³²⁵ *Ibid.*

¹³²⁶ Clark, H., Dawson, J., *Is China running out of policy space to navigate future economic challenges?*, Federal Reserve Bank of New York, 26 September 2022; available at: <https://libertystreeteconomics.newyorkfed.org/2022/09/is-china-running-out-of-policy-space-to-navigate-future-economic-challenges/> (accessed on 31 August 2023). See also *OECD Economic Surveys: China 2022*, OECD, 2022, p. 28: 'All these measures were effective to entice banks to lend, as illustrated by robust credit growth shortly after the outbreak, which resulted in soaring corporate debt'.

¹³²⁷ *Ibid.* See further *Chinese debt-to-GDP ratio approaches 300%*, The Bank of Finland, Institute for Emerging Economies, 29 January 2021; available at: https://www.bofit.fi/en/monitoring/weekly/2021/vw202104_3/ (accessed on 31 August 2023).

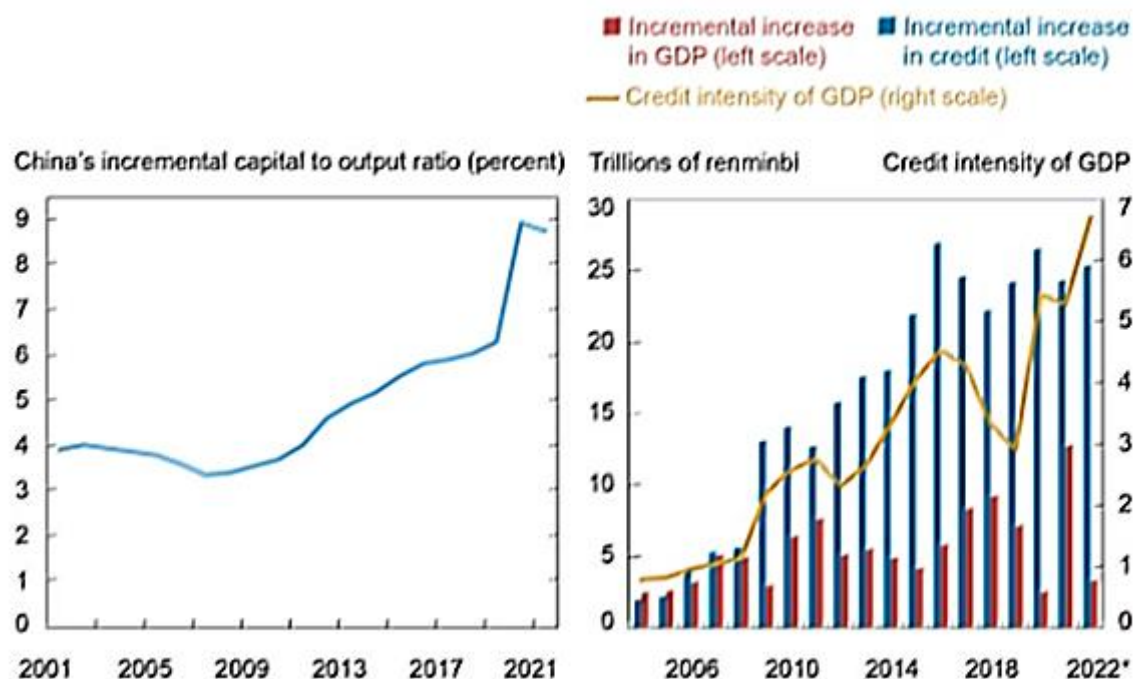
¹³²⁸ Clark, H., Dawson, J., *Is China running out of policy space to navigate future economic challenges?*, Federal Reserve Bank of New York, 26 September 2022; available at: <https://libertystreeteconomics.newyorkfed.org/2022/09/is-china-running-out-of-policy-space-to-navigate-future-economic-challenges/> (accessed on 31 August 2023).

¹³²⁹ *China domestic credit growth*, CEIC Data 2000-2023; available at: <https://www.ceicdata.com/en/indicator/china/domestic-credit-growth> (accessed on 31 August 2023).

¹³³⁰ *Ibid.*

particular Section 6.3.1.5), the economy has been locked in a fundamentally unsustainable dynamics: slowing the growth of credit would risk sharply reducing activity and profits in several sectors. The credit-based stimulus policy has thus led to excessive use of debt. This contributed to massive overinvestment in capital intensive industries, which in turn caused the formation of overcapacities¹³³¹. At the same time, corporate profits have been deteriorating. As an increasing amount of capital was invested in projects with lower returns on investment, the quality of bank assets declined, and debt-at-risk increased¹³³². As a result, the incremental capital-to-output ratio and the credit intensity of growth have steadily increased (see Figure 11.3 below).

Figure 11.3: Incremental capital-to-output ratio and credit intensity¹³³³



This is most visible in the sectors of the economy that were most involved in stimulus spending, i.e. local governments that were pushed by the central authorities to provide the bulk of the support to industry and industries with overcapacities, as will be described in greater detail below.

¹³³¹ *Overcapacity in China: An impediment to the Party's reform agenda*, EUCCC, 2016, p. 8; available at: <https://www.europeanchamber.com.cn/en/publications-overcapacity-in-china> (accessed on 31 August 2023).

¹³³² Maliszewski, W. et al., *Resolving China's corporate debt problem*, IMF Working Paper WP/16/203, October 2016, pp. 3-4; available at: <https://www.imf.org/external/pubs/ft/wp/2016/wp16203.pdf> (accessed on 31 August 2023). See also *China's supply-side structural reforms: Progress and outlook*, The Economist Intelligence Unit, 2017, p. 3; available at: http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=China_SSSR_EN.pdf&mode=wp&campaignid=ChinaSSSR2017 (accessed on 31 August 2023).

¹³³³ Clark, H., Dawson, J., *Is China running out of policy space to navigate future economic challenges?*, Federal Reserve Bank of New York, 26 September 2022; available at: <https://libertystreeteconomics.newyorkfed.org/2022/09/is-china-running-out-of-policy-space-to-navigate-future-economic-challenges/> (accessed on 31 August 2023).

11.4.2. THE ROLE OF LOCAL GOVERNMENTS IN THE DEBT CRISIS

Following the global financial crisis in 2008, local governments undertook major spending projects to keep economic growth on track and much of this was financed through so-called local government financing vehicles ('LGFVs')¹³³⁴, state-owned companies that raise funds for local governments¹³³⁵. Many of the local level SOEs are LGFVs¹³³⁶. These entities may assume various names, such as corporations for city construction investment, city asset investment or urban development investment¹³³⁷. The local government is the sole or dominant shareholder in the LGFV, which raises capital to finance the local government's investment projects.

A typical arrangement is that the local government transfers ownership of land to the local financing vehicle, and the land is used as collateral to borrow from banks' WMP, trusts or the bond market. In addition to the land use rights, the local government can also use other collateral in exchange for equity ownership, such as highways or bridges and general budget revenues¹³³⁸. The local government directly or indirectly shares the debt servicing responsibilities, and sometimes subsidises the losses of LGFVs¹³³⁹.

In this context, it is important to note that there is a mismatch in provincial finances between centralised revenue generation and local spending responsibilities¹³⁴⁰. In fact, local

¹³³⁴ Bai, C.E., Hsieh, C.T., Song, Z., *The long shadow of a fiscal expansion*, Brookings, Fall 2016, pp. 1-2; available at: <https://www.brookings.edu/wp-content/uploads/2017/02/baitextfall16bpea.pdf> (accessed on 30 August 2023).

¹³³⁵ Zhang, M., *China's local government financing vehicles (LGFV): 7 things you should know about China's local debt bomb*, 27 September 2013; available at: <http://www.ibtimes.com/chinas-local-government-financing-vehicles-lgfv-7-things-you-should-know-about-chinas-1411694> (accessed on 4 September 2023).

¹³³⁶ Batson, A., *Fixing China's state sector*, Paulson Policy Memorandum, Paulson Institute, January 2014, p. 12; available at: http://www.paulsoninstitute.org/wp-content/uploads/2017/01/fixingchina_sstatesector_english_R.pdf (accessed on 4 September 2023).

¹³³⁷ Hou, Y., *Interpreting China's fiscal reforms and the 13th Five-Year Plan targets*, Maxwell School, Syracuse University, 27 April 2016, p. 9; available at: https://www.uscc.gov/sites/default/files/Yilin%20Hou_Written%20Testimony%20042716.pdf (accessed on 4 September 2023).

¹³³⁸ Ambrose, B.W., Dong, Y., Wu, J., *Understanding the risk of China's local government debts and its linkage with property markets*, 14 March 2016, p. 14.; available at: <https://www1.villanova.edu/content/dam/villanova/VSB/assets/Understanding%20the%20Risk%20of%20China's%20Local%20Government%20Debts%20and%20Its%20Linkage%20with%20Property%20Markets.pdf> (accessed on 4 September 2023); Bai, C.E., Hsieh, C.T., Song, Z., *The long shadow of a fiscal expansion*. Brookings, Fall 2016, pp. 1, 6, 8–10; available at: <https://www.brookings.edu/wp-content/uploads/2017/02/baitextfall16bpea.pdf> (accessed on 30 August 2023); Dorrucchi, E., Pula, G., Santabarbara, D., *China's Economic Growth and Rebalancing*, European Central Bank, Occasional Paper Series No. 142, February 2013; available at: <https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp142.pdf> (accessed on 4 September 2023); Clarke, D., Lu, F., *The law of China's local government debt crisis: Local government financing vehicles and their bonds*, George Washington University Law School, 2016; available at: https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2472&context=faculty_publications (accessed on 4 September 2023); *The debt dragon: Credit habit proves hard for China to kick*, Financial Times, 26 August 2013; available at: <https://www.ft.com/content/f43a4dda-08f2-11e3-ad07-00144feabdc0> (accessed on 4 September 2023).

¹³³⁹ Zhang, Y.S., Barnett, S., *Fiscal vulnerabilities and risks from local government finance in China*, IMF Working Paper WP/14/4, January 2014, p. 4; available at: <https://www.imf.org/external/pubs/ft/wp/2014/wp1404.pdf> (accessed on 4 September 2023).

¹³⁴⁰ Deutsche Bank: *China's provinces*, research briefing, 11 June 2015, pp. 1, 7–9.

governments account for around 86% of total budgetary expenditures; however, they receive only around 53% of tax revenues as returns from the central government¹³⁴¹. In short, fiscal revenue is mostly collected by the central government but mostly spent at the local level¹³⁴².

The higher degree of decentralisation of expenditure responsibilities relative to revenues has led to financing gaps at the sub-national level that are only partially filled by fiscal transfers¹³⁴³.

In addition, on-budget borrowing by local governments is limited and tightly regulated by the central government. However, LGFV debt does not show up on the government's balance sheet, and therefore local governments are free to raise funds without violating the budget law¹³⁴⁴. For example, debts incurred to finance urban construction projects are often classified as SOE debt and do not show up in the budget¹³⁴⁵. Local governments therefore rely extensively on such off-budget mechanisms to finance priority spending, in particular infrastructure investment¹³⁴⁶.

Finally, investments are important for local officials because companies boost employment in the region and improve tax revenues in the medium term. Traditionally, an official's career development was determined by positive local GDP growth data, industrial production and visible physical changes in cities. To attract investments, it is therefore common for local officials to give implicit lending guarantees to companies. The 2008 stimulus package, which presented local governments with huge amounts of money in early 2009, worsened this trend at the local level¹³⁴⁷. This has again occurred in connection with the COVID-19 stimulus, which drove significant funds toward infrastructure investment¹³⁴⁸.

As a result, local government debt ballooned in the aftermath of the 2008 financial crisis and again in response to COVID-19. Various estimates of local government debt exist, which are

¹³⁴¹ See China Power. *Making sense of China's government budget*. <https://chinapower.csis.org/making-sense-of-chinas-government-budget/> (accessed on 13 June 2023) and statistics from National Bureau of Statistics of China. *National Government Revenue and Expenditure*. <https://data.stats.gov.cn/english/tablequery.htm?code=AC07> (accessed on 13 June 2023).

¹³⁴² OECD *Economic Surveys: China 2017*, OECD, 2017, pp. 29-30; Hou, Y., *Interpreting China's fiscal reforms and the 13th Five-Year Plan targets*, Maxwell School, Syracuse University, 27 April 2016, p. 3; available at: https://www.uscc.gov/sites/default/files/Yilin%20Hou_Written%20Testimony%20042716.pdf (accessed on 4 September 2023).

¹³⁴³ OECD *Economic Surveys 2017*, OECD, 2017, pp. 29-30.

¹³⁴⁴ Bai, C.E., Hsieh, C.T., Song, Z., *The long shadow of a fiscal expansion*, Brookings, Fall 2016, pp. 1, 6, 8–10; available at: <https://www.brookings.edu/wp-content/uploads/2017/02/baitextfall16bpea.pdf> (accessed on 30 August 2023); Dorrucchi, E., Pula, G., Santabarbara, D., *China's Economic Growth and Rebalancing*, European Central Bank, Occasional Paper Series No. 142, February 2013; available at: <https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp142.pdf> (accessed on 4 September 2023); Clarke, D., Lu, F., *The law of China's local government debt crisis: Local government financing vehicles and their bonds*, George Washington University Law School, 2016; available at: https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2472&context=faculty_publications (accessed on 4 September 2023).

¹³⁴⁵ OECD *Economic Surveys: China 2022*, OECD, 2022, p. 39.

¹³⁴⁶ Zhang, Y.S., Barnett, S., *Fiscal vulnerabilities and risks from local government finance in China*, IMF Working Paper WP/14/4, January 2014, pp. 5, 13; available at: <https://www.imf.org/external/pubs/ft/wp/2014/wp1404.pdf> (accessed on 4 September 2023).

¹³⁴⁷ *Overcapacity in China: An impediment to the Party's reform agenda*, EUCCC, 2016, p. 10; available at: <https://www.europeanchamber.com.cn/en/publications-overcapacity-in-china> (accessed on 31 August 2023).

¹³⁴⁸ OECD *Economic Surveys: China 2022*, OECD, 2022, p. 15.

not directly comparable. Official Chinese figures include ‘*on budget*’ debt (i.e. local government bonds and explicit debt), whereas the IMF also calculates ‘*augmented*’ debt that further captures additional LGFV debt that is assumed likely to be recognised as general government debt¹³⁴⁹. According to the IMF, official local government debt jumped from RMB 16,5 trillion (20% of GDP) in 2017 to RMB 30,5 trillion (27% of GDP) in 2021. This does not include the additional LGFV debt, which itself jumped from RMB 30,7 trillion (37% of GDP) in 2017 to RMB 50,1 trillion (44% of GDP) in 2021¹³⁵⁰. Notably, the LGFV debt is significantly greater than the official, ‘*on budget*’ debt.

The government has made some recent efforts to rein in LGFV indebtedness. In addition to the regulatory measures introduced in 2017-2018 (see Section 6.3.1.5), in July 2021, CBIRC issued guidelines that forbid banks from (i) extending new working capital loans to LGFVs that carry legacy government debt, (ii) funding LGFV projects that rely on fiscal subsidies alone for debt servicing, and (iii) funding enterprises that use expected land transfer income as the source of debt repayment¹³⁵¹. Nonetheless, the mushrooming debt has sparked fears of LGFV defaults; in fact, according to the IMF, LGFV debt-at-risk is equivalent to about 37% of GDP and contributes to China’s elevated debt vulnerabilities¹³⁵².

As such, LGFV activities have contributed to the systemic risks in the financial sector, such as the excessive use of leverage, the overinvestment in capital intensive industries, and the increasingly inefficient allocation of credit already described above.

11.4.3. NON-PERFORMING LOANS

In view of the situation described above, it may be surprising to see that according to official CBIRC figures, only 1.9% of outstanding loans are qualified as NPLs, as shown in Table 11.1 below.

Table 11.1: Official CBIRC estimates of NPLs¹³⁵³

	2015	2016	2017	2018	2019	2020
NPLs (RMB 100 million)	19 624	21 935	23 892	28 426	31 924	34 740
NPLs (%)	1.9	1.9	1.9	2.0	2.0	1.9
Substandard loan (%)	1.0	0.8	0.8	0.8	0.9	0.9

¹³⁴⁹ See *People’s Republic of China: 2022 Article IV Consultation*, IMF Country Report No. 23/67, IMF, 2022, p. 44, 54; available at: <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1CHNEA2023001.ashx> (accessed on 31 August 2023).

¹³⁵⁰ *Ibid*, p. 44.

¹³⁵¹ *Guiding Opinions for Banding and Insurance Institutions to Further Improve the Prevention and Resolution of Hidden Debt of Local Governments*, Document 2021/15, CBIRC, 2021.

¹³⁵² Hoyle, H., Jaesakul, P., *Local government financing vehicles revisited*, IMF, p. 41.; available at: <https://www.elibrary.imf.org/downloadpdf/journals/002/2022/022/article-A003-en.xml> (accessed on 4 September 2023).

¹³⁵³ *Statistics – Achievements During the 13th FYP Period*, CBIRC, 2021; available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=970583&itemId=954&generaltype=0> (accessed on 4 September 2023).

Doubtful loan (%)	0.8	0.8	0.8	0.8	0.8	0.7
Loss loan (%)	0.2	0.3	0.3	0.3	0.3	0.3

However, official data on NPLs are unreliable because the classification of loans does not follow international standards, and a significant amount of credit risk is not reflected on bank balance sheets because it has been moved off balance sheet through the use of asset management companies ('AMCs').

In principle, China follows the international five category system that classifies loans into categories of 'pass', 'special mention', 'substandard', 'doubtful' and 'loss'. The last three categories are scored as NPLs. While the CBIRC and PBOC jointly formulated rules on risk classification of commercial bank credit facilities in 2023 to better align with international standards¹³⁵⁴, China does not yet fully follow international norms. Official NPL classification suffers from several weaknesses:

- the Basel Committee for Bank Supervision classifies a loan as 'doubtful' when any interest payment is overdue by 180 days or more (90 in the US), while in China this step is only taken when (i) a principal payment is overdue by 270 days or more, (ii) the debtor is evading its debts owed to banks, or (iii) there is credit impairment of the financial assets and the expected credit loss accounts for more than 50% of the book value thereof¹³⁵⁵;
- due to debt moratoria for debtors affected by COVID-19, potential bad loans are not yet classified as such as of writing of this Report and will likely boost the share of bad loans in the future¹³⁵⁶;
- as noted above, a substantial amount of loan risk has been moved off balance sheet, as banks write off bad loans and transfer them to AMCs on a 'massive' scale¹³⁵⁷.

The situation also varies by sector, with certain sectors plagued by overcapacity issues and higher shares of NPLs. A 2016 UBS study found, for example, that in six overcapacity sectors – coal, metal smelting, cement, glass, aluminium and ship building – earnings before interest and tax are not enough to cover interest payments for about 25-30% of the total number of companies in these six sectors¹³⁵⁸. The study identified various resolution scenarios and concluded that in the 'more likely' scenario, some USD 1-1.5 trillion of additional NPLs would need to be written off by banks. Similar concerns have played out more recently in the real estate sector. The sector has been characterised by particularly high leverage, with listed

¹³⁵⁴ Order No. 1 [2023] of CBIRC and PBOC, *Rules on Risk Classification of Financial Assets of Commercial Banks*, issued on 10 February 2023, effective from 1 July 2023; available at: https://www.gov.cn/zhengce/2023-02/11/content_5750184.htm (accessed on 4 September 2023), English version available at: <http://www.pbc.gov.cn/en/3688253/3689009/4180845/4835368/2023033016333840569.pdf> (accessed on 4 September 2023).

¹³⁵⁵ *Ibid.*, Article 12.

¹³⁵⁶ *OECD Economic Surveys: China 2022*, OECD, 2022, p. 32.

¹³⁵⁷ *Ibid.*

¹³⁵⁸ *China economic perspectives – The economic and financial impacts of excess capacity reduction*, UBS, 2016.

companies having an average debt-to-asset ratio in 2020 of approximately 80%¹³⁵⁹. Tightening credit conditions and the turmoil caused by COVID-19 led to a surge of defaults and bankruptcy filings in early 2020 and defaults by some of the major players in 2021¹³⁶⁰ (see Section 6.4.2.2). This led S&P Global Ratings to warn, in December 2021, that NPL ratios for property loans could rise from 2% at the end of 2020 to 5.5% at the end of 2021¹³⁶¹. Notably, banks have been allowed to ease NPL classification rules for loans to sectors impacted by the real estate crisis and the COVID-19 pandemic more generally¹³⁶².

11.4.4. GOVERNMENT RESPONSE TO DEBT-AT-RISK

11.4.4.1. EVERGREENING OF LOANS

Until recently, the first reaction of the Government and financial institutions to increasing bad debt problems was to ‘*weather it out*’ by rolling over debt and providing bailouts or debt restructuring to avoid defaults. This led to an abundance of so-called zombie companies (see Section 5.4), i.e. companies making losses or unable to service their interest payment obligations but still able to obtain loans. In this regard, China has demonstrated a degree of progress. According to SASAC, China implemented a three-year plan to clean up the issue of zombie companies by 2020¹³⁶³. Nonetheless, Chinese banks continue to demonstrate a propensity to ‘*evergreen*’ corporate debt. In 2022, Zhongtai Securities analysed the continued extent of this practice by tracking volumes of loans with deferred repayment in China’s commercial banks. As shown in Figure 11.4 below, evergreening remains an issue and has in fact increased in scale.

¹³⁵⁹ *China listed company: debt to asset ratio: real estate 2001-2020*, CEIC Data; available at: <https://www.ceicdata.com/en/china/financial-data-of-listed-company-debt-to-asset-ratio/cn-listed-company-debt-to-asset-ratio-real-estate> (accessed on 4 September 2023).

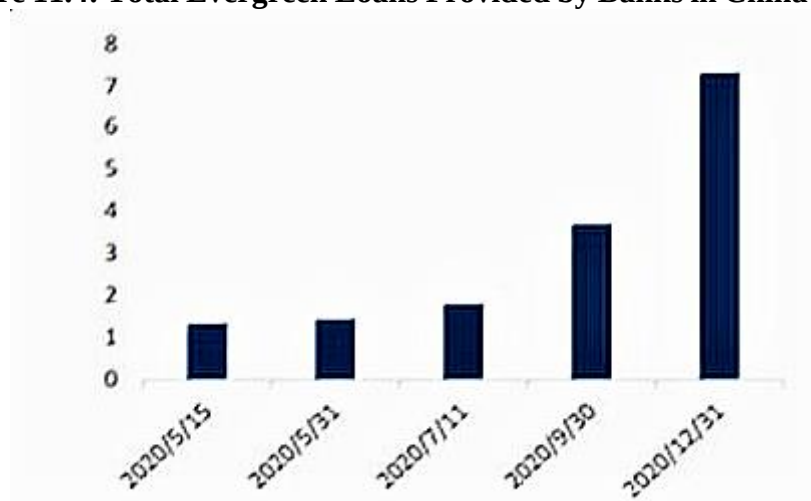
¹³⁶⁰ See *OECD Economic Surveys: China 2022*, OECD, 2022, p. 35.

¹³⁶¹ *Chinese banks to see doubling of bad property loan ratio, warns S&P*, Reuters, 15 December 2021; available at: <https://www.reuters.com/markets/rates-bonds/chinese-banks-see-doubling-bad-property-loan-ratio-warns-sp-2021-12-15/> (accessed on 4 September 2023).

¹³⁶² *People’s Republic of China: 2022 Article IV Consultation*, IMF Country Report No. 23/67, IMF, 2022, p. 10; available at: <https://www.imf.org/-/media/Files/Publications/CR/2023/English/1CHNEA2023001.ashx> (accessed on 31 August 2023).

¹³⁶³ *Ibid*, p. 49. Though there is some concern that China’s response to COVID-19 may result in the reemergence of zombie companies as a major concern. See, for example, Huang, T., *As China recovers from the pandemic, will zombie firms return?*, Peterson Institute for International Economics, 21 October 2020; available at: <https://www.piie.com/blogs/china-economic-watch/china-recovers-pandemic-will-zombie-firms-return> (accessed on 4 September 2023).

Figure 11.4: Total Evergreen Loans Provided by Banks in China (in 100 million RMB)¹³⁶⁴



In the aggregate, PBOC statistics show that in 2020 Chinese banks made evergreen loans of RMB 7,3 trillion in total¹³⁶⁵. Data from S&P Global shows that evergreening of debt amounted to 3,5% of corporate credit by the end of 2020 (RMB 6,6 trillion)¹³⁶⁶.

The existence of evergreening practices was confirmed by circulars issued in November 2022 by the PBOC, CBIRC and other ministries. These circulars explicitly encouraged financial institutions to support deferred repayment of principal and interest of loans to micro and small businesses, as well as to support reasonable extensions of development loans and credit loans to real estate enterprises¹³⁶⁷.

11.4.4.2. TRANSFER OF DEBT OWNERSHIP

In response to the Asian financial crisis in the late 1990s, the government dealt with NPLs by injecting fresh state capital into the then ‘Big Four’ banks (see Section 6.3.1.1) and by establishing four AMC, i.e. a ‘bad bank’ for each of the Big Four. These AMCs purchased NPLs from the banks and then slowly sold them off to recover part of the losses. Such an

¹³⁶⁴ Securities research report - *Tracking and envisioning banks’ policies on deferred repayment of principal and interest: Scale and impact on income and asset quality*, Zhongtai Securities, 29 May 2022; available at: https://pdf.dfcfw.com/pdf/H3_AP202205301568848350_1.pdf?1653923381000.pdf (accessed on 4 September 2023).

¹³⁶⁵ PBOC press release of 15 January 2021; available at: https://www.gov.cn/xinwen/2021-01/15/content_5580268.htm (accessed on 4 September 2023).

¹³⁶⁶ Rong, M., *China’s policy on delaying repayment of principal and interest has been renewed three times to mitigate non-performing risks, but small and medium-sized banks are still under pressure*, Reuters, 13 April 2021; available at: <https://www.reuters.com/article/china-covid-aid-loan-bank-npl-0413-idCNKBS2C00XN> (accessed on 4 September 2023).

¹³⁶⁷ Circular [2022] 252 of the PBOC, CBIRC, MOF, NDRC, MIIT and SAMR on Further Increasing Support for Deferred Repayment of Principal and Interest of Loans to Micro and Small Businesses, issued on 8 November 2022; available at: https://www.gov.cn/zhengce/zhengceku/2022-11/14/content_5726949.htm (accessed on 4 September 2023); Circular [2022] 254 of the PBOC and CBIRC on Effectively Carrying out the Existing Work on Providing Financial Support for the Stable and Healthy Development of Real Estate Sector, issued on 11 November 2022; available at: <http://www.pbc.gov.cn/zhengwugongkai/4081330/4406346/4693549/4720053/index.html> (accessed on 4 September 2023).

approach helped to avoid a banking crisis, but – in itself – did nothing to resolve the underlying corporate governance and misallocation problems.

The current approach of the Government to the rising credit crisis consists of a mix of policies, which should be considered in the context of the broader policies on SSSR (see Section 5.4), which were first set out in December 2015, focusing on five areas to reduce structural imbalances and financial risks in the Chinese economy. One of these five focal points is corporate deleveraging, i.e. reducing debt ratios in the corporate sector¹³⁶⁸. As part of the corporate deleveraging exercise, the Opinions on Actively and Steadily Lowering Enterprise Leverage Ratio were issued by the State Council in September 2016¹³⁶⁹. This document follows the underlying principles similar to the previous AMC approach, as it addresses excessive corporate leverage mainly by transferring ownership of the debt through mergers and acquisitions ('M&A') and debt-for-equity swaps, without solving the underlying problems of the distressed companies.

This approach is still evident in a circular issued in 2019 by the NDRC, PBOC, MOF and CBIRC, which sets key tasks for reducing leverage ratios and promotes debt-for-equity swaps and other measures, including M&A¹³⁷⁰.

11.4.4.2.1. Mergers and Acquisitions

The Government promotes business consolidation and debt restructuring in order to reduce financial risks. For example, the 2016 Guiding Opinions (see Section 5.4) clarified central SOEs' strategic position and aimed to form a group of innovative and internationally competitive firms, with consolidation expected to drive efficiency gains and to lower financial risks. Such consolidation has in fact played out. According to SASAC, the total number of central SOEs has been reduced from 117 in 2012 to 97 via M&A¹³⁷¹ (see Section 5.2).

Several other regulatory documents corroborate this assessment, as they promote M&A in various ways. For example, the above-mentioned Opinions on Actively and Steadily Lowering Enterprise Leverage Ratio explicitly encourage M&A as a means of corporate deleveraging. In this document, the State Council calls for reinforced efforts to conduct M&A for enterprises in industrial overcapacity sectors, eliminating zombie companies and ineffective ones. It also pledges to strengthen financial support through measures such as granting M&A loans and

¹³⁶⁸ *China's supply-side structural reforms: Progress and outlook*, The Economist Intelligence Unit, 2017, p. 3; available at:

http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=China_SSSR_EN.pdf&mode=wp&campaignid=ChinaSSSR2017 (accessed on 31 August 2023).

¹³⁶⁹ *Opinions of the State Council on Actively and Steadily Lowering Enterprise Leverage Ratio*, Document 2016/54, State Council, 22 September 2016; available at: https://www.gov.cn/gongbao/content/2016/content_5124355.htm (accessed on 4 September 2023).

¹³⁷⁰ Circular [2019] 1276 of the NDRC, PBOC, MOF, CBIRC on Issuing the 2019 Key Tasks for Reducing the Leverage Ratio of Enterprises, 2019; available at: https://www.gov.cn/zhengce/zhengceku/2019-12/03/content_5458022.htm (accessed on 4 September 2023).

¹³⁷¹ China Daily indicated 98 as the total number of central SOEs in 2023, see *SOEs' restructuring set to advance*, China Daily, 28 February 2023; available at: <https://www.chinadaily.com.cn/a/202302/28/WS63fd600ea31057c47ebb13bb.html> (accessed on 4 September 2023).

encouraging qualified enterprises to raise funds for M&A through issuing preference shares and convertible bonds¹³⁷².

Furthermore, at the level of industrial sectors, the 2016 Several Opinions on the Issues of Financial Claims and Liabilities Involved in Resolving Overcapacity of the Iron and Steel Industry and the Coal Industry state that: “*Financial support shall be stepped up for iron and steel enterprises and coal enterprises that engage in merger and reorganization*”¹³⁷³.

Similarly, the Guidelines of the PBOC, CBRC, CSRC, and CIRC on Supporting the Steel and Coal Industries to Resolve Overcapacity and Achieve Turnaround in Development state that it is necessary to “*improve the M&A loan business, and expand the scale of M&A loans, reasonably determine the loan term and interest rate, so as to support enterprises and regions with comparative advantage to integrate the industrial capacity*”¹³⁷⁴.

The PBOC and CBIRC have also recently announced financial support policies for the real estate industry to this end. For example, commercial banks are encouraged to issue M&A loans for real estate projects in a steady and orderly manner and to support high-quality real estate enterprises in acquiring projects of distressed real estate enterprises. In addition, PBOC and CBIRC would support eligible commercial banks and AMCs to issue bonds involving real estate M&A¹³⁷⁵.

One example of state-led corporate restructuring is Brilliance Automobile, which defaulted on its debt in 2020¹³⁷⁶. The Shenyang government led the subsequent restructuring efforts¹³⁷⁷. In May 2023, Brilliance Automobile publicly filed with the HKSE that its restructuring committee had selected Shenyang Automobile Co., Ltd., ultimately controlled by the Shenyang Municipal

¹³⁷² *Opinions of the State Council on Actively and Steadily Lowering Enterprise Leverage Ratio*, Document 2016/54, State Council, 22 September 2016; available at: https://www.gov.cn/gongbao/content/2016/content_5124355.htm (accessed on 4 September 2023).

¹³⁷³ *Several Opinions on the Issues of Financial Claims and Liabilities Involved in Resolving Overcapacity of the Iron and Steel Industry and the Coal Industry*, Document [2016] 51, NDRC, MIIT and CBRC, 1 December 2016; available at: https://www.gov.cn/xinwen/2016-12/16/content_5148914.htm (accessed on 4 September 2023).

¹³⁷⁴ *Guidelines on Supporting the Steel and Coal Industries to Resolve Overcapacity and Achieve Turnaround in Development*, PBOC, CBRC, CSRC, CIRC, 17 April 2016; available at: https://www.gov.cn/gongbao/content/2016/content_5095765.htm (accessed on 4 September 2023).

¹³⁷⁵ *Circular of the PBOC and CBIRC on Effectively Carrying out the Work on Providing Financial Support for the Stable and Healthy Development of Real Estate Sector*, 11 November 2022; available at: https://www.gov.cn/xinwen/2022-11/23/content_5728454.htm (accessed on 4 September 2023).

¹³⁷⁶ Cao, D., Cai, J., *Shenyang weighing takeover of Brilliance China's major owner, sources say*, Bloomberg, 25 May 2023; available at: <https://www.bloomberg.com/news/articles/2023-05-25/shenyang-said-to-mull-takeover-of-brilliance-china-s-major-owner> (accessed 4 September 2023).

¹³⁷⁷ *Ibid.*

Government's SASAC to take over the company¹³⁷⁸ which would be a RMB 16 billion transaction¹³⁷⁹. In August 2023, the restructuring plan was approved¹³⁸⁰.

Finally, the question remains how the merger of inefficient groups will actually result in higher efficiency¹³⁸¹, unless major efforts are undertaken to improve the corporate governance and profit efficiency of the merged entities¹³⁸².

11.4.4.2.2. Debt-to-Equity Swaps

The debt-to-equity swap program initiated by the State in 2016¹³⁸³ aims at lowering the debt ratios of companies in financial difficulty and decreasing their financing costs by replacing high-interest rate bank loans with relatively cheaper equity capital. Through August 2022, the accumulated value of debt-to-equity swap deals had grown to RMB 2 trillion¹³⁸⁴.

Debt-to-equity swaps for distressed companies also take place outside of China. However, in market economies, the process is normally market driven, i.e. a company in financial distress will offer a swap to the financial market, which will decide whether or not to accept the offer. Depending on the company's financial strength, the debt will be taken over at face value or at a discount. In the Chinese case, the process is largely State driven and suffers from information asymmetry; thus, pricing is not market determined¹³⁸⁵.

Although a diverse group of bank and nonbank financial institutions is charged with implementing China's swap program, commercial banks and in particular state-owned banks

¹³⁷⁸ Inside information update on restructuring of controlling shareholder, Brilliance China Automotive Holdings Limited, 31 May 2023; available at: <http://iis.aastocks.com/20230531/10754893-0.PDF> (accessed 4 September 2023).

¹³⁷⁹ Cao, D., Cai, J., *Shenyang weighing takeover of Brilliance China's major owner, sources say*, Bloomberg, 25 May 2023; available at: <https://www.bloomberg.com/news/articles/2023-05-25/shenyang-said-to-mull-takeover-of-brilliance-china-s-major-owner> (accessed 4 September 2023). Inside information update on restructuring of controlling shareholder, Brilliance China Automotive Holdings Limited, 31 May 2023; available at: <http://iis.aastocks.com/20230531/10754893-0.PDF> (accessed 4 September 2023).

¹³⁸⁰ Reuters (2024) – No discussion of stake sale in China BMW joint venture – Shenyang document; available at: <https://www.reuters.com/business/autos-transportation/no-discussion-sale-stake-china-bmw-joint-venture-shenyang-document-2024-01-18/#:~:text=Last%20August%2C%20creditors%20and%20a,bankrupted%20shareholder%20of%20Brilliance%20China> (accessed on 8 March 2024).

¹³⁸¹ OECD Economic Surveys 2017, OECD, p. 38.

¹³⁸² See on this issue for instance Xiao, Z., Ming, Y., Gao, C., *Does mixed-ownership reform improve SOEs' innovation? Evidence from state ownership*, China Economic Review, Volume 61, June 2020; available at: <https://doi.org/10.1016/j.chieco.2020.101450> (accessed on 4 September 2023).

¹³⁸³ *Opinions of the State Council on Actively and Steadily Lowering Enterprise Leverage Ratio*, Document 2016/54, State Council, 22 September 2016; available at: https://www.gov.cn/gongbao/content/2016/content_5124355.htm (accessed on 4 September 2023).

¹³⁸⁴ CBIRC press release of 23 September 2022; available at: <https://www.nbd.com.cn/articles/2022-09-23/2476731.html> (accessed on 4 September 2023).

¹³⁸⁵ “[I]n the case of China's debt-to-equity swap market, information asymmetry, lack of key pricing infrastructure, and too much state intervention have significantly restricted the role of market forces in determining fair prices of swaps”. See Huang, T., *Tracking China's debt-to-equity swap program: 'Great cry and little wool'*. Peterson Institute for International Economics, 24 June 2019; available at: <https://www.piie.com/blogs/china-economic-watch/tracking-chinas-debt-equity-swap-program-great-cry-and-little-wool> (accessed on 4 September 2023).

are still the key players¹³⁸⁶. Because commercial banks are not allowed to hold directly the equity of companies (except in special circumstances¹³⁸⁷), they generally establish an ‘implementing agency’, which is typically a financial asset investment company (‘FAIC’) in which a commercial bank registered in China should be the primary promoter¹³⁸⁸. Implementing agencies are also allowed to raise funds from external investors, such as WMPs and social capital (insurers, pension funds) to support the swaps¹³⁸⁹. The idea is that banks could then transfer their initial exposure to new investors (i.e. mainly households)¹³⁹⁰. However, in reality, banks’ exposure to the debt-at-risk remains essentially the same, especially if the WMPs are in fact their own subsidiaries.

In principle, the first thing equity holders of a distressed company would be expected to do in a market economy is to restructure the company and replace its management. But in China, the new owners are actually the financial institutions via their implementing agencies. In fact, the debt-to-equity swap program has been mainly implemented by the five largest state-owned banks; as of April 2019, the FAICs set up by just these five banks had executed nearly 70% of signed swap projects, representing 44% of the signed swap value¹³⁹¹. While it is true that a company with good prospects of getting back on track would have no incentive to surrender its equity at a distressed valuation to a state-owned financial institution, the fact that the companies were facing significant financial difficulties suggests that the equity value should have been heavily discounted. However, there are indications that swaps are conducted at face value instead of at a discount¹³⁹².

¹³⁸⁶ *Ibid.* See also Circular [2018] 1442 of the NDRC, PBOC, MOF, CBIRC, and CSRC on Encouraging Relevant Institutions to Participate in Market-Oriented Debt-for-Equity Swaps, 13 November 2018; available at: https://www.gov.cn/xinwen/2018-11/19/content_5341777.htm (accessed on 4 September 2023).

¹³⁸⁷ For example, banks may hold equity interests of distressed companies as a result of enforcing a pledge attached to the equity interest, but only for up to two years. See Article 42 of the Banking Law.

¹³⁸⁸ *Administrative Measures for Financial Asset Investment Companies (for Trial Implementation)*, CBIRC, 29 June 2018; available at: https://www.gov.cn/gongbao/content/2018/content_5319826.htm (accessed on 4 September 2023).

¹³⁸⁹ Circular [2018] 152 of the NDRC, PBOC, MOF, CBIRC, SASAC, CSRC, CIRC on Specific Policies for the Implementation of Market-Oriented Debt-for-Equity Swaps of Banks, 19 January 2018; available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/201801/t20180125_962652.html (accessed on 4 September 2023); Circular [2018] 1442 of the NDRC, PBOC, MOF, CBIRC, & CSRC on Encouraging Relevant Institutions to Participate in Market-Oriented Debt-for-Equity Swaps, 13 November 2018, https://www.gov.cn/xinwen/2018-11/19/content_5341777.htm (accessed on 4 September 2023); Circular of the CBIRC on Matters Relating to Asset Management Business Conducted by Financial Asset Investment Companies, 16 April 2020, <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=902411&itemId=926> (accessed on 4 September 2023).

¹³⁹⁰ *China’s supply-side structural reforms: Progress and outlook*, The Economist Intelligence Unit, 2017, p. 16; available at: http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=China_SSSR_EN.pdf&mode=wp&campaignId=ChinaSSSR2017 (accessed on 31 August 2023).

¹³⁹¹ Huang, T., *Tracking China’s debt-to-equity swap program: ‘Great cry and little wool’*. Peterson Institute for International Economics, 24 June 2019; available at: <https://www.piie.com/blogs/china-economic-watch/tracking-chinas-debt-equity-swap-program-great-cry-and-little-wool> (accessed on 4 September 2023).

¹³⁹² Lo, C., *China’s debt-equity swaps – a wake-up call for structural reforms*, BNP Paribas Asset Management, 17 November 2020; available at: <https://china.bnpparibas-am.com/portfolio-perspectives/chinas-debt-equity-swap-programme-the-good-the-bad-and-the-ugly-en/> (accessed on 4 September 2023).

There is further evidence that swaps are sometimes conducted by financially unviable companies, which should not be the case in a market-driven process. This is despite the fact that the State Council’s guidelines state that companies with no financial prospects would not be eligible for debt-to-equity swaps¹³⁹³. The idea is that debt-to-equity swaps should only be initiated for enterprises that cannot service their immediate debts but are considered by the lender to be financially sustainable in the medium- to long-term. Only a limited group of firms conform to both these conditions, thus restricting in theory the potential scale of such measures¹³⁹⁴.

However, in practice, a significant share of swaps – 58% in terms of value and 37% in terms of number of swaps – initiated between October 2016 and August 2019 took place in the coal and steel sector, in which overcapacities and zombie companies were relatively common features¹³⁹⁵. Data from 2019 also show that the debt-to-equity swap program had done little to cut China’s high leverage, at least in part due to a lack of participation by private investors¹³⁹⁶. In 2020, the CBIRC issued the Circular on Matters Relating to Asset Management Business Conducted by Financial Asset Investment Companies to solve the fundraising challenge faced by implementing agencies by allowing retail investors to invest in products backed by debt-to-equity assets¹³⁹⁷. At the same time, the CBIRC also recognized the high risk of debt-to-equity swaps, as apparent from the statement of a senior official when explaining the new rules: “requirements for retail investors are higher than for other asset management products because debt-to-equity swaps often involve higher risks”¹³⁹⁸.

Thus, it seems that in their current form, Chinese debt-to-equity swaps help avoid short-term bankruptcies and loss of employment, but they are less effective at addressing the fundamental issues underlying China’s debt problem. In addition, they add to overall systemic risks in the Chinese financial sector, as part of the debt burden is shifted to retail investors and households through WMPs¹³⁹⁹.

11.4.4.3. BANKRUPTCIES

While defaults or liquidation are not the preferred scenarios for companies in distress in China (see Section 6.7), the Government in 2019 unveiled a reform plan to strengthen market-based

¹³⁹³ *Opinions of the State Council on Actively and Steadily Lowering Enterprise Leverage Ratio*, Document 2016/54, State Council, 22 September 2016; available at: https://www.gov.cn/gongbao/content/2016/content_5124355.htm (accessed on 4 September 2023).

¹³⁹⁴ *OECD Economic Surveys 2017*, OECD, 2017, p. 18.

¹³⁹⁵ *Things about debt-to-equity swaps*, Sinolink Securities, 2019; available at: <https://zhuanlan.zhihu.com/p/77179104> (accessed on 4 September 2023).

¹³⁹⁶ Huang, T., *Tracking China's debt-to-equity swap program: 'Great cry and little wool'*. Peterson Institute for International Economics, 24 June 2019; available at: <https://www.piie.com/blogs/china-economic-watch/tracking-chinas-debt-equity-swap-program-great-cry-and-little-wool> (accessed on 4 September 2023).

¹³⁹⁷ Circular of the CBIRC on Matters Relating to Asset Management Business Conducted by Financial Asset Investment Companies, 16 April 2020. <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=902411&itemId=926> (accessed on 4 September 2023).

¹³⁹⁸ *Ibid.*

¹³⁹⁹ *China's zombie state-owned enterprises benefit from surge in debt-equity swaps*, China Banking News, 22 August 2017; available at: <https://www.chinabankingnews.com/2017/08/22/chinas-zombie-state-owned-enterprises-benefit-surge-debt-equity-swaps/> (accessed on 4 September 2023).

exit mechanisms by making insolvency and restructuring a more credible option¹⁴⁰⁰. As a result, the number of bankruptcy cases has increased¹⁴⁰¹, including for example the reorganization of Hainan Air Group, the largest as of the writing of this Report involving creditors' rights of over RMB 1,6 trillion¹⁴⁰².

Nonetheless, as described in Section 6.7.2, the number of insolvency cases is low for an economy the size of China and enforcement of China's Bankruptcy Law remains overall weak and inconsistent. Defaults, especially for large companies and SOEs, have often been handled on a case-by-case basis with differing degrees of state intervention and transparency, and with a preference for keeping companies alive. This results in the survival of unviable companies that contribute to excess production capacities and amounts to an implicit state guarantee that artificially reduces the cost of capital.

11.5. CHAPTER SUMMARY

Access to capital for corporate actors in China is subject to various distortions given the strong State presence and regulatory controls governing the formal financial system. Firstly, the State plays an undue role in allocating capital. This results in a bias toward lending to SOEs and private businesses with close government ties, crowding out other players in the market. The inefficient allocation of capital is particularly evident in the fact that there is a negative correlation between productivity and leverage, with less profitable SOEs bearing a disproportionate share of indebtedness. This has been exacerbated by China's economic response to COVID-19, which leaned heavily on SOEs through credit-fuelled investment. It is clear that the mechanisms at work in the banking system do not follow normal commercial responses (see Section 11.2.1).

Policy signals provided by the Government concerning strategic sectors also play a role. The Government seeks to direct investment into key projects and industries by, inter alia, offering loan interest subsidies, loan guarantees and other means of reducing capital costs. Moreover, banks and other lenders are encouraged to support these policies by providing loans to companies active in such sectors. This generates further lending bias, which fundamentally distorts China's financial markets (see Section 11.2.2).

Secondly, the cost of capital is not the result of free market forces. Although China has continued to liberalise its interest rate regime through the LPR, in September 2022 34% of loans were made below the benchmark (see Section 11.3). Further, China has made notable use of selective liquidity support. For example, the state subsidises loans to scientific and technological enterprises. Due to artificially low borrowing costs removed from the typical risk-return relationship, China has seen a continued credit boom characterised by overinvestment and excessive use of capital (see Section 11.4.1).

¹⁴⁰⁰ Circular on Issuing the Reform Plan for Accelerating the Improvement of the Market Entity Exit System, NDRC et al., 22 June 2019, available at: <https://www.gov.cn/guowuyuan/2019-07/16/5410058/files/bbaef6612fed4832b70a122b39f1d5bd.pdf> (accessed on 4 September 2023).

¹⁴⁰¹ Zhao, J., Gu, W., Hou, Y., Chen, J., *Restructuring and insolvency increase in China*, IFLR; available at: <https://www.iflr.com/article/2af6gcnl855tnepvguxa8/sponsored/restructuring-and-insolvency-increase-in-china> (accessed on 4 September 2023).

¹⁴⁰² *Ibid.*

The rising incremental capital-to-output ratio and growth of credit intensity indicate a worsening efficiency of capital allocation. Non-performing loans are thus an increasing concern, as has recently played out in the real estate sector in particular (see Section 11.4.3). Nonetheless, China has in part masked the issue through evergreening loans and restructuring debt, including through M&A activity and debt-to-equity swaps, without fundamentally addressing the debt problem and its root causes (see Section 11.4.4).

In essence, despite the recent steps that have been taken to liberalise the market, the corporate credit system in China is affected by significant systemic distortions resulting from the continuing pervasive role of the state in the capital markets.

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12.1. INTRODUCTION

China's economy consumes vast quantities of raw materials. This is why security of supply is one of the most important targets, often underlined in the Chinese policy documents, in particular the respective sectoral 14th FYPs (see Chapter 4, as well as Section 12.2.1). China continues to invest in securing reliable supplies of raw materials, inside and outside of China. Indeed, in 2021, investment in geological exploration within China reached RMB 97.29 billion out of which RMB 79.91 billion was invested in the exploration of oil and gas minerals while RMB 17.38 billion was invested in the exploration of non-oil and gas minerals¹⁴⁰³.

China is also the leader in the production and consumption of raw materials globally. According to the Commission's 2023 study on critical raw materials¹⁴⁰⁴ which screened 70 candidate raw materials comprising 67 individual materials and three materials groups: ten heavy ('HREEs') and five light ('LREEs') rare earth elements, and five platinum-group metals, i.e. 87 individual raw materials in total¹⁴⁰⁵, China is the largest supplier of several critical raw materials¹⁴⁰⁶ (see Table 12.1 below).

¹⁴⁰³ Ministry of Natural Resources (2022). *China Mineral Resources 2022*, PRC, Geological Publishing House, Beijing.

¹⁴⁰⁴ See European Commission (2023). *Study on the Critical Raw Material for the EU, Final Report*; available at: <https://ec.europa.eu/docsroom/documents/54114/attachments/1/translations/en/renditions/native> (accessed on 22 August 2023).

¹⁴⁰⁵ *Ibid.*, p.5, for the full list of raw materials.

¹⁴⁰⁶ *Ibid.*, p.10.

Table 12.1:Raw materials with the largest China’s global supply share

Raw material	China’s global supply share, in % <i>(italics – extraction stage;</i> regular font – processing stage)
Aluminium	56
<i>Antimony</i>	56
Arsenic	44
<i>Baryte</i>	44
Bismuth	70
Cobalt	60
<i>Coking Coal</i>	53
Copper	38
<i>Fluorspar</i>	56
Gallium	94
Germanium	83
Lithium	56
Magnesium	91
Manganese	58
Natural graphite	67
Nickel	33
<i>Phosphate rock</i>	44
Phosphorus	79
Scandium	67
Silicon metal	76
Titanium metal	43
Tungsten	86
<i>Vanadium</i>	62
LREEs	85
HREE	100

Moreover, China is the world's largest producer of indium, molybdenum, strontium and tin, and has the second-largest reserves of cadmium, diatomite, lead and zinc, as well as a significant position on iron ore, gold and mercury¹⁴⁰⁷.

All manufacturing industries require raw materials which therefore enter practically every supply chain. Upstream industries extract, refine and process raw materials while downstream industries further use the processed materials in the manufacturing process. Significant shifts in the demand for raw materials occur, not least in view of the development of hi-tech products and environmental applications, with certain raw materials previously found in niche applications becoming crucial components in a number of products, ranging from wind turbines and solar panels (see Chapter 10) to semiconductors (see Chapter 19) to new energy vehicles (see Chapter 22) etc.

More broadly, raw materials used in the production process can be divided into a number of subgroups, including:

- metals which can be further subdivided into precious metals, ferrous metals, non-ferrous metals, rare earths etc.;
- industrial minerals;
- mineral fuels;
- agricultural commodities which can be further subdivided into grains, oils, cotton etc.;
- wood-based products which can be further subdivided into logs, sawn wood etc.; and
- other raw materials used for manufacturing processed products.

This chapter considers raw materials and other material inputs as a broad category encompassing various types of natural resources used as production inputs in the manufacturing process. Focusing mainly on various forms of governmental measures, this chapter will describe in detail individual Chinese policies which impact the functioning of the relevant raw material markets. Complementing this chapter, certain production inputs are examined in more depth in dedicated chapters, such as energy in Chapter 10, steel in Chapter 14, aluminium in Chapter 15 or chemicals in Chapter 16.

12.2. POLICY MEASURES CONCERNING RAW MATERIALS

Raw materials encompass a broad range of different categories of unprocessed and processed materials and are covered by a number of policy measures. This section will first analyse the relevant national level FYPs (see Section 12.2.1), followed by provincial level FYPs and other policy documents relating to raw materials.

12.2.1. NATIONAL SECTORAL FYPs AND OTHER POLICIES

According to the 14th FYP (see Section 4.2.5), China will “*accelerate the construction of a manufacturing powerhouse*”, as well as “*build a modern industrial system with coordinated development of the real economy, technological innovation, modern finance, and human*

¹⁴⁰⁷ Hilpert, H.G., Mildner, S.A. (2013). *Fragmentation or Cooperation in Global Resource Governance? A Comparative Analysis of the Raw Materials Strategies of the G20*, SWP Research Paper 2013/RP 01, German Institute for International and Security Affairs.

resources”¹⁴⁰⁸. This includes the objective to “transform and upgrade traditional industries, promote the optimization and structural adjustment of raw material industries such as petrochemicals, steel, nonferrous metals, and building materials, expand the supply of high-quality products in sectors such as light industry and textiles, speed up the transformation and upgrading of enterprises in key industries such as the chemical industry and papermaking and improve the green manufacturing system”¹⁴⁰⁹. This goal is accordingly reflected in a number of national level sectoral 14th FYPs relevant for the raw materials segment. Those include but are not limited to¹⁴¹⁰ the Raw materials industry development plan (see Section 12.2.1.1), the Plan for revitalisation of particular regions (see Section 12.2.1.2), the Green industry development plan (see Section 12.2.1.5), the Circular economy development plan (see Section 12.2.1.4), as well as the Plan promoting the development of resource-rich regions (see Section 12.2.1.3). The sectoral 14th FYPs are further complemented by a host of policies adopted by central authorities, in particular the NDRC and the respective line ministries, as well as by provincial- and municipal-level planning documents (see Section 12.2.2).

12.2.1.1. 14TH FYP ON DEVELOPING RAW MATERIALS INDUSTRY

Referring explicitly to the task of implementing the 14th FYP and describing the raw materials as the “bedrock of the real economy [...] underpinning the development of the national economy, a key field that shapes China’s international competitive edges, and the ‘main battlefield’ for the restructuring of the industrial foundation and green industrial development”, the 14th Raw Materials FYP covers a wide range of materials. As explained by MIIT when the 14th Raw Materials FYP was introduced, “in order to enhance the systematic, holistic and collaborative nature of planning and promote the coupling and symbiotic development of industries, the [Plan] no longer separately formulates petrochemical chemicals, iron and steel, non-ferrous metals, building materials and other industry plans, but integrates the raw material industry to make a plan. This is also the first time in history”¹⁴¹¹.

Main features of the plan

The 14th Raw Materials FYP emphasizes that the 13th FYP enabled China to become the world’s largest producer of strategic minerals such as crude steel, refined copper, electrolytic aluminium, methyl alcohol, urea, cement and plate glass. It further enabled the country to start dealing with other challenges, including rebalancing serious overcapacity in certain sectors and increasing the proportion of R&D investment, and pushed forward the green transition. At the core of the plan lies the intention to build a new development paradigm largely based on two ideas. The first idea is reducing reliance on imports of primary sources and increasing the resilience of the industrial chain. The second idea is realizing the green and safe development

¹⁴⁰⁸ See the 14th FYP, Part Three, *Accelerate the development of a modern industrial system and consolidate and strengthen the foundation of the real economy*, Introduction.

¹⁴⁰⁹ See the 14th FYP, Part Three, Article VIII, Section 3.

¹⁴¹⁰ Other national level planning policy documents include for instance Made in China 2025 (see Section 4.2.3).

¹⁴¹¹ See at: https://www.cnii.com.cn/gxxww/gxdt/202112/t20211229_347388.html (accessed on 22 August 2023).

of the raw materials industry in support of other goals, such as peaking carbon emissions and promoting workplace safety¹⁴¹².

As other planning documents, the 14th Raw Materials FYP also refers to President Xi's Thought on Socialism with Chinese Characteristics for a New Era as a guiding principle¹⁴¹³.

The plan also sets out a clearly defined set of *development objectives*, including:

- Striving for the High-End Industry Supply: the intention of the Chinese authorities is to boost the supply of high-end products made of advanced base materials. To reach this objective, the innovation capacity of the new materials industry *“shall be greatly improved, and the share of R&D investment in key sectors is expected to exceed 1.5 percent, enabling China to own a series of proprietary key generic core technologies”*;
- Developing an Appropriate Industrial Structure through significant cuts in production capacity of crude steel and cement, among others. The plan envisions industrial concentration of key fields, as well as enhanced *“synergy between the industrial layout and production factors [...] to develop at least five world-class advanced manufacturing clusters in the field of raw materials”*;
- Accelerating Green Industrial Development by pursuing specific targets, such as that *“energy consumption per ton of steel in the steel sector shall drop by 2 percent; the energy consumption per unit of cement clinker shall fall by 3.7 percent; and the carbon emissions of electrolytic aluminium are expected to decline by 5 percent. The pollutant emission intensity per unit of output value and the total emissions of pollutants from key sectors are expected to fall as well”*.
- Stepping up Digital Industrial Transformation, including by ensuring that *“[t]he Computer Numerical Control (CNC) rate shall be applied to over 70 percent of critical processes. Key sectors shall secure greater progress in realizing digital, Internet-based and intelligent development. Enterprises shall work faster to improve their capacity for Internet security protection. More than 100 intelligent manufacturing demonstration plants and over ten industrial online platforms shall be put in place”*¹⁴¹⁴.

The 14th Raw Materials FYP further contains a number of provisions related to individual raw materials sub-sectors (concerning steel, see Chapter 14). The provisions listed below are examples of measures which are likely to have an impact on supply.

Concerning **chemicals and petrochemicals**¹⁴¹⁵, the plan envisages that China will *“advance such technology as highly selective catalysts, efficient membrane separation, and the essential safety of dangerous processes, and press ahead with the R&D of special-purpose metallocene-based polyolefin, high-end lubricants, high-purity/ultra-high-purity chemicals, special-purpose industrial gas, olefin produced via the coupling of methane, and other new products”*¹⁴¹⁶. With respect to industrial structure, the layout plan for the petrochemical industry is to be put in place

¹⁴¹² *Ibid.*

¹⁴¹³ *Ibid.*, Section II(I).

¹⁴¹⁴ *Ibid.*, Section II(III).

¹⁴¹⁵ Raw materials in the petrochemical industry include products of petroleum oil refining while main chemical raw materials generally include, among others, fossil fuels like coal and natural gas, water, salt, limestone and sulphur.

¹⁴¹⁶ See the 14th Raw Material Plan, Feature 1.

and “steps will be taken to encourage the petrochemical and chemical sectors to explore the complementary development of the modern coal chemical industry and the traditional refining and chemical industry and the industry of hydrogen production powered by electricity generated from renewable sources [...]”¹⁴¹⁷.

Moreover, a central objective of the plan is to improve chemical and petrochemical industry’s competitiveness by taking measures to make leading enterprises bigger and stronger, i.e. by fostering “a number of pioneering enterprises that could lead the ecosystem of the industrial chain”. In this regard, “financial institutions will be encouraged to [...] provide comprehensive financial services for raw materials enterprises that have implemented mergers and reorganization as well as transformation and upgrading”¹⁴¹⁸.

Similar goals, including fostering pioneering leading enterprises and the related financial support¹⁴¹⁹ are foreseen also for the non-ferrous metals¹⁴²⁰ subsector. The general green development goal, which translates into control of the total energy consumption and total carbon emissions features further among the main objectives of the plan concerning non-ferrous metals¹⁴²¹. The authorities also plan to “support dominant enterprises to establish recycling bases and industrial agglomeration areas for [...] copper, lithium, nickel, cobalt, tungsten and molybdenum, and promote the integrated development of the recycling, dismantling, processing, classification and delivery of renewable metals”¹⁴²² and to “support the development of key domestic mines including iron ores, copper ores and rear earth”¹⁴²³.

As with other raw materials, building materials will also be controlled to reach targets in the total energy consumption and total carbon emissions¹⁴²⁴ and to promote the use of green building materials¹⁴²⁵. Specifically, the authorities are planning to “push forward the R&D of such emerging technology as the deep desulfurization and denitrification of cement, enhanced dust removal via chemical agglomeration, and efficient and low-carbon energy conservation, [...] to develop an integrated application system for such technology as the tiered purification of non-metallic ores, crystal structure protection, particle shape control technology, special-purpose glass melting and forming technology, advanced ceramic powder preparation technology, high-temperature solid oxide fuel cell powder and component co-firing technology and sintering technology [...]”¹⁴²⁶.

Implementation of the Plan

As is customary in this type of policy document, a dedicated Section¹⁴²⁷ specifies how the 14th Raw Materials FYP should be implemented: “Relevant departments of the country shall ensure

¹⁴¹⁷ *Ibid.*, Section III(II).

¹⁴¹⁸ *Ibid.*, Section IV(III).

¹⁴¹⁹ *Ibid.*

¹⁴²⁰ Non-ferrous metals mentioned in the plan include, among others, rear earth metals, aluminium, iron ore, copper and zinc. For aluminium, see Chapter 15 for more details.

¹⁴²¹ See the 14th Raw Material Plan, Section II(III) and Feature 3.

¹⁴²² *Ibid.*, Section VII(I).

¹⁴²³ *Ibid.*, Feature 5.

¹⁴²⁴ *Ibid.*, Section II(III).

¹⁴²⁵ *Ibid.*, Section III(III).

¹⁴²⁶ *Ibid.*, Feature 1.

¹⁴²⁷ Section VIII – Guarantee Measures.

the implementation of relevant initiatives according to the division of duties and responsibilities. All localities need to include the main contents and major projects herein in their primary local tasks. Petrochemical and chemical, steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan and the actual conditions in the aforesaid sectors”¹⁴²⁸.

Moreover, “[t]he leading role of the Plan shall be fully leveraged to strengthen coordination and collaboration between industry policies and policies of fiscal affairs and taxation, finance, investment, import and export, energy, the eco-environment, natural resources and pricing. Competent investment and natural resource departments at all levels shall take the Plan as an important basis for examining and approving investment projects and land and sea use. [...] The existing funding channels shall be made full use of to support major projects involved in the Plan. We shall deepen industry-finance cooperation and leverage the role of the national industry-finance cooperation platform to provide strong support for projects in line with the Plan by means of financial services and equity investment”¹⁴²⁹.

12.2.1.2. 14TH FYP ON REVITALIZATION OF SPECIAL AREAS

The Revitalization and Development Plan for Special Areas during the 14th FYP Period¹⁴³⁰ (‘14th FYP on Revitalization of Special Areas’) aims to help special areas including underdeveloped regions, old revolutionary base areas, border areas, ecologically degraded areas, resource-rich areas and old industrial cities to better solve problems and play supporting roles¹⁴³¹. Chapter VI specifically plans the transformation and development of resource-rich areas to achieve sustainable development¹⁴³². Raw materials sectors affected by these policies are mainly building materials, chemicals, steel and non-ferrous metals. In this regard, the role of the central government is to coordinate the supporting policies both at central and local level.

The relevant authorities are expected to “select areas with good mining condition and strong resource and environmental capacity, build a number of energy resource bases and national planning mining areas, actively promote intensive, efficient and green development of energy resources [...], accelerate the construction of mining processes, materials research and development, [...] cultivate energy chemicals, energy conservation [...], new materials, security equipment and other innovative industrial clusters and build a number of influential and distinctive regional industrial innovation centres”¹⁴³³.

By 2025, the corresponding targets are¹⁴³⁴:

- To create about 10 demonstration cities (districts) for sustainable development of resource-exhausted cities [...];

¹⁴²⁸ 14th Raw Materials FYP, Section VIII(I).

¹⁴²⁹ *Ibid.*, Section VIII(II).

¹⁴³⁰ Available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202111/P020211126360075462620.pdf> (accessed on 22 August 2023).

¹⁴³¹ 14th FYP on Revitalization of Special Areas, Chapter I, Section 2.

¹⁴³² *Ibid.*, Chapter VI.

¹⁴³³ *Ibid.*, Chapter VI, Section I.

¹⁴³⁴ *Ibid.*, Feature 4.

- To support about 60 counties and county-level cities to implement comprehensive treatment projects for coal mining subsidence areas [...];
- To support about 90 counties and county-level cities to implement reconstruction and upgrading projects for independent industrial and mining areas [...]; and
- To create about 10 transformation and innovation pilot zones in resource-rich regions.

The 14th FYP on Revitalization of Special Areas also calls for cultivating superseded industries and sets development directions for specific areas. Some examples are listed below¹⁴³⁵ (see Table 12.2 below).

Table 12.2: Development directions for specific areas in the 14th FYP on Revitalization of Special Areas

Development Direction	Region/Cluster	Sector
Transforming and upgrading traditional industries	Liaoning Fushun	chemical new materials and high-end fine chemicals
	Anhui Tongling	copper deep processing
	Jiangxi Jingdezhen	ceramic raw materials
	Shandong Dongying	green petrochemicals
	Henan Sanmenxia	non-ferrous
	Hubei Huangshi	steel deep processing
	Hunan Hengyang	copper lead and zinc
	Guangxi Baise	ecological aluminium deep processing
	Yunnan Gejiu	tin deep processing and comprehensive utilization
	Xinjiang Karamay	petroleum and petrochemical characteristic
Developing SEIs	Hebei Zhangjiakou	big data
	Inner Mongolia Baotou	rare earth innovation
	Fujian Minxi	rare earth and fluorine new materials
	Shandong Zibo	new materials
	Gansu Jinchang	advanced structural materials
	Ningxia Shizuishan	lithium batteries
Developing specialized industrial clusters	Shandong Zaozhuang	coal chemicals
	Hunan Shaoyang	light industry

¹⁴³⁵ *Ibid.*, Feature 5.

Development Direction	Region/Cluster	Sector
Transforming and upgrading traditional industries	Liaoning Fushun	chemical new materials and high-end fine chemicals
	Anhui Tongling	copper deep processing
	Jiangxi Jingdezhen	ceramic raw materials
	Shandong Dongying	green petrochemicals
	Henan Sanmenxia	non-ferrous
	Hubei Huangshi	steel deep processing
	Hunan Hengyang	copper lead and zinc
	Guangxi Baise	ecological aluminium deep processing
	Yunnan Gejiu	tin deep processing and comprehensive utilization
	Xinjiang Karamay	petroleum and petrochemical characteristic
Developing service industries with local features	Hebei Handan	high-quality tourism

12.2.1.3. 14TH FYP ON PROMOTING THE HIGH-QUALITY DEVELOPMENT OF RESOURCE-RICH REGIONS

The main objectives of the 14th FYP on Promoting the High-quality Development of Resource-rich Regions¹⁴³⁶ are to strengthen the capabilities of resource-rich regions in safeguarding resources and energy security, and basically establish a modern industrial system led by innovation, accelerated transformation and diversified development (by 2025) and to make resource-rich regions meet high-quality development targets in terms of safeguarding resources and promoting a vibrant economy, ecological environment and people's well-being (by 2035)¹⁴³⁷. To pursue these objectives, the Government intends to strengthen the planning of surveys, evaluation, exploration, and exploitation of strategic mineral resources and establish a safe and reliable reserve, supply and system for resources and energy¹⁴³⁸.

In order to guide the development of resource-rich regions and encourage localities with industrial foundation and technological advantages to carry out intensive processing of resources, the authorities intend to promote the transformation and upgrading of traditional industries, accelerate the development of new materials, new energy, energy saving and

¹⁴³⁶ Available at: <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202111/P020211112402058352817.pdf> (accessed on 30 May 2023).

¹⁴³⁷ *Ibid.*, Part II.

¹⁴³⁸ *Ibid.*

environmental protection, high-end equipment manufacturing and other SEIs that are closely related to deep processing of resources¹⁴³⁹.

In terms of policy support, *“the [NDRC] shall take the lead in strengthening work collaboration and do a good job in overall planning and coordination. All relevant departments of the State Council shall provide active support in terms of project construction, capital investment, and system and mechanism innovation in accordance with the division of functions. Provincial governments of all relevant provinces shall [...], formulate provincial implementation plans, and develop and promulgate supporting policies and measures”*¹⁴⁴⁰.

The relevant authorities are further requested to *“[c]ontinue transfer payments to resource-exhausted cities”* and to *“[c]ontinue to arrange central budget investment to support the implementation of coal mining subsidence area comprehensive management project and independent industrial and mining area renovation and upgrading project”*¹⁴⁴¹.

12.2.1.4. 14TH FYP FOR DEVELOPING THE CIRCULAR ECONOMY

The 14th FYP for Developing the Circular Economy (*‘14th Circular Economy FYP’*)¹⁴⁴², released by NDRC in July 2021, explains the global context in which it should be read as follows¹⁴⁴³:

Developed countries and regions, such as the United States, the European Union and Japan, have systematically deployed a new cycle of action plans to accelerate circular economic development in order to address the new challenges of resource availability across the globe. However, non-economic factors, such as fundamental shifts in the world order and the rise of unilateralism and protectionism, compounded by the impacts brought about by the corona virus pandemic, have severely affected the global manufacturing, and value and supply chains. The uncertainty and instability of supplies of resources worldwide pose major challenges to China’s resource security. At the domestic level, China is focussing on building a new development paradigm during the 14th FYP period that is in harmony with the ‘domestic-international dual circulation’ development pattern, with an emphasis on the domestic circular economy, unleashing the potentials for domestic demand, expanding domestic consumption, raising consumption levels, and building extremely large domestic markets, where demand for resources and energy shall continue to grow robustly. At the same time, China is heavily dependent on foreign supplies for some of its major resources. There is an acute friction between supply and demand, while resource and energy utilisation efficiency remains weak in general.

Against this background, the 14th Circular Economy FYP emphasizes the importance of increasing the overall efficiency in resource utilisation, stepping up the use of recycled

¹⁴³⁹ *Ibid.*, Part IV (9-11).

¹⁴⁴⁰ *Ibid.*, Part VIII (22).

¹⁴⁴¹ *Ibid.*, Part VIII(24).

¹⁴⁴² Available at: <https://www.gov.cn/zhengce/zhengceku/2021-07/07/5623077/files/34f0a690e98643119774252f4f671720.pdf> (accessed on 23 July 2023).

¹⁴⁴³ 14th Circular Economy FYP, Section I(ii).

resources and building a robust, green, low-carbon circular economy¹⁴⁴⁴. This general goal is translated into key objectives: “[b]y 2025, circular production methods shall be fully rolled out, green design and green manufacturing shall be widely adopted, the integrated resource utilisation capacity shall be significantly increased, and a circular economic system shall basically be in place”¹⁴⁴⁵ and specific targets: “[b]y 2025, major resource productivity shall be increased by about 20% compared to 2020 [...]. There shall be an integrated utilisation rate of [...] 60% for bulk solid wastes, 60% for construction wastes, and the recycling of 60 million tonnes of waste paper, 320 million tonnes of scrap steel and 20 million tonnes of renewable non-ferrous metals. The production of recycled copper, aluminium and lead shall reach 4 million tonnes, 11.5 million tonnes and 2.9 million tonnes respectively, and the industrial output for resource recycling will tally RMB 5 trillion”¹⁴⁴⁶.

To achieve these goals and targets, the 14th Circular Economy FYP lists a number of main tasks¹⁴⁴⁷, key projects and actions¹⁴⁴⁸, as well as modalities of policy support¹⁴⁴⁹. While many of the individual provisions of the 14th Circular Economy FYP are hardly objectionable, certain components show the persisting influence of the Government which targets selected priority sectors for regulation: “promote green manufacturing and upgrade programmes in key sectors such as petrochemical, chemical, coking, cement, non-ferrous metals, electroplating, printing and dyeing, packaging, etc. by formulating industry-specific policies (‘one industry, one policy’)”¹⁴⁵⁰, “promote clustering and development of recycling industries [...] and promote the concentration of resources to advantageous enterprises”¹⁴⁵¹ and leverages the financial system for the objectives set “[t]o integrate existing funding channels and strengthen support for major and priority projects, and encourage capacity building in the circular economy. To encourage financial institutions to increase their investment in major projects in the circular economy”¹⁴⁵².

12.2.1.5. 14TH FYP ON INDUSTRIAL GREEN DEVELOPMENT

Similarly to the 14th Circular Economy FYP, the global context and the local industrial policy implication form the starting point of the 14th FYP on Industrial Green Development (‘14th Green Development FYP’), released by MIIT in November 2021¹⁴⁵³. At the outset, the 14th Green Development FYP recalls that “[t]o peak carbon dioxide emissions by 2030 and achieve carbon neutrality by 2060 is a major strategic decision made by the Central Committee of the Communist Party of China (CPC) with Xi Jinping at its core. The 14th FYP period is a crucial window for China to address climate change and peak carbon dioxide emissions, and the key

¹⁴⁴⁴ *Ibid.*, II(i).

¹⁴⁴⁵ *Ibid.*, II(iii).

¹⁴⁴⁶ *Ibid.*

¹⁴⁴⁷ *Ibid.*, Section III.

¹⁴⁴⁸ *Ibid.*, Section IV.

¹⁴⁴⁹ *Ibid.*, Section V.

¹⁴⁵⁰ *Ibid.*, Section III(i)2.

¹⁴⁵¹ *Ibid.*, Section III(ii)2.

¹⁴⁵² *Ibid.*, Section V(iii).

¹⁴⁵³ See at:

https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_4ac49eddca6f43d68ed17465109b6001.html (accessed on 22 August 2023).

five years for the industrial sector to realize green and low-carbon transformation. Currently, China is still in the process of industrialization and urbanization. Traditional industries remain dominant, while strategic emerging industries and high-tech industries have not become the driving force of economic growth”¹⁴⁵⁴ and that “[s]ome developed economies are planning for or already implementing green trading systems such as the carbon border adjustment mechanism”¹⁴⁵⁵. In view of this, China “shall take a strategic shift towards a ‘Manufacturing Power’ Strategy and ‘Internet Power’, with promoting quality development as the theme, supply-side structural reforms as the main task, peaking carbon emission and achieving carbon neutrality as the overall goal”¹⁴⁵⁶.

What follows is again a mix of principles, targets, tasks and organisational measures which, just like in the case of the 14th Circular Economy FYP comprise elements ranging from those which do not appear to contradict a market-based resource allocation fundamentals to openly interventionist Government measures. To provide an example which also illustrates that the Chinese policy makers can integrate the seemingly contradictory approaches of ‘market-led’ and ‘government-steered’, the 14th Green Development FYP stipulates that China “shall combine the effective market with a functioning government, give full play to the leading role of enterprises, and give play to the decisive role of market in allocating resources”¹⁴⁵⁷.

Accordingly, in order to adopt actions to reduce carbon dioxide emissions in the industrial sector, “[c]entral government-owned enterprises and large enterprise groups shall play a leading role. Major projects that yield good carbon reduction results and set good examples shall be carried out in key carbon discharging industries and in areas related to hydrogen power and renewable energy application, new energy storage and carbon dioxide capture, and utilization and storage”¹⁴⁵⁸.

Another major task specified in the 14th Green Development FYP, namely the transformation of the industrial structure towards high-end, is reflected as follows in the text¹⁴⁵⁹:

We shall accelerate the development of strategic emerging industries, such as new energy, new materials, new energy vehicles, green intelligent ships, eco-friendly high-end equipment and energy electronics to drive the green and low-carbon development of the whole economy. Efforts shall be made to integrate these industries, form clusters, and ensure they are eco-friendly. We shall help leading companies grow stronger and larger and nurture a number of ‘little giant’¹⁴⁶⁰ enterprises that specialize in niche sectors and enterprises that are champions in single manufacturing.

¹⁴⁵⁴ 14th Green Development FYP, Section I(ii).

¹⁴⁵⁵ *Ibid.*

¹⁴⁵⁶ *Ibid.*, Section II(i).

¹⁴⁵⁷ *Ibid.*

¹⁴⁵⁸ *Ibid.*, Section III(i).

¹⁴⁵⁹ 14th Green Development FYP, Section III(ii).

¹⁴⁶⁰ See Section 2.3.2

In the same vein, the wording related to the task of promoting recycling in resources utilisation shows that rather than relying on market forces, Chinese authorities are intent on shaping the layout of the sector through government policies¹⁴⁶¹:

Both domestic and international sources shall be coordinated to optimize the cross-region and cross-industry allocation of resources. In particular, iron ores, phosphate ores, non-ferrous metals and other mineral resources shall be appropriately developed across the board, and more shall be done to develop the vanadium titanium resources in vanadium titano-magnetite, the fluorine resources in phosphate ores and other co-associated mineral resources. We shall better match the supply and demand of raw materials among enterprises of steel, non-ferrous metals, construction materials and chemicals, to realize more effective and coordinated supply, strengthen the circulation among enterprises, industrial parks and industry clusters and thereby improve resource utilization. [...] We shall nurture leading recycling enterprises for main renewable resources, including iron and steel scraps, non-ferrous metal scraps, waste plastics, waste tires, waste paper, waste electronic products, waste batteries, waste oil and waste textiles.

Last but not least, the 14th Green Development FYP contains the instruction to the financial system to support the goals formulated in the plan¹⁴⁶²:

Investment and financing policies that match with green and low-carbon development shall be formulated, the investment in energy-intensive and high-emissions projects shall be brought under strict control, while more investment and financing shall be channelled to projects related to energy conservation and environmental protection initiatives, new energy, and CCUS. We need to use the national platform for the cooperation between industries and the financial sector, develop a database of green industrial development projects, and enable the innovation of green financial products and services. Financial institutions shall be encouraged to increase the supply of green credit loans [...].

12.2.2. PROVINCIAL LEVEL FYPS AND OTHER POLICY MEASURES

Given the overall structure of the Chinese planning system (see Chapter 4), various provisions concerning raw materials can be found in FYPs and other planning policy measures on the provincial level. These policies implement the national level plans and provide further, more detailed instructions to the relevant authorities. The below overview provides a sampling of such provincial level policy measures.

12.2.2.1. 14TH RAW MATERIAL INDUSTRY DEVELOPMENT PLAN - GANSU

Referring to the 14th FYP of Gansu Province, the Gansu 14th Raw Material Industry Development Plan ('*Gansu Plan*')¹⁴⁶³ outlines its scope as including petrochemical, steel, non-

¹⁴⁶¹ *Ibid.*, Section III(iv).

¹⁴⁶² *Ibid.*, Section III(ix).

¹⁴⁶³ Available at:

<http://gxt.gansu.gov.cn/gxt/c106992/202201/1959993/files/bc8a41db8b904e55b5bd7017eb42d119.pdf>
(accessed on 5 June 2023).

ferrous metals, building materials and other industries¹⁴⁶⁴. For all the industries within its scope the Gansu Plan list “*striving for industrial growth, enhancing innovation capabilities, extending industry chain, forming industrial clusters and promoting green development*” as the development goals during the 14th planning cycle¹⁴⁶⁵.

In its subsequent sections, the Gansu Plan lists various goals and targets for individual industries. For petrochemicals, the Gansu Plan focuses on the development of such products as integrated oil-aromatics, propylene, aromatic hydrocarbons, high-end oil products, special hydraulic oil, environmentally friendly solvent oil and photovoltaic hydrogen¹⁴⁶⁶.

For the non-ferrous metal industry, the main development focus is on products based on nickel, cobalt, copper, aluminium and precious metals¹⁴⁶⁷. For the metallurgical industry, on steel, ferroalloy and carbon products¹⁴⁶⁸. For the chemical industry, on synthetic rubber, synthetic resin, polycarboxylate, electronic chemicals, medicine and pesticide chemicals¹⁴⁶⁹. For the new materials industry, on non-ferrous metal materials (e.g. nickel-copper cobalt powder, salt chemicals, precious metals and rare earth materials), advanced petrochemicals and chemical new materials (e.g. engineering plastics, special synthetic rubbers, special fibres), advanced steel materials (e.g. high-strength plastic automotive steel, energy steel, composite construction steel, mining and agricultural machinery steel, nuclear power stainless steel), advanced inorganic non-metallic materials (e.g. high-performance polishing materials or new energy cutting materials, glass), high-performance fibres and composite materials (e.g. fibre precursors, fatty matrix composites, carbon fibre/metal matrix composites)¹⁴⁷⁰. For coal industry, on coal gas, phosgenation products and coal-based fertilizers¹⁴⁷¹. For the building materials industry, on cement, mineral products, steel structure products, new building materials (e.g. low-emission coated glass, photovoltaic glass, high-efficiency bricks and wall materials)¹⁴⁷².

For each of the above sub-sectors, the Gansu Plan also includes the target output value to be achieved by 2025¹⁴⁷³. The methods to achieve the set goals comprise a broad range of measures known from other planning documents, including promoting industrial transformation and upgrading¹⁴⁷⁴, advancing industrial chains¹⁴⁷⁵ and promoting industrial clustering¹⁴⁷⁶. The final part of the Gansu Plan lays out the administrative measures for its implementation¹⁴⁷⁷, as well as the financial support foreseen for the enterprises concerned¹⁴⁷⁸.

¹⁴⁶⁴ Gansu Plan, Section 1(1).

¹⁴⁶⁵ *Ibid.*, Section 2(3).

¹⁴⁶⁶ *Ibid.*, Section 3(1).

¹⁴⁶⁷ *Ibid.*, Section 3(2).

¹⁴⁶⁸ *Ibid.*, Section 3(3).

¹⁴⁶⁹ *Ibid.*, Section 3(4).

¹⁴⁷⁰ *Ibid.*, Section 3(5).

¹⁴⁷¹ *Ibid.*, Section 3(6).

¹⁴⁷² *Ibid.*, Section 3(7).

¹⁴⁷³ *Ibid.*, Sections 3(1)–(7).

¹⁴⁷⁴ *Ibid.*, Section 4(2).

¹⁴⁷⁵ *Ibid.*, Section 4(3).

¹⁴⁷⁶ *Ibid.*, Section 4(4).

¹⁴⁷⁷ *Ibid.*, Section 5(1).

¹⁴⁷⁸ *Ibid.*, Section 5(2).

12.2.2.2. 14TH FYP FOR THE HIGH-QUALITY DEVELOPMENT OF THE NONFERROUS METALS INDUSTRY - JIANGXI

Following an overview of the overall development basis and circumstances, the 14th FYP for the High-Quality Development of Non-Ferrous Metals Industry of Jiangxi Province (‘*Jiangxi Plan*’)¹⁴⁷⁹ sets out basic principles and major objectives, including those on the target size and structure of the sector¹⁴⁸⁰:

During the 14th Five Years Plan period, the non-ferrous metals industry shall become the first industry in Jiangxi that earns the operating revenue of more than RMB 1 trillion, and decisive progress shall be secured in the optimization and upgrading of traditional industries. [...] The industrial scale shall exceed RMB one trillion. During the 14th Five Years Plan period, the average annual growth rate of the operating revenue of Jiangxi’s non-ferrous metals industry shall stand at around ten percent. In terms of operating revenue, the non-ferrous metals industry shall have a scale of more than RMB one trillion by around 2023, and the industries of tungsten, rare earth, and other strategic resources shall have a scale of more than RMB 100 billion by 2025. New results shall be achieved in structural adjustment. We shall see that the types of new material products increase significantly, the industrial layout becomes more reasonable, and the concentration ratio of industry further increases. By 2025, the output value of new materials shall account for over 30 percent of that of the whole non-ferrous metals industry [...]. The cultivation of business shall step into new phases. The concentration ratio of copper, tungsten, rare earth, and other key industries shall be further increased. By 2025, we shall develop five leading enterprises with ecological dominance and core competitiveness along the industrial chain, cultivate around 50 national-level technically advanced “little giant” enterprises, and introduce 20 national-level enterprises leading an individual field of the manufacturing industry.

The Jiangxi Plan then lays down development guidance for individual sub-sectors, namely the copper industry¹⁴⁸¹, tungsten industry¹⁴⁸², rare-earth industry¹⁴⁸³ and the industry of other non-ferrous metals (such as tin, stibium, indium or cobalt), specifying typically which areas/municipalities are to house which projects/clusters and concentrate on which products/industrial processes.

In order to achieve the above-mentioned goals, the Jiangxi Plan prescribes tasks that follow the standard pattern by emphasizing technology innovation capabilities and capacities for industrial public services as well as by straightforwardly specifying the desired industry structure in the province¹⁴⁸⁴:

¹⁴⁷⁹ Available at: http://www.jiangxi.gov.cn/art/2021/11/10/art_4999_3717079.html (accessed on 5 June 2023).

¹⁴⁸⁰ Jiangxi Plan, Chapter II, Section III.

¹⁴⁸¹ *Ibid.*, Chapter III, Section I.

¹⁴⁸² *Ibid.*, Chapter III, Section II.

¹⁴⁸³ *Ibid.*, Chapter III, Section III.

¹⁴⁸⁴ *Ibid.*, Chapter IV, Sections I-III.

We shall reinforce the control over key links in the industrial chain. We shall cultivate leading non-ferrous metals enterprises, enhance the control over key links, standards and core technologies. Backbone enterprises are encouraged to hold more mineral resources reserves and enhance their ability to secure resources. [...]

We shall drive the leading enterprises stronger and better. The leading enterprises of non-ferrous metals are encouraged to integrate innovation resources and elements, explore key core technological R&D, improve product quality, enhance comprehensive competitiveness, and become the industrial leaders of technological innovation, transformation and upgrading. The leading enterprises are encouraged to gather assets, resources, talents, market and other elements through resource integration, mergers as well as acquisitions and reorganization, to grow into the “master” enterprises with ecological dominance of the industrial chain.

We shall promote the development of technologically advanced [...] SMEs [...]. We shall create a market environment conducive to the development of SMEs and stimulate their enthusiasm for innovation. We shall give full play to their advantages in small-lot non-ferrous metals varieties for their technologically advanced development. Eligible ones are offered support to apply for the titles of “provincial technologically advanced SMEs” and “national technologically advanced ‘little giant’” [...].

We shall promote the key industry clusters bigger and stronger. The key industry clusters are encouraged to do realistic mapping of industrial chains and develop action plans for industrial clusters to promote advantages and tackle areas of weaknesses, so as to accelerate their growth. With Yingtian the “world copper capital” and Ganzhou the “China Rare Earth Valley” as the core, we shall optimize the spatial layout of industrial clusters [...].

We shall foster a cluster ecosystem for growth. The leading enterprises in the industrial clusters are encouraged to jointly undertake major national and provincial projects with upstream and downstream enterprises, universities and colleges, research institutes, etc., to promote collaborative innovation in the industrial chain and improve the overall innovation capacity of the clusters.

The Jiangxi Plan concludes with an overview of the support policies which are available to the sector, including the financial support and the request to the financial institutions to support the industry with increased credit support¹⁴⁸⁵:

We shall offer more targeted policies. We shall implement various policies to support the development of the non-ferrous metals industry, and strengthen the coordination between fiscal, taxation, financial and trade policies as well as industrial policies. We shall increase financial support and encourage enterprises to obtain financing at different levels and in diversified forms. [...] Financial institutions are encouraged to increase credit support in light of the production and operation characteristics and needs of non-ferrous metals enterprises. [...] Non-

¹⁴⁸⁵ Ibid., Chapter V.

ferrous metals enterprises of new materials are encouraged to apply for the first batch of key new materials insurance.

12.2.2.3. 14TH FYP ON THE HIGH-QUALITY DEVELOPMENT OF MANUFACTURING INDUSTRY – GUANGDONG

Guangdong's 14th FYP on the High-Quality Development of Manufacturing Industry ('Guangdong Plan')¹⁴⁸⁶ contains a number of provisions concerning raw materials, for example in section on advanced materials: *"Focus on the development of high-end steel and special steel and continue to strengthen the management of carbon emissions in the steel industry. Support the development of high-end copper, aluminium, lead, zinc, tungsten and other non-ferrous metal processing and recycled non-ferrous metal recycling remelting and promote the development of high-performance alloy materials. Support the development of high-performance rubber"*¹⁴⁸⁷.

The final chapter on implementation¹⁴⁸⁸ of the Guangdong Plan provides a comprehensive overview of how deeply interwoven government, business operators, industry associations and other subject are, providing the necessary platforms and transmission mechanisms on which the government industrial policies rest: *"Strengthen organizational leadership and strategic planning, guide the promotion of key industries across regions, [...], promote the construction of new industrial clusters governance mechanism, strengthen planning advocacy guidance to ensure effective implementation of the plan."*

Section I on Reinforcing organizational leadership sets that *"[t]he leading group for the construction of strong manufacturing province in Guangdong Province coordinates the overall work of the construction of strong manufacturing province, strengthens strategic planning, establishes strategic industry clusters to coordinate and promote the mechanism, builds strategic consulting support institutions for each strategic industry cluster, forms an operable policy toolkit and innovation system and compiles a list of key projects, leading enterprises and single champions [...]."*

Section II aims to strengthen cross-sectoral support collaboration across regions: *"[A]ctively serve the national defence and economic and social development needs and strive for national key industries, major projects, science and technology major special projects and major scientific and technological infrastructure and other layout in Guangdong. Increase the resources, funds, policies and support for the manufacturing industry, the financial resources at all levels in the province combined with the financial arrangements to support the construction of major industrial projects, major park carriers, major R&D platforms in the manufacturing industry. The provinces and municipalities are working together and the departments are coordinating the factors of capital. The government has been supporting the key industries and forming a synergy of efforts. Strengthen the horizontal cross-border cooperation of industries, urge each city to speed up the introduction of policies to guide the differentiated development of local industries according to its own foundation and*

¹⁴⁸⁶ Available at: <http://www.gd.gov.cn/attachment/0/438/438152/3458462.pdf> (accessed on 5 June 2023).

¹⁴⁸⁷ Guangdong Plan, Section III(1)v.

¹⁴⁸⁸ *Ibid.*, Chapter V.

characteristics and realize the division of labour and collaboration in the implementation and promotion of 20 strategic industrial clusters in the key core technologies, basic research, professional talents and policy shortcomings.”

Section 3 on Innovative industry cluster governance mechanism aims to “*Promote the construction of ‘enterprise + government + intermediary organizations + supporting services’, a new type of industry cluster governance mechanism [...]. Encourage the development of new cluster promotion organizations led by market players, promote the linkage and cooperation between government, industry, academia, research and finance, better play the role of business associations in policy planning and research, standard setting, publicity and evaluation, service platform building and external exchange and cooperation and enhance the overall operational efficiency of industrial chains and industrial clusters.*”

Section IV aims at strengthening the implementation of planning and advocacy guidance by improving “*the monitoring and evaluation mechanism of the implementation of the plan, accelerate the construction of strategic industrial clusters statistical system, all local departments continue to track and evaluate the development goals of the plan, key projects, major project, major policy measures to promote implementation, the implementation of the plan as an important basis for performance assessment. Regularly organize the good development of manufacturing industry clusters, key enterprises, key projects to be informed and praised, summarize and promote the successful experience of promoting the high-quality development of the manufacturing industry around.*”

12.2.2.4. 14TH FYP ON THE HIGH-QUALITY DEVELOPMENT OF MANUFACTURING INDUSTRY – FUJIAN

While the 14th FYP on the High-Quality Development of Manufacturing Industry in Fujian Province (*‘Fujian Plan’*)¹⁴⁸⁹ does not focus on raw materials primarily, a range of raw materials is listed among the province’s development priorities.

In particular, with regard to chemical raw materials, the Fujian Plan specifies in the context of making leading industries bigger and stronger the need to “[f]ocus on promoting the construction of large petrochemical projects in “two bases and one special zone”, improving the level of integration of refining and chemistry, and enhancing the capacity to guarantee basic raw materials such as olefins and aromatics”¹⁴⁹⁰. Similarly, in the context of planning in advance to cultivate cutting-edge emerging industries, the Fujian Plan calls for vigorous promotion of basic raw materials (such as non-ferrous metals and petrochemicals) and key strategic materials¹⁴⁹¹.

The Fujian Plan further underlines the need to develop the metallurgical industry, with a focus on high-end steel, stainless steel and non-ferrous metals¹⁴⁹²: “*speed up the large scale production of copper, high-precision copper tape, copper tubes, precious metal targets and other products for composite materials and electronic industries. To develop marine copper, to*

¹⁴⁸⁹ Available at: http://www.fujian.gov.cn/zwgk/zfxxgk/szfwj/jgzz/jmgjgz/202107/t20210706_5641624.htm (accessed on 22 August 2023).

¹⁴⁹⁰ Fujian Plan, Section III(1)iii.1.

¹⁴⁹¹ *Ibid.*, Section III(3)i.

¹⁴⁹² *Ibid.*, Section III(2)ii.

extend the gold-copper deep processing industry chain and accelerate the expansion of Shanghang Copper Industrial Park and Ningde Copper Industrial Base”.

The available support to achieve the goals specified in the Fujian Plan entails fiscal and financial support, including “*tax and fee reduction policies to reduce the cost of production and operation of enterprises, as well as instruction to “not arbitrarily downgrad[e] credit ratings and loan classifications or arbitrarily compress [...] loan scales and credit limits”*”¹⁴⁹³.

12.2.2.5. 14TH FYP ON THE HIGH QUALITY DEVELOPMENT OF MANUFACTURING INDUSTRY - CHONGQING MUNICIPALITY

The Chongqing municipality’s 14th FYP on the High-Quality Development of Manufacturing Industry (‘*Chongqing Plan*’) ¹⁴⁹⁴ can serve as another example of a sub-central level planning document which forms part of the planning matrix described in Chapter 4 and which contains specific provisions concerning raw materials¹⁴⁹⁵ in the otherwise standard structure of a FYP in which an overview of past achievements and current situation introduces a list of requirements¹⁴⁹⁶, principles¹⁴⁹⁷, strategic priorities¹⁴⁹⁸, development goals¹⁴⁹⁹ and tasks to be followed by the relevant authorities and other subjects in various sectors of the manufacturing industry.

For instance, in relation to new materials, the Chongqing Plan lists certain advanced non-ferrous alloys (such as high-strength and high-toughness aluminium alloys), high-end synthetic materials (such as polyurethane products), aerogel, graphene and other designated new materials as priorities for development¹⁵⁰⁰:

Accelerate the construction of alumina projects, actively plan electrolytic aluminium and regenerated aluminium projects, and build a local supply guarantee system for upstream materials that is compatible with the back-end aluminium processing and manufacturing capabilities. Promote existing aluminium processing enterprises to strengthen the research and development of aluminium alloy purification smelting and solidification technology, high-strength, high-toughness large-specification profile plate processing technology and other

¹⁴⁹³ *Ibid.*, Section V(5).

¹⁴⁹⁴ See at: https://www.cq.gov.cn/zwgk/zfxxgkml/szfwj/qtgw/202108/t20210803_9538603.html (accessed on 22 August 2023).

¹⁴⁹⁵ Example of new materials envisaged by the plan are: new high-strength, high-toughness, corrosion-resistant aluminium alloy materials and large-size products for electronics, automobiles, aerospace, rail transit and other fields, high-performance magnesium alloys and their products, titanium alloy structural parts and fasteners, copper High-strength and high-conductivity copper alloys such as alloy precision strips and ultra-long wire products. High-end synthetic materials: polyurethane foam, polyurethane elastomer, water-based polyurethane coating, synthetic leather and other polyurethane products, nylon 66, nylon 6, long carbon chain nylon and other polyamide products, PET, PBT (polybutylene terephthalate)) and other polyester products, PMMA and other polymethyl methacrylate products, VAE, PVB resin and other polyolefin products, polycarbonate products, polyoxymethylene products, BDO products, and the main raw materials of synthetic materials. Glass fiber and products, carbon fiber materials, aerogel materials, graphene materials, functional membrane materials.

¹⁴⁹⁶ Chongqing Plan, Section 2

¹⁴⁹⁷ *Ibid.*, Section 2(2).

¹⁴⁹⁸ *Ibid.*, Section 2(3).

¹⁴⁹⁹ *Ibid.*, Section 2(4).

¹⁵⁰⁰ *Ibid.*, Section 3(4).

technologies, plan and implement high-end aluminium series projects, and continuously enrich the types of aluminium and aluminium alloy products. Accelerate the pace of engineering and industrialization of high-strength and tough titanium alloys for aviation, actively introduce upstream raw material enterprises, and further improve the local titanium alloy industry system. Give full play to the technical advantages in the field of magnesium alloys, promote existing enterprises to accelerate the development of high-performance magnesium alloys and deformed magnesium alloys, magnesium alloy forgings, corrosion-resistant magnesium alloys and other products, expand application scenarios, and further expand the magnesium alloy industry. Promote existing copper processing enterprises to accelerate the development of copper alloy products such as precision strip and ultra-long wire, copper alloy lead frame, and electronic copper foil. [...] Taking silicon-based aerogels as the starting point, extend the upstream aerosilicone source, inorganic silicon source, functional silane and other aerogel precursors and substrate industry chain, and form a new high-end silicon industry base for aerogel product clusters and a variety of silicon-based chemicals.

Similarly, in relation to raw materials, the Chongqing Plan lists key subsectors for development¹⁵⁰¹: high-quality green building steel, automotive steel, special steel, high-end stainless-steel products, high-grade cement, special cement, ready-mixed mortar, high-performance concrete; super-large machine-based sand and gravel base [...]

The authorities are then requested to: “Cultivate industry leaders and ‘chain master’ enterprises with a dominant position in the industrial ecosystem. Establish a pool of key cultivation enterprises around key industrial chains. Support enterprises to quickly become bigger and stronger through mergers and acquisitions, joint ventures and cooperation”¹⁵⁰², as well as to “[s]upport industrial parks with outstanding characteristics to establish national demonstration bases for new-type industrialized industries and municipal characteristic industrial bases, guide enterprises in related fields to gather in characteristic industrial bases, and create a number of 100 billion-level characteristic industrial clusters”¹⁵⁰³.

Moreover, the Chongqing Plan requests the local authorities to “[e]stablish a positive incentive mechanism for bank-enterprise cooperation, guide commercial banks to further firmly establish the awareness of not arbitrarily drawing loans and cutting off loans, appropriately increase the tolerance ratio of non-performing loans, implement policy tools such as medium- and long-term loans, re loans, and rediscounting in the manufacturing industry, promote the introduction of policies to benefit enterprises in finance, accelerate the expansion of direct financing, and reduce the financing costs of enterprises”¹⁵⁰⁴.

12.2.3. SUMMARY WITH RESPECT TO PLANS

¹⁵⁰¹ *Ibid.*, Feature 12.

¹⁵⁰² *Ibid.*, Section 4(5).

¹⁵⁰³ *Ibid.*, Section 4(7).

¹⁵⁰⁴ *Ibid.*, Section 5(4).

As noted in the previous Sections, the planning documents regulate numerous aspects of raw materials production and supply, including listing specific industries to be further developed, setting output value targets to be achieved by the end of the planning cycle, prescribing the geographical distribution of industrial sectors, controlling industry structure, putting in place specific support policies (including financial support measure) etc. In all those respects, the planning documents concerning raw materials are fully in line with the FYPs known from other sectors, as described in Chapter 4, as well as in, for example, Chapters 14 or 16.

12.3. MEASURES IMPACTING THE EXPORT OF RAW MATERIALS

12.3.1. INTRODUCTORY REMARKS

Government measures which favour the domestic consumption of raw materials as opposed to an allocation of raw materials on the basis of international supply and demand, tilt the level playing field in favour of the domestic downstream industry. Put differently, these restrictions influence export activities by increasing the relative price of exported products, decreasing the quantity supplied or changing the terms of competition among suppliers.

The OECD Inventory of Export Restrictions on Industrial Raw Materials lists the following types of export restrictions:

- export tax;
- fiscal tax on exports;
- export surtax;
- export quota;
- export prohibition;
- Non-automatic licensing requirement;
- minimum export price or price reference for exports;
- VAT tax refund reduction or withdrawal;
- restriction on customs clearance point for exporters;
- qualified exporters list;
- domestic market obligation;
- captive mining;
- other export measures¹⁵⁰⁵.

Those, as well as any other measures restraining exports, drive domestic prices down and create a comparative advantage for the domestic producers. An OECD study on the subject recognises that export restrictions “*indirectly subsidise domestic industries that use the restricted commodity as input. Assisting downstream industries to grow and compete may be the intended result of such restrictions*”¹⁵⁰⁶.

¹⁵⁰⁵ OECD (2022). *Methodological note to the Inventory of Export Restrictions on Industrial Raw Materials*. OECD, available at: <https://www.oecd.org/trade/topics/trade-in-raw-materials/documents/methodological-note-inventory-export-restrictions-industrial-raw-materials.pdf> (accessed on 19 October 2023).

¹⁵⁰⁶ OECD (2014). *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices*; available at : <https://issuu.com/oecd.publishing/docs/oecd-export-restrictions-raw-materi> (accessed on 19 October 2023).

Export restrictions can lead to considerable price differences between China and the world market. The export restrictions in practice limit the exports significantly (depending on the amount of the export duty) and keep the products on the domestic market. The increased supply on the domestic market drives the domestic prices for those products down, giving downstream industries access to cheaper raw materials. The cheaper raw materials mean lower downstream production costs, increasing the competitiveness of downstream producers and potentially enabling them to undercut international prices and expand their exports.

According to the OECD Inventory of Export Restrictions on Industrial Raw Materials, between 2020 and 2022, China applied export taxes (export duties), export quotas and non-automatic export licensing requirements as export restricting measures on some goods. This list is not exhaustive. As a result, producers in China can often purchase raw materials cheaper than foreign competitors. This provides them with a strong competitive advantage with regard to both prices and availability¹⁵⁰⁷.

12.3.2. EU-WTO DISPUTES WITH CHINA ON EXPORT RESTRICTIONS

If one or very few countries command a large share of global output of certain critical or otherwise important raw materials, foreign customers have very few alternative sources to turn to. As an example, China is a world leader in the production of the following raw materials which are subject to export restrictions: rare earths, magnesite, fluorspar, vanadium, phosphates, molybdenum¹⁵⁰⁸ (see Table 12.1 for China's shares of global output). Historically, the export restrictions had serious repercussions for global commodity prices. For example, between 2010 and 2011, the prices of antimony, tungsten and rare earths as a whole doubled, whereas some elements like lanthanum and cerium (both rare earths) increased by 900%¹⁵⁰⁹. In most cases there were few or no substitutes available for many of the necessary inputs, and substitution would incur significant increase in the production costs or compromise the performance of the product in which the input is used¹⁵¹⁰.

To date the EU already brought three WTO disputes¹⁵¹¹ against export restricting measures imposed on raw materials by the Chinese government.

Following the legal action by the EU, China abolished the export restrictions on the raw materials subject to those disputes. However, China continues to impose export restrictions on

¹⁵⁰⁷ For example, due to an export tax and no VAT refund for raw materials for seamless stainless steel pipes and tubes, the prices of these raw materials in China were around 30% lower than in the US and the EU. See Commission Regulation (EU) No 627/2011 of 27 June 2011 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of stainless steel originating in the PRC, recitals 26 and 27.

¹⁵⁰⁸ OECD (2014). *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices*; available at : <https://issuu.com/oecd.publishing/docs/oecd-export-restrictions-raw-materials> (accessed on 19 October 2023).

¹⁵⁰⁹ *Ibid.*

¹⁵¹⁰ *Ibid.*

¹⁵¹¹ WT/DS395 - China - Measures Related to the Exportation of Various Raw Materials; WT/DS432 - China - Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum; WT/DS509 - China - Duties and other Measures concerning the Exportation of Certain Raw Materials. For details on these disputes see the 2017 version of this Report.

a number of other raw materials and other products. This fact has been a long-standing concern for the EU and other WTO Members.

12.3.3. EXPORT RESTRICTIONS APPLIED BY CHINA

12.3.3.1. EXPORT DUTIES

An export duty, also referred to as an export tax, export tariff, export levy or export charge, is a tax collected on goods or commodities when they leave a customs territory. It can be set either on a *per unit* or an *ad valorem* basis¹⁵¹².

The imposition of export duties is not per se prohibited under WTO law. However, the imposition of export duties in practice limits the exports significantly (depending on the amount of the export duty) and keeps the products on the domestic market. As already noted above, the increased supply on the domestic market, which is not necessarily linked to an increased demand, is likely to drive the domestic prices for those products down. This in turn can imply that the downstream industry gains access to cheaper raw materials, with accordingly lower costs of production. Depending on the circumstances of the case, this can in consequence enable the downstream industry of the country imposing the export duties to undercut the international prices of the downstream products and expand their exports of the finished products.

China is one of the few WTO Members who undertook as a part of its accession obligations to eliminate export duties, unless otherwise specified in the protocol. Paragraph 11.3 of the CAP states that “*China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT¹⁵¹³ 1994*”. Annex 6 titled ‘*Products Subject to Export Duty*’ contains a table listing 84 different products (each identified by an eight-digit Harmonized System (HS) number and product description) and specifies a maximum export duty rate for each.

China maintains basic framework legislation authorising the imposition of export duties:

- the Foreign Trade Law (as revised on 17 November 2016);
- the Customs Law (adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress on 22 January 1987, amended 28 December 2013, in Order No 8, and then revised on 4 November 2017);
- Regulations on Import and Export Duties (State Council, Order No. 392, adopted at the 26th executive meeting of the State Council on 29 October 2003, amended 1 March 2017, in Order No. 676);
- State Council Customs Tariff Commission Notice on Issuing the 2017 Tariff Adjustment Plan (State Council Customs Tariff Commission, Shui Wei Hui [2016] No. 31, issued 19 December 2016, effective 1 January 2017) (the ‘2017 Tariff Adjustment Plan’);

¹⁵¹² OECD (2014). *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices*; available at : <https://issuu.com/oecd.publishing/docs/oecd-export-restrictions-raw-materi> (accessed on 19 October 2023).

¹⁵¹³ General Agreement on Tariffs and Trade.

- General Administration of Customs Notice on the 2017 Tariff Adjustment Plan (General Administration of Customs, Zong Shu Gong Gao [2016] No. 89, issued 30 December 2016, effective 1 January 2017).

On 28 December 2022, the Tariff Commission of the State Council issued *the Tariff Adjustment Plan for 2023*. According to the list in its Annex 6¹⁵¹⁴, 160 items are still subject to export duties, and the markets for these products and their downstream products are likely distorted as a result.

12.3.3.2. EXPORT QUOTAS

Export quotas are prescribed maximum volumes of exports. The effect of export quotas is similar to the effect of export duties (increased supply leads to lower prices on the domestic market). The imposition of export quotas considered trade distortive and therefore the imposition of export quotas is in principle prohibited under Article XI of the GATT.

According to the OECD export restrictions inventory, there were around 40 different product groups subject to export quotas in China in 2014¹⁵¹⁵. Since then, China greatly diminished the list of products subject to export quotas. Those include, as of writing of this Report:

- An official list of export items subject to quota published by MOFCOM. It includes mostly agricultural items and products such as sewn timber¹⁵¹⁶.
- Phosphates. There were a number of measures to stop exports of fertilisers from China:
 - In July 2021, the NDRC organised a meeting with major fertiliser producers where the companies made a commitment not to export fertilisers¹⁵¹⁷.
 - As from 15 October 2021, fertilisers were added to the catalogue of import and export commodities that must be subject to inspection¹⁵¹⁸.
 - A phosphate export licensing system has been in place since 2019¹⁵¹⁹.
 - In mid-2022, the export quota was diminished even further¹⁵²⁰.
- Oil: in 2022, the combined export quota for diesel, gasoline and jet fuel amounted to 37.25 million tonnes¹⁵²¹.

¹⁵¹⁴ Annex 6 of the 2023 Tariff Adjustment Plan, available at: <https://www.gov.cn/zhengce/zhengceku/2022-12/29/5734125/files/a3d59cbc7ee044feb7c45c848476dad1.pdf> (accessed on 22 August 2023).

¹⁵¹⁵ See the 2017 version of this Report.

¹⁵¹⁶ Full list available at: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202210/20221003363245.shtml> (accessed on 22 August 2023).

¹⁵¹⁷ See the NDRC website: https://www.ndrc.gov.cn/xwdt/xwfb/202107/t20210730_1292363.html?code=&state=123 (accessed on 22 August 2023).

¹⁵¹⁸ See the NDRC website: <http://www.customs.gov.cn/customs/302249/zfxxgk/zfxxgkml34/3957544/index.html> (accessed on 22 August 2023).

¹⁵¹⁹ See press release at: <https://www.cccmc.org.cn/hyzz/syhg/ff8080817c30e65b017cfe6f3a9a133e.html> (accessed on 22 August 2023).

¹⁵²⁰ See Reuters (2022), *China issues phosphate quotas to rein in fertiliser exports – analysts*, available at: <https://www.reuters.com/article/china-fertilizers-quotas-idUSKBN2OQ0KY> (accessed on 22 August 2023).

¹⁵²¹ See Reuters (2022), *China sets oil products export quotas at about 15 million tonnes*, available at: <https://www.reuters.com/business/energy/china-sets-oil-products-export-quotas-about-15-mln-t-sources-2022-09-30/> (accessed on 22 August 2023).

Under the Foreign Trade Law, MOFCOM is responsible for the centralised administration of all export quotas. MOFCOM, in collaboration with Customs, is responsible for ‘*formulating, adjusting, and publishing*’ the catalogue listing all goods subject to export quotas. MOFCOM also determines and announces the total annual export quota for each product covered by the relevant measure by 31 October of the previous year.

China allocates quotas either directly or through a quota bidding system. A decision on allocation must be issued within 30 days from the date of submission of the application and no later than 15 December of the year of application. Enterprises that are approved to export under the quotas are issued a certificate of quota. After obtaining a certificate of quota, the exporter applies for the export licence, which must be issued by the relevant authority within three working days of receiving the application. The exporter then seeks export clearance from Customs by presenting the export quota licence to Customs for declaration and examination.

China may also impose administrative or criminal sanctions for the unlawful exportation of goods subject to restriction, or for forging or altering import or export licences, quota certificates, or other documents. Under the Regulation on Import and Export Administration, the holder of an export quota may be subject to reduction in the allocation of quotas for the following year for failure to return the unused quotas by 31 October of the year for which the export quotas have been issued; or subject to administrative sanctions for exporting without permission, exceeding the quantitative limitations, or buying or selling quota certificates or other documents without approval. Sanctions include revocation of the business licence for foreign trade and possible criminal punishment. Quota administering authorities that distribute quotas exceeding their authority may also be subject to sanction.

In October 2022, MOFCOM published an official list of export items subject to quotas in 2023¹⁵²².

In directly allocating quotas, MOFCOM and the local administrative authorities are directed to take into consideration: (i) the export performance of the particular good; (ii) the utilization rate of the export quota; (iii) the business management/operation capacity of the applicant; and (iv) the ‘*production scale and resources status of the applicant enterprise or area*’ during the previous three years.

The legal basis for selecting the products subject to export quota bidding are the Export Quota Bidding Measures which contain a broad variety of selection criteria, including goods that are ‘*non-renewable, staple-resource-type*’ goods or goods ‘*well-positioned on the international market*’ and upon the export volume of which the impact of price fluctuation is relatively little. In general, in order to participate in the bidding process, the enterprises must be: (i) qualified for engaging in export; (ii) registered with the business administration authority; (iii) members of the relevant chamber of commerce for import and export; and (iv) have exported or supplied for export volumes of the relevant commodity that ‘*reach [...] a certain level.*’

¹⁵²² See the MOFCOM website: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202210/20221003363245.shtml> (accessed on 22 August 2023).

The bidding price represents the amount per metric tonne that a bidding enterprise is willing to pay for the right to export. The bidding quantity is the amount of the relevant material the enterprise seeks to export. The bidding price and quantity, multiplied together, are used to determine the bid-winning price. China ranks all bids from enterprises in descending order, based on the bidding prices that are submitted. China then adds up the bid quantities proposed by the bidding enterprises in this descending list until the total quantity bid is equal to the total quantity of quota available. Those enterprises whose bid quantities are included in the total quantity of quota available are the winning bidders. The winning bidders are thus determined based on the highest bid prices.

Because of the imposition of export quotas, the markets of the products subject thereto and their downstream products are likely distorted.

12.3.3.3. NON-AUTOMATIC EXPORT LICENSING REQUIREMENTS

For certain goods, exporters must obtain prior approval of the government in the form of licenses or permits in order to export the product. This gives the government control over the exporters and the amounts of exported goods. Additionally, the required procedures may increase transaction costs or prevent exporters from reacting quickly to sales opportunities abroad due to long processing times. Non-automatic export licensing requirements are also referred to as export permits¹⁵²³.

The OECD Inventory of Export Restrictions on Industrial Raw Materials lists 106 items which were subject to licensing export requirements in 2021 (the newest data available currently), including aluminium, antimony, beryllium, cobalt, coke coal, rare earth metals, ferro-alloys, molybdenum, nickel, silver, tantalum and titanium waste and scrap, tin, tungsten, vanadium, wood and other goods¹⁵²⁴. The full list of materials subject to export licensing is published annually by MOFCOM in the Catalogue of Goods Subject to Export Licensing¹⁵²⁵.

Based on the draft Regulations on Rare Earth Management (see Section 12.8), the export of rare earths shall abide by the Export Control Law ('ECL'), which implies an export approval procedure provided by the ECL. The State Export Control Administrative Departments may deny its approval and prevent rare earths' export when it deems it is necessary¹⁵²⁶.

In July 2023, MOFCOM and the General Administration of Customs announced restrictions on the export of two rare earth elements, namely gallium and germanium, starting from 1 August. Exporters of gallium metal, germanium metal, and twelve associated compounds (i.e., gallium antimonide, gallium arsenide, gallium nitride, gallium oxide, gallium phosphide, gallium

¹⁵²³ OECD (2014). *Export Restrictions in Raw Materials Trade: Facts, Fallacies and Better Practices*, available at: <https://issuu.com/oecd.publishing/docs/oecd-export-restrictions-raw-materi> (accessed on 19 October 2023).

¹⁵²⁴ Inventory on export restrictions on Industrial Raw Materials, http://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (accessed on 26 June 2023).

¹⁵²⁵ The full list of products subject to licensing can be found in the catalogue: <http://shfb.mofcom.gov.cn/article/fazhengdongtai/202301/20230103380743.shtml> (accessed on 23 August 2023).

¹⁵²⁶ See: <https://www.china-briefing.com/news/china-tightens-control-over-management-of-rare-earths/> (accessed on 23 August 2023).

selenide, indium gallium arsenide, germanium dioxide, germanium epitaxial growth substrate, germanium ingot, germanium tetrachloride, and zinc germanium phosphide) will be required to obtain licenses from MOFCOM prior to exporting them¹⁵²⁷. These export restrictions are partly based on the Foreign Trade Law and in particular the ECL, which authorizes the government to impose restrictions on exports of certain commodities to “safeguard national security and interests, fulfil international obligations such as non-proliferation, and strengthen and standardize export controls.” While China’s announcement does not explicitly target any country, the government has said the restrictions are necessary to protect China’s national security, leading some observers to believe they may be retaliation for export controls on semiconductors imposed by the US in October 2022 and similar measures undertaken by US allies, including Japan and the Netherlands, as gallium and germanium are integral to the production of semiconductor wafers, integrated circuits, light-emitting diodes, electric vehicles, solar cells, fiber-optic cable, and other electronic components.

In October 2023, in what many call the latest move in the escalating technological rivalry between the West and China, Chinese authorities again invoked the “national security” provision to announce export licensing requirements for graphite. Graphite, a soft form of carbon, is a key component of lithium batteries used in electric vehicles¹⁵²⁸. China is the world’s top producer, accounting for two-thirds of the global supply¹⁵²⁹. In numbers, China holds a 65% share of natural graphite production, over 75% of synthetic graphite, and more than 90% of spherical graphite, the type primarily used in batteries. It also produces more than 90% of the world’s anodes¹⁵³⁰. Given that the market has more than doubled over the past five years and is expected to triple in the next five years¹⁵³¹, these latest licensing requirements provide the Government with an additional lever to exert pressure on its trade partners.

12.3.3.4. STATE TRADING

Under the State trading provisions, only certain State Trading Enterprises (‘STEs’) can trade goods specified by the government (exports and imports). According to the WTO Trade Policy Review 2006 of China: “*The continued use of state trading to export these commodities allows the Government to influence their domestic (and export) price. Exports by STEs are determined*

¹⁵²⁷ See the MOFCOM website: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202307/20230703419666.shtml> (accessed on 23 August 2023).

¹⁵²⁸ See Reuters (20 October 2023), *China curbs graphite exports in latest critical minerals squeeze*, available at: <https://www.reuters.com/markets/commodities/china-curbs-graphite-exports-latest-critical-minerals-squeeze-2023-10-20/> (accessed on 25 October 2023).

¹⁵²⁹ “China boasts a commanding position in the graphite market, with a 65 percent share of natural graphite production, over 75 percent of synthetic graphite, and more than 90 percent of spherical graphite, the type primarily used in batteries. It also produces more than 90 percent of the world’s anodes.”, Moerenhaut, T. (25 October 2023), *China’s Latest Move in the Critical Mineral and Technology Trade War*; available at: <https://www.energypolicy.columbia.edu/chinas-latest-move-in-the-critical-mineral-and-technology-trade-war/> (accessed on 25 October 2023).

¹⁵³⁰ BenchmarkSource (20 October 2023), *China’s graphite export regulation shift puts anode in the spotlight*, available at: <https://source.benchmarkminerals.com/article/china-graphite-export-restrictions-could-hinder-ex-china-anode-development> (accessed on 25 October 2023).

¹⁵³¹ Moerenhaut, T. (25 October 2023), *China’s Latest Move in the Critical Mineral and Technology Trade War*; available at: <https://www.energypolicy.columbia.edu/chinas-latest-move-in-the-critical-mineral-and-technology-trade-war/> (accessed on 25 October 2023).

*taking into account both domestic and international demand and supply and seek to maintain stable prices of "strategic" agricultural commodities and ensure adequate supplies of inputs to state-run processing industries. Thus, the latter industries enjoy an implicit subsidy”*¹⁵³².

Under WTO rules member countries have to regularly notify WTO about their state trading enterprises¹⁵³³. Since China did not submit a notification between 2003 and 2014, in August 2014 the US submitted a counter-notification on China's STEs. China subsequently submitted state trading notifications to WTO in 2016, 2018 and the latest one dating from 2021 (as of the time of drafting of this report)¹⁵³⁴. The export items listed therein include rice, corn, coal, crude oil, processed oil, tungsten and tungsten products, antimony and antimony products, silver, tobacco and cotton.

12.3.3.5. VAT REFUND WITHDRAWALS AND REBATES FOR PROCESSED GOODS

Another way of limiting exports of given products are VAT refund withdrawals. According to the OECD definition: *“Most countries with a VAT system will rebate the VAT on exports. By denying VAT reimbursement in whole or part, it is less advantageous to export a product than to sell it domestically. This in turn encourages exports of products produced locally that use the input to produce downstream products. A variant is the removal or reduction of rebate from other sales taxes on exports of a product”*¹⁵³⁵.

According to the Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of Value-added Tax and Consumption Tax Applicable to Exported Goods and Services: *“Unless VAT export tax refund rates (hereinafter referred to as the ‘Tax Refund Rate’) have been specified by the MOF and the SAT pursuant to the decisions of the State Council, the Tax Refund Rates of exported goods shall be their respective applicable tax rate. The SAT shall, in accordance with the foregoing provisions, release the Tax Refund Rates through the database of Tax Refund Rates for Exported Goods and Services for compliance by both taxpayers and tax authorities”*¹⁵³⁶. By means of this notice China is maintaining a policy of withdrawing VAT tax refunds for exports on specific items.

¹⁵³² WTO Trade Policy Review 2006, WT/TPR/S/161, page 170.

¹⁵³³ Paragraph 1 of the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 provides that ‘[i]n order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party.’ Paragraph 1 further states: ‘Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.’

¹⁵³⁴ List of China’s WTO notifications, available at: <https://notifications.wto.org/en/status-by-member/china> (accessed on 23 August 2023).

¹⁵³⁵ See OECD (2016). *Methodological note to the Inventory of Export Restrictions on Industrial Raw Materials*, available at: <https://www.oecd.org/trade/topics/trade-in-raw-materials/documents/methodological-note-inventory-export-restrictions-industrial-raw-materials.pdf> (accessed on 23 August 2023).

¹⁵³⁶ Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of VAT and Consumption Tax Applicable to Exported Goods and Services, available at: https://guangdong.chinatax.gov.cn/gdsw/zjfg/2015-01/01/content_b2b7d2139f4347e6a4e124d7067c036d.shtml (accessed on 23 August 2023).

In a number of sectors there are full or partial VAT rebates on downstream products but not on the primary goods. This discourages the exports of unprocessed goods, artificially contributing to lower prices domestically (see the example of aluminium, Section 15.3).

12.4. PRICE SETTING THROUGH THE NDRC

Officially, the role of the NDRC with regard to pricing consists of drafting and implementing price policies; setting the prices and charging standards of important commodities and services that are regulated by the state; and deepening price reforms, timely revising and downsizing the government pricing catalogue, and improving pricing mechanisms that reflect market supply and demand¹⁵³⁷.

Specifically, the State Council Department of Price, which is an NDRC department, is responsible for dealing with pricing issues¹⁵³⁸, including price setting for items subject to the Catalogue of Pricing.¹⁵³⁹ Items subject to price regulation relevant for the purpose of this Report include electricity, oil and gas pipeline transportation and water supply (for energy, see Section 10.2.1)¹⁵⁴⁰.

12.5. STOCKPILING

Chinese stockpiling activities seem to have a considerable impact on the prices as well as availability of certain commodities in China and worldwide. For example, in 2022, the global food prices were at 10-year highs. One factor contributing to those high prices was China's stockpiling of large amounts of corn, rice and wheat¹⁵⁴¹. There are many other commodities that China is known to stockpile, which contributes to higher prices. It releases them at certain times, potentially affecting global prices.

12.5.1. NATIONAL FOOD AND STRATEGIC RESERVES ADMINISTRATION

The National Food and Strategic Reserves Administration ('NFSRA') is a state agency under the NDRC. It replaced its predecessor the States Reserve Bureau ('SRB'), founded in 1953. NFSRA was established on 4 April 2018, based on the Decision of the First Session of the 3rd NPC on the Institutional Reform Plan of the State Council. Based on this document¹⁵⁴²:

The National Food and Strategic Reserves Administration shall be formed. The duties of the State Administration of Grain, the duties of the National Development and Reform Commission to organize the implementation of national strategic

¹⁵³⁷ See the NDRC English website: <https://en.ndrc.gov.cn/aboutndrc/mainfunctions/> (accessed on 23 August 2023).

¹⁵³⁸ See: https://en.ndrc.gov.cn/aboutndrc/BandD/202105/t20210526_1280939.html (accessed on 23 August 2023).

¹⁵³⁹ See at: https://www.gov.cn/zhengce/2020-03/13/content_5713304.htm (accessed on 23 August 2023).

¹⁵⁴⁰ Other items include: special drugs and blood; important transportation services: railroad transportation services, civil aviation transport services, port services; important postal services; important professional services (basic services of commercial banks and service charges on bank card swiping). See Order No. 29 of the National Development and Reform Commission of the People's Republic of China – Catalogue of Pricing by the Central Government.

¹⁵⁴¹ Bloomberg: Minter, A. (2022) *One Reason For Rising Food Prices? Chinese Hoarding*, available at: <https://www.bloomberg.com/opinion/articles/2022-01-05/one-reason-for-rising-food-prices-chinese-hoarding#xj4y7vzkg> (accessed on 23 August 2023).

¹⁵⁴² Available at: https://www.gov.cn/guowuyuan/2018-03/17/content_5275116.htm (accessed on 23 August 2023).

material procurement, storage, rotation, and management and the management of the national grain, cotton, and sugar reserves, as well as the duties of the Ministry of Civil Affairs, Ministry of Commerce, National Energy Administration, and other ministries to organize the implementation of purchasing, storage, rotation, and daily management of national strategic and emergency reserve materials will be integrated to form the National Food and Strategic Reserves Administration under the management of the National Development and Reform Commission. The National Food Agency will no longer be retained.

The Regulations on the Functional Allocation, Internal Institutions and Staffing of the NFSRA lists the main responsibilities of NFSRA. However, it does not provide a detailed list of commodities subject to stockpiling. According to Article 3(3), NFSRA shall “[m]anage the national grain, cotton and sugar reserves, and be responsible for the administration of the central grain and cotton reserves. Monitor changes in the supply and demand of international and domestic food and strategic materials [...]”¹⁵⁴³. While there is no mention of the specific products subject to NFSRA’s stockpiling in the regulatory documents, the institutional setup suggests that NFSRA manages more than just food. The divisions within NFSRA include, among others, Food Reserve Division, Material Reserve Division, Energy Reserves Division and Emergency Supplies Reserve¹⁵⁴⁴. The website of Material Reserve Division mentions in its press releases the following materials: copper, aluminium and zinc¹⁵⁴⁵, however there is no full list of stockpiled goods, nor quantities of good currently stockpiled. NFSRA has 26 agencies at the provincial level, which are tasked with managing the collection, storage, rotation and outbound of national strategic materials within their jurisdiction, and supervising and inspecting the quantity, quality and storage safety of reserve materials¹⁵⁴⁶.

It seems that NFSRA, like its predecessor the SRB, holds reserves of commodity metals (such as aluminium, copper, iron, tin), some technical metals (chromium, lithium, manganese, molybdenum, rare earth elements, selenium, tantalum, tungsten, vanadium, zirconium) and potash. US government reports indicate that the SRB probably held stocks of antimony, germanium¹⁵⁴⁷, cadmium and cobalt¹⁵⁴⁸. However, there is no official list of strategic commodities subject to stockpiling¹⁵⁴⁹. The NFSRA decides which raw materials and in what quantities will be stockpiled, depending on the forecast demand. There is no transparency of

¹⁵⁴³ Regulations on the Functional Allocation, Internal Institutions and Staffing of the State Food and Material Reserve Administration available at: https://www.gov.cn/zhengce/2018-09/11/content_5320985.htm (accessed on 23 August 2023).

¹⁵⁴⁴ See the NFSRA website: <http://www.lswz.gov.cn/> (accessed on 23 August 2023).

¹⁵⁴⁵ See at: <http://www.lswz.gov.cn/html/ywzd/wzcb/index.shtml> (accessed on 23 August 2023).

¹⁵⁴⁶ See the NFSRA website: http://www.lswz.gov.cn/html/c70129/2019-07/24/content_245807.shtml (accessed on 23 August 2023).

¹⁵⁴⁷ U.S. Geological Survey (2014). *Mineral commodity summaries 2014*: U.S. Geological Survey, p. 196.

¹⁵⁴⁸ Menzie, W.D. (2012). *China's Quest for Resources*. Testimony of W. David Menzie, Chief, Global Minerals Analysis Section, National Minerals Information Center, U.S. Geological Survey, available at: https://www.doi.gov/oc/ hearings/112/ChinaMinerals_012612 (accessed on 23 August 2023).

¹⁵⁴⁹ Hilpert H.G. and Mildner S.A. (2013). *Fragmentation or Cooperation in Global Resource Governance? A Comparative Analysis of the Raw Materials Strategies of the G20*, German Institute for International and Security Affairs.

volumes and flows¹⁵⁵⁰. The objective of stockpiling is to avoid price fluctuations and critical shortages¹⁵⁵¹.

The activities of the NFSRA can have a considerable impact on the prices as well as availability of certain materials in China and worldwide.

For example, fluctuations in the global price of **copper** are usually linked by analysts to the Chinese stockpiling. The record high global prices of copper in the first half of 2021 were partially attributed to intensive stockpiling activities by China¹⁵⁵². According to estimates, the copper stockpile of China in 2021 could have been somewhere around 2 million tonnes¹⁵⁵³. Later that year, China announced it would release copper, aluminium and zinc to curb commodity prices¹⁵⁵⁴. Chinese copper stockpiling activities are highly secretive and subject to speculation. While the visible inventories in China seemed to be at historical lows in 2023, there was also speculation that since 2022 China has been restocking copper, taking advantage of low prices¹⁵⁵⁵.

Another commodity subject to important stockpiling in China is **aluminium**. China's stockpiling activities in aluminium are described in detail in the Aluminium chapter of this report, in Section 15.5.4.

China is also known to stockpile **zinc**. In 2021, China held an estimated 350 000 tonnes of zinc, which it was planning to partly that year release to bring the global prices down and hence support its manufacturers struggling with high costs¹⁵⁵⁶. Information concerning Chinese stockpiling activities is not in the public domain, therefore it is unclear what is the amount of China's zinc reserves.

¹⁵⁵⁰ *Ibid.*

¹⁵⁵¹ *Ibid.*

¹⁵⁵² Nasdaq.com (2021). *China is Using its Currency to Stockpile Copper and Grains*, available at: <https://www.nasdaq.com/articles/china-is-using-its-currency-to-stockpile-copper-and-grains-2021-01-26> (accessed on 23 August 2023).

¹⁵⁵³ CNBC (2021): *China to release copper, aluminium and zinc reserves to stabilise prices*, available at: <https://www.cnbc.com/2021/06/16/china-to-release-copper-aluminum-and-zinc-reserves-to-stabilize-prices.html#:~:text=China%20will%20release%20copper%2C%20aluminum%20and%20zinc%20in,firms%20%E2%80%9Cin%20the%20near%20future%E2%80%9D%20via%20public%20auction> (accessed on 23 August 2023).

¹⁵⁵⁴ *Ibid.*

¹⁵⁵⁵ Reuters (2023): *Column: While Dr Copper waits for China, China buys more copper*, available at: <https://www.reuters.com/markets/commodities/while-dr-copper-waits-china-china-buys-more-copper-2023-01-27/> (accessed on 23 August 2023).

¹⁵⁵⁶ Reuters (2021), *Explainer: What we know about China's metals reserves release*, available at: <https://www.reuters.com/world/china/what-we-know-about-chinas-metals-reserves-release-2021-06-17/> (accessed on 23 August 2023).

There are also indications that China is stockpiling **cobalt**, with purchases made in 2015 and 2016¹⁵⁵⁷ a call by NFSRA to purchase cobalt in 2020¹⁵⁵⁸ and indications it would buy more cobalt in 2022¹⁵⁵⁹.

There were also reports of China purchasing **nickel**, for example in 2022¹⁵⁶⁰, however as in case with other metals, the purchases have not been made public and there are only indications pointing to a large nickel stockpile in China.

Another metal which might be stockpiled by China is **tin**, with the tin stockpile held by the Shanghai Future Exchange reaching its 5-year high in 2023 according to some sources¹⁵⁶¹. Again, there uncertainty with respect to the exact nature of these stockpiling activities, with some analysts arguing China does not hold any tin or lead at all¹⁵⁶².

It seems apart from the above, China also holds antimony, indium, germanium and molybdenum oxide¹⁵⁶³.

While the Chinese stockpile purchases are not announced publicly, there are indications that metal purchases only came from restricted companies and that the main focus was on aiding large SOEs, such as the Aluminium Corporation of China ('*CHALCO*')¹⁵⁶⁴. Other suppliers of metals to the Chinese stockpile included the three main domestic suppliers: China Minmetals, Jiangxi Copper Corp and China North Industries Corp (Norinco) in China, as well as Glencore globally¹⁵⁶⁵.

12.5.2. NATIONAL OIL RESERVE

In 2004, China started to build up strategic petroleum reserves. The International Energy Agency requires that its members hold strategic reserves equivalent to 90 days of petroleum imports¹⁵⁶⁶ and China set out a plan divided into three phases to reach this goal. The first phase was completed in 2009 with the total capacity of 102 million barrels (13.8 million tonnes) and

¹⁵⁵⁷ *Ibid.*

¹⁵⁵⁸ Reuters (2020): *China aiming to add to its cobalt stockpile*, available at: <https://www.reuters.com/article/china-cobalt-stockpiling-idUKL4N2G82DV> (accessed on 23 August 2023).

¹⁵⁵⁹ Erismann, F. Earth Resource Investment (2022), *China stockpiles Copper, Nickel and Cobalt – has the commodity sector bottomed out?*, available at: <https://earth-investment.com/en/insight/china-stockt-kupfer-nickel-und-kobalt-auf-ist-der-tiefpunkt-im-rohstoffsektor-erreicht/> (accessed on 23 August 2023).

¹⁵⁶⁰ *Ibid.*

¹⁵⁶¹ Treadgold, T. Small Caps (2023). *Tin faces a price fall as supply rises*, available at: <https://smallcaps.com.au/tin-faces-price-fall-as-supply-rises/> (accessed on 23 August 2023).

¹⁵⁶² Reuters (2021). *Explainer: What China keeps in its secretive commodity reserves*, available at: <https://www.reuters.com/world/china/what-china-keeps-its-secretive-commodity-reserves-2021-08-05/> (accessed on 23 August 2023).

¹⁵⁶³ *Ibid.*

¹⁵⁶⁴ Financial Times. (2012). *Beijing set to buy up base metals*, 12.11.2012, available at: <https://www.ft.com/content/b56082b8-2cee-11e2-beb2-00144feabdc0> (accessed on 23 August 2023).

¹⁵⁶⁵ Metal Bulletin (2015). *China's SRB revealed. Shedding light on the State Reserve Bureau*, A Metal Bulletin-Copper Price Briefing special report, available at: <https://www.metalbulletin.com/Article/3475883/Article.html> (accessed on 23 August 2023).

¹⁵⁶⁶ Long, H., Wang, S., Wu, W. (2022). *The economic influence of oil shortage and the optimal strategic petroleum reserve*, available at: <https://www.sciencedirect.com/science/article/pii/S2352484722014330> (accessed on 23 August 2023).

90% of it filled¹⁵⁶⁷. The second phase was planned run between 2010 and 2015, rising the total capacity to 271 million barrels (36.9 million tonnes) and the last phase was supposed to finish in 2020¹⁵⁶⁸. However, there was a delay to that initial planning and China announced plans to finalise the second phase by 2020 and then start the third phase¹⁵⁶⁹. It is unclear where China is exactly in this progress, as there is no detailed reporting available on the exact amounts of China's current oil reserves. There were some reports that China finished phase two, but also indication that the goal was not met yet¹⁵⁷⁰. The initial plan provided that at the end of the third phase, China should have a total stockpile of 68.8 million tonnes, equivalent to 83 days in 2016 net imports of crude oil¹⁵⁷¹. According to NEA, China held around 80 days of oil in storage in 2019, however no specific quantities were disclosed¹⁵⁷².

12.5.3. STOCKPILING OF OTHER GOODS

12.5.3.1. COTTON

Beijing introduced cotton stockpiling in 2011, as a policy to maintain domestic cotton production and secure raw material supply to the domestic textile industry. This in turn led to a significant increase in Chinese cotton prices, due to a cut in supply of the raw materials to the textile mills¹⁵⁷³. In 2014, China stopped buying additional cotton, offering subsidies to cotton producers instead. At least part of the cotton reserves was sold by the State in 2014¹⁵⁷⁴, but in 2017 China still held large reserves of cotton¹⁵⁷⁵, which according to some accounts could have amounted to 60% of the world cotton stocks¹⁵⁷⁶. In July 2022, China National Cotton Reserves Corporation ('CNCRC') announced that it would purchase up to 500 000 tonnes of cotton from Xinjiang, in order to support producers hit by a US ban on cotton produced in Xinjiang¹⁵⁷⁷.

¹⁵⁶⁷ Reuters (2014). *China makes first announcement on strategic oil reserves*, available at: <https://www.reuters.com/article/china-oil-reserves-idUSL3N0TA1QE20141120> (accessed on 23 August 2023).

¹⁵⁶⁸ Xie, N., Yan, Z., Zhou, Y., Huang, W. (2017). *China's optimal stockpiling policies in the context of new oil price trend*. Energy Policy, 105, pp. 332-340, available at: <https://www.sciencedirect.com/science/article/pii/S0301421517301489> (accessed on 23 August 2023).

¹⁵⁶⁹ Reuters (2014). *China makes first announcement on strategic oil reserves*, available at: <https://www.reuters.com/article/china-oil-reserves-idUSL3N0TA1QE20141120> (accessed on 23 August 2023).

¹⁵⁷⁰ Tang, F (2021). SCMP: Explainer. *How big are China's crude oil reserves and how do they compare to the US' SPR?*, available at: <https://www.scmp.com/economy/china-economy/article/3156952/how-big-are-chinas-crude-oil-reserves-and-how-do-they-compare> (accessed on 23 August 2023).

¹⁵⁷¹ Long, H., Wang, S., Wu, W. (2022).

¹⁵⁷² Reuters (2019). *China has enough oil inventories to last about 80 days*: NEA, available at: <https://www.reuters.com/article/us-china-energy-idUSKBN1W514V> (accessed on 24 August 2023).

¹⁵⁷³ See Financial Times (2014). *China abandons failed cotton stockpiling programme*, 20 January 2014, available at: <https://www.ft.com/content/5e0333ce-81a4-11e3-a600-00144feab7de> (accessed on 23 August 2023).

¹⁵⁷⁴ See Financial Times (2015). *Datawatch: Chinese cotton price*, available at: <http://blogs.ft.com/ftdata/2015/09/03/datawatch-chinese-cotton-price> (accessed on 23 August 2023).

¹⁵⁷⁵ See Financial Times (2017). *Cotton price rally goes 'pretty parabolic'*, 15 March 2017, available at: <https://www.ft.com/content/34bf621e-3851-11e7-821a-6027b8a20f23> (accessed on 23 August 2023).

¹⁵⁷⁶ See Financial Times (2016). *China pledges to end corn stockpiling*, 29 March 2016, available at: <https://www.ft.com/content/15b0fb4a-f59e-11e5-803c-d27c7117d132> (accessed on 23 August 2023).

¹⁵⁷⁷ Siji, J. (2022). South China Morning Post. *China to buy Xinjiang cotton, but state stockpiling won't save mills from massive losses amid US ban*, available at: <https://www.scmp.com/economy/china->

12.5.3.2. AGRICULTURAL COMMODITIES

China holds stocks of corn, wheat, rice and other agricultural commodities. As in case of other commodities, there is no official data concerning the Chinese stockpile of agricultural commodities, however according to reports, China might hold even up to 69% of the world's corn reserves, 60% of its rice and 51% of its wheat¹⁵⁷⁸. According to the Chinese authorities, in November 2021, China held enough wheat to last for 18 months¹⁵⁷⁹.

12.6. SHANGHAI FUTURES EXCHANGE

The Shanghai Futures Exchange ('SHFE') was founded in 1999 with the merger of the Shanghai Metals Exchange (founded in 1992), the Shanghai Commodities Exchange and the Shanghai Cereals and Edible Oils Exchange.

The SHFE is a closed exchange for Chinese-registered companies and Chinese citizens and is controlled by the CSRC. According to the SHFE's website, the highest authority of the Exchange is the Member's Assembly which consists of all members. Now SHFE has 201 Members. The Board is the standing organ of this assembly with six special commissions (market compliance, trading, delivering, membership review, conciliation, finance and technology) as well as other special commissions when necessary. The internal supervision organ of the Exchange is the Board of Supervisors, and it is responsible for supervising the performance of the Board of Directors and the management.

Currently there are 20 future contracts and six commodity options available for trading on the SHFE, including the futures on copper, aluminium, zinc, lead, nickel, tin, gold, silver, steel rebar, steel wire rod, hot rolled coil, fuel oil, crude oil, bitumen, natural rubber, wood pulp, technically specified rubber TSR 20, stainless steel, LSFO (low sulphur fuel oil) and bonded copper, and also copper option, natural rubber option, gold option, aluminium option, zinc option and crude oil option¹⁵⁸⁰.

The SHFE Business Services Co., Ltd., Shanghai Futures Information Technology Co., Ltd., Shanghai Futures and Derivatives Research Institute and Shanghai International Energy Exchange ('INE') are the subsidiaries of SHFE. INE, set up in the Shanghai Pilot Free Trade Zone in November 2013, is an international exchange and is open to global futures' participants. INE is a self-regulated entity and discharges its duties pursuant to the Chinese Company Law, the Regulations on the Administration of Futures Trading and relevant rules and regulations prescribed by the CSRC. Four futures (crude oil, LSFO (low sulphur fuel oil), technically specified rubber TSR20, copper cathode) and one option (crude oil) are listed in INE¹⁵⁸¹.

¹⁵⁷⁸ [economy/article/3185044/china-buy-xinjiang-cotton-state-stockpiling-wont-save-mills](https://www.bloombergeconomy.com/article/3185044/china-buy-xinjiang-cotton-state-stockpiling-wont-save-mills) (accessed on 24 August 2023).

¹⁵⁷⁹ Bloomberg: Minter, A. (2022) *One Reason For Rising Food Prices? Chinese Hoarding*, available at: <https://www.bloomberg.com/opinion/articles/2022-01-05/one-reason-for-rising-food-prices-chinese-hoarding#xj4y7vzkg> (accessed on 23 August 2023).

¹⁵⁸⁰ *Ibid.*

¹⁵⁸¹ See the SHFE website: <https://www.shfe.com.cn/eng/about/introduction/overview/> (accessed on 24 August 2023).

¹⁵⁸¹ Official website of INE: <https://www.ine.cn/eng/> (accessed on 24 August 2023).

The previous investigations of the Commission into aluminium products revealed a number of pricing irregularities with regard to the SHFE¹⁵⁸². The investigations revealed that the Chinese producers normally acquired raw materials in the Chinese market from local suppliers using Chinese spot market prices (or SHFE prices) as a benchmark. Since the aluminium prices in the SHFE were around 14-15% lower than the world market prices, Chinese operators benefitted from this price difference. Moreover, the Chinese companies could also buy raw materials at London Metals Exchange (*'LME'*) prices when prices in the Chinese market are higher, whilst the opposite is impossible for non-Chinese operators, since SHFE is only open to Chinese purchasers.

The SHFE performs its functions in accordance with the Regulation on the Administration of Futures Trading, the Measures for the Administration of Futures Exchanges and its Articles of Association. The investigations unveiled that several rules governing the functioning of the SHFE contribute to low volatility and depressed prices at the SHFE: daily price fluctuations are limited to 4% above or below the settlement price of the previous trading day, trading happens at a low frequency (until the 15th day of each month), futures contracts are limited to a duration of up to 12 months, and transaction fees are charged by both the SHFE and brokers. In addition, the State sets daily price limits via the rules of the SHFE which have been approved by the State Regulator, the CSRC¹⁵⁸³.

Access to the exchange is limited by law only to Chinese traders which also need an approval from CSRC to trade on the exchange. Market representatives of SHFE members can only perform transactions at the request of SHFE members, cannot accept orders from other organizations and cannot trade on their own account¹⁵⁸⁴.

Moreover, as concerns SHFE transactions, physical deliveries can only take place in an approved warehouse within China, unlike international exchanges, where delivery can take place worldwide. SHFE is a platform for physical exchanges only (no derivatives are sold), which completely insulates the Chinese market for SHFE traded commodities. As a consequence, the exchange works in isolation from other world markets, as arbitrage with the worldwide benchmark – the LME or other markets – is practically not possible. Thus, equalization among these markets cannot take place¹⁵⁸⁵.

¹⁵⁸² See Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the PRC; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the PRC; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the PRC.

¹⁵⁸³ *Ibid.*

¹⁵⁸⁴ See Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the PRC.

¹⁵⁸⁵ See Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the PRC; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the PRC; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the PRC.

The investigations furthermore indicated that the State also intervenes with the price setting mechanisms in the SHFE as it is both a seller and a purchaser of primary aluminium via the NFSRA¹⁵⁸⁶. As described in Section 12.5.1, stockpiling by the NFSRA has an immediate effect on prices, which is then reflected in price fluctuations on the SHFE, and thus benefits the Chinese purchasers who can purchase raw materials cheaper than their foreign counterparts can.

12.7. PRESENCE OF SOES

The SOEs active in the commodities sector have a dual structure: on the one hand there are large SOEs with high productivity and leading positions in world markets and on the other hand a large number of smaller, cooperatively owned companies with small output and low productivity.

The most prominent examples of SOEs include CHALCO (aluminium), Baowu Steel and Hebei Iron & Steel (steel), Jinduicheng (molybdenum), Baotou Steel & Rare Earth (rare earth elements), Yunnan Tin (tin), Zijin Mining (gold, copper, zinc) and China Minmetals (metal trading)¹⁵⁸⁷.

China's SOEs represent a majority in the following raw material industries: professional and support activities for mining (SOEs own 90% of assets in this industry), mining and washing of coal (88%), production and supply of gas (82%), mining and processing of ferrous metal ores (77%), mining and processing of non-ferrous metal ores (73%), mining and processing of non-metal ores (57%), smelting and processing of non-ferrous metals (55%), smelting and processing of ferrous metals (54%), and manufacturing of raw chemical materials and chemical products (49%)¹⁵⁸⁸.

12.8. RARE EARTHS

Through the use of quotas China is able to control the supply of metals on the market and hence influence their prices. Twice per year MIIT sets quotas for rare earths: a mining quota and a quota for the smelting and separation. The mining quota is further subdivided into quotas for light rare earths and heavy rare earths.

In January 2021, MIIT released draft Regulations on Rare Earth Management that aim “to strengthen oversight of the entire industry chain of rare earth metals, from mining to exports, including refining, product transport, and sales”. The proposed regulations extend beyond the current regulations that focus primarily on the production stage of the rare earth industry¹⁵⁸⁹. The draft regulations specify that a quota shall be established by government agencies¹⁵⁹⁰, considering elements such as regional economic policy, industrial capacity and the quota

¹⁵⁸⁶ *Ibid.*

¹⁵⁸⁷ Hilpert H.G. and Mildner S.A. (2013). *Fragmentation or Cooperation in Global Resource Governance? A Comparative Analysis of the Raw Materials Strategies of the G20*, German Institute for International and Security Affairs.

¹⁵⁸⁸ By total assets, on the basis of main indicators of enterprises by industrial sector in 2021 from the China Statistical Yearbook 2022, National Bureau of Statistics of China, available at: <http://www.stats.gov.cn/sj/ndsj/2022/indexeh.htm> (accessed on 24 August 2023).

¹⁵⁸⁹ See at: <https://repository.mines.edu/bitstream/handle/11124/176887/Payne-Institute-Student-Commentary-Chinas-Consolidation-of-Rare-Earth-Elements-Sector.pdf> (accessed on 24 August 2023).

¹⁵⁹⁰ Likely MIIT, NDRC, and Ministry of Natural Resources.

implementation in the previous year. The quota will be published after approval by the State Council. The proposed draft regulations also envisage that the government may adopt measures to restrict or suspend rare earth mining, smelting, and separation, if it is necessary to protect natural resources and the ecological environment¹⁵⁹¹.

Most of the quota is allocated among six major SOEs: China Minmetals, CHALCO, China Northern Rare Earth Group High-Tech, Xiamen Tungsten, China Southern Rare Earth Group and Guangdong Rare Earth Industry Group. The quota is normally distributed by them across their provincial affiliated SOEs, who will then allocate quotas to lower level SOEs, private firms or Chinese-foreign joint ventures.

In December 2021, China Rare Earth Group Co. Ltd was formally established. It is a conglomerate of several big industrial producers, including the rare earth units of three major above-mentioned SOEs (namely CHALCO, China Minmetals, and Ganzhou Rare Earth Group Co., Ltd.¹⁵⁹²) – each of these three entities holding more than 20% of China Rare Earth Group’s shares – and two research companies (China Iron & Steel Research Institute Group and Grinm Group Corporation Ltd.), each holding 3.9% of the shares¹⁵⁹³. Based on 2021 data, the China Rare Earth Group Co. Ltd had around 30% of both the mining and the smelting and separation quotas¹⁵⁹⁴. This SOE is directly supervised by SASAC that has more than 31% of China Rare Earth Group’s shares.

China has raised the annual quota for five years in a row. In 2022¹⁵⁹⁵, the rare earth mining quota was 210 000 tonnes (increased by 25% comparing with 168 000 tonnes in 2021 and doubled comparing to 105 000 tonnes in 2017¹⁵⁹⁶): 100 800 tonnes in the first batch and 109 200 tonnes in the second batch. The quota for the smelting and separation of rare earth in 2022 was 202 000 tonnes (increased by 25% comparing with 162 000 tonnes in 2021 and more than doubled comparing with 100 000 tonnes in 2017¹⁵⁹⁷): 97 200 tonnes in the first batch and 104 800 tonnes in the second batch¹⁵⁹⁸.

¹⁵⁹¹ Chinatrademonitor (2021). *China Proposes Rules to Regulate Rare Earth Production*. 31 January 2021, available at: <https://www.chinatrademonitor.com/china-proposes-rules-to-regulate-rare-earth-production/> (accessed on 24 August 2023).

¹⁵⁹² China Southern Rare Earth Group is a key subsidiary of Ganzhou Rare Earth Group.

¹⁵⁹³ *China Merges Three Rare Earths State-Owned Entities to Increase Pricing Power and Efficiency*, 12 January 2022; available at: <https://www.china-briefing.com/news/china-merges-three-rare-earths-state-owned-entities-to-increase-pricing-power-and-efficiency/> (accessed on 24 August 2023).

¹⁵⁹⁴ *Ibid.* 52 719 metric tons of mining quota (31% of the total) and 47 129 metric tons of smelting quota (29% of the total).

¹⁵⁹⁵ 2022 first batch, see at: https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2022/art_d1f7f30b71314d8b9f11f2cd01b39c81.html (accessed on 24 August 2023) and 2022 second batch, see at: https://www.miit.gov.cn/jgsj/ycls/xt/art/2022/art_c663540f8ae24fb28fa88fab41cb1386.html (accessed on 24 August 2023).

¹⁵⁹⁶ The rare earth mining quota was 140 000 tonnes in 2020, 132 000 tonnes in 2019, 120 tonnes in 2018.

¹⁵⁹⁷ The quota for the smelting and separation of rare earth was 135 000 tonnes in 2020, 127 000 tonnes in 2019, 115 tonnes in 2018.

¹⁵⁹⁸ Reuters (2022). *China hikes 2022 rare earth quota by 25% on rising demand*. 17 August 2022, available at: <https://www.mining.com/web/china-hikes-2022-rare-earth-quota-by-25-on-rising-demand/> (accessed on 24 August 2023).

In March 2023, MIIT announced¹⁵⁹⁹ that in the first batch of 2023 the rare earth mining quota is 120 000 tonnes and the quota for smelting and separation of rare earth is 115 000 tonnes¹⁶⁰⁰ (both increased by 20% comparing with the first batch of 2022). The production quota was divided between four major rare earth companies: China Northern Rare Earth Group, China Rare Earth Group, Xiamen Tungsten and Guangdong Rare Earths Industry Group¹⁶⁰¹.

12.9. INVESTMENT REGULATION

One of the instruments to influence the level of supply is the steering of investment activities by the government as explained in more detail in the investment chapter (see Chapter 8).

The government limits investment into a number of sectors related to raw materials. According to the Notice of the State Council on Promulgating the Catalogue of Investment Projects Subject to Government Verification and Approval¹⁶⁰² (see Section 8.3.9.1):

- Crude oil or natural gas (including coalbed methane) development projects shall be independently decided by enterprises with exploitation rights and be reported to relevant industry management departments of the State Council for record-filing. Relevant enterprises with exploitation rights shall adhere to the principle of overall planning pursuant to applicable laws and regulations [...];
- Projects of iron and steel, electrolytic aluminium, cement, flat glass, vessels and other industries with serious overcapacity shall be strictly governed by the Guiding Opinions of the State Council on Addressing the Conflicts Caused by Serious Industry Overcapacity [...]. All regions and departments shall not process the record-filing of any project that adds new capacity in any other name or by any means;
- Coal mine projects shall be strictly governed by the Opinions of the State Council on Resolving Overcapacity on the Coal Industry and Achieving Turnaround in Development [...]. In other words, the examination and approval of new coal mine projects, technological transformation projects that increase capacity and capacity verification and increase projects shall, in principle, be suspended for three years with effect from 2016. [...]

China regulates foreign investment by using various legal tools, in particular negative lists of sectors in which foreign investment is either prohibited or restricted (see Section 8.3). According to the lists applicable as of writing of this Report, foreign investment is prohibited in exploration, mining, and mineral processing (beneficiation) of rare earths, radioactive

¹⁵⁹⁹ 2023, first batch, see at: https://www.miit.gov.cn/jgsj/ycls/wjfb/art/2023/art_cfcef0279a2a4fe0938691a3ac1b1e3e.html (accessed on 24 August 2023).

¹⁶⁰⁰ Global Times (2023). *China hikes rare-earth quota by nearly 20% amid rising demand*. 24 March 2023, available at: <https://www.globaltimes.cn/page/202303/1287914.shtml> (accessed on 24 August 2023).

¹⁶⁰¹ YiCai Global (2023). *China Northern Rare Earth Group Keeps Top Position as MIIT Releases First Quota List*. 27 March 2023, available at: <https://www.yicai.com/news/china-northern-rare-earth-group-keeps-top-position-as-miit-releases-first-quota-list> (accessed on 23 August 2023).

¹⁶⁰² Notice of the State Council on Promulgating the Catalogue of Investment Projects Subject to Government Verification and Approval of 20 December 2016, available at: https://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm (accessed on 23 August 2023).

minerals, and tungsten. The Special Administrative Measures for Foreign Investment in Pilot Free Trade Zones (see Section 8.3.1) additionally specify that it is forbidden without permission to enter rare earth mining areas or obtain mine geological data, ore samples and production technology.

Since 2017 annual revisions of the negative list for access of foreign investment contributed to progressively lowering the scope of restrictions affecting foreign investments¹⁶⁰³. However, investment restrictions with regard to investment projects relating to raw materials have an impact on the structure of whole industry.

Another tool of regulation of foreign investment is the Encouraged FI Catalogue (see Section 8.2.3.1.2). Foreign investors investing in the industries included in this catalogue are entitled to certain preferential policies at the local government level, such as a discount of up to 70% on the land price, exemption from duties on imported equipment or a 15% income tax rate (compared with 25% in other industries)¹⁶⁰⁴. The version of the catalogue¹⁶⁰⁵ applicable as of writing of this Report encourages on the national level foreign investment, for example, in:

- low-carbon upgrade of petrochemical chemical raw materials;
- raw materials manufacturing (high-purity electronic chemicals, high-performance coatings and organic polymer materials were added or modified in the 2022 catalogue edition);
- production of fluorine resource recovery from phosphorus chemical industry and aluminium smelting;
- exploration and development of oil and natural gas (including shale gas and coal bed methane) and utilization of mine gas;
- exploration, mining and mineral processing of minerals in short supply (such as potash, chromite, etc.).

Additionally, in certain regions foreign investment is encouraged, for example, in:

- ecosystem restoration and reconstruction projects in mining areas (Shanxi, Heilongjiang, Tibet Autonomous Region);
- production of fully mechanized mining equipment and explosion-proof electromechanical products in large coal mines (Shanxi);
- exploration and mining of seabed minerals (Hainan);
- exploration, mining and mineral processing, development and application of shale oil and gas technology (Chongqing, Sichuan);
- wood processing (Jilin, Gansu); wood processing and wood product production (Heilongjiang);

¹⁶⁰³ OECD Services Trade Restrictiveness Index (STRI). China 2022; available at: <https://www.oecd.org/trade/topics/services-trade/documents/oecd-stri-country-note-chn.pdf>

¹⁶⁰⁴ ICLG. *Mining Laws and Regulations in China* 2023, available at: <https://iclg.com/practice-areas/mining-laws-and-regulations/china> (accessed on 23 August 2023).

¹⁶⁰⁵ The Catalogue of Encouraged Industries for Foreign Investment (2022 edition), available at: https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202210/t20221028_1339662.html?code=&state=123 (accessed on 23 August 2023).

- development and application of new short-process iron and steel smelting technology (Gansu, Guizhou); development and application of non-blast furnace smelting technology (direct reduction method) (Guizhou).

As already noted in Chapter 8, for some industries included in the negative lists – or even into the catalogue of encouraged industries – there may still be approvals that foreign investors need to secure from relevant Chinese authorities (see Section 8.3.1)¹⁶⁰⁶. Namely, foreign investment in sectors not included in the foreign investment negative lists may be subject to the restrictions set in the MA Negative List (see Section 8.3.9.1) which applies to both domestic and foreign investors. For example, it prohibits, without a license or relevant qualifications, engagement in mineral resource exploration and mining, production and operation, and foreign cooperation, or, without permission, investment in the construction of specific raw materials (rare earths, iron ore and non-ferrous metals, gold, petrochemicals, coal) projects.

12.10. CHAPTER SUMMARY

China uses of a broad range of instruments allowing it to significantly influence the prices of raw materials. By artificially increasing or decreasing the level of raw materials supply, or simply by centrally setting the prices, the government can steer the prices upwards or downwards.

The dense web of plans – including plans at the national, sectoral, provincial and municipal level – regulates basically every aspect of the Chinese economy and sets specific targets. In accordance with such plans, many key raw materials and other material inputs are to some extent regulated and are the targets of government intervention (see Section 12.2).

Other instruments applied in the plans which allow the Government to influence the supply level as well as the industry in general include, but are not limited to: increasing supply of raw materials by setting detailed minimum production targets, decreasing supply by setting maximum targets, prescriptions over overcapacity e.g. by blocking new investment projects, interventions of the State into the structure of enterprises (mergers and acquisitions to create large enterprises), central management of the geographic distribution of industries and transfers, and various extensive support measures (financial and other).

Secondly, the Government can influence prices by introducing different sorts of impediments to export. By limiting the quantities of raw materials exported abroad, the domestic supply is kept artificially high, leading to lower prices, constituting a benefit for the domestic producers of downstream products. Export restrictions are described in detail in Section 12.3.3.

Thirdly, the Government has the capacity to set prices of certain goods centrally. Even though the list of centrally set prices has to a great extent been reduced, the government is still intervening in cases where the prices run counter to government policies.

Stockpiling is another instrument allowing the State to significantly influence the domestic – and in some cases the global – raw material prices. Section 12.5 addresses the stockpiling of

¹⁶⁰⁶ China Briefing, *China's 2019 Negative Lists and Encouraged Catalogue for Foreign Investment*, 10 July 2019, available at: <https://www.china-briefing.com/news/chinas-2019-negative-lists-encouraged-catalogue-foreign-investment/> (accessed on 23 August 2023).

certain metals, including copper and nickel, as well as cotton and agricultural commodities, and the major impact those reserves have on domestic and global prices. However, detailed information on stockpiling is not made public.

Section 12.6 describes how the stockpiling and the interventions by the Government benefit the domestic producers due to the distortions of the Shanghai Futures Exchange benchmark prices.

Section 12.7 demonstrates that the industries relevant to the production of raw materials are to a large extent served by SOEs.

Finally, Section 12.9. shows that the State is guiding investments in the sectors examined. For some sectors there are investment restrictions, while for many sectors the government encourages investments. The State can back-up these restrictions and encouragements in a variety of ways, notably by granting (or refusing) financial support and when reviewing the various permits. All this allows the government to artificially influence the supply of specific goods.

13. LABOUR

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13.1. INTRODUCTION

Historically, the Chinese workforce was highly segmented, both on the geographic as well as the sectoral level. Workers were assigned to a geographic location by the *hukou* system and to a specific workplace through the ‘*danwei*’ for urban residents and brigades (‘*dadui*’) for rural residents. The Chinese pre-reform employment system was clearly isolated from any market forces, with employees assigned to an SOE for a lifetime and wages set by the government. The centrally planned economy system also required a different institutional setting.

The first reforms to the system fully controlled by the State were introduced in the 1980s, and in the intervening years, the Chinese labour system has evolved, giving more rights to workers with respect to compensation and choice of employment. However, remnants of the old system are still in place, such as the *hukou* system having an impact on the mobility of workers and their access to social protection, lack of the explicit right to strike, as well as the lack of freedom of association and independent collective bargaining. Furthermore, recently there is evidence that state-imposed forced labour is playing an important role in some regions of the country. All of these factors will be further analysed below.

13.2. LABOUR LAW

China abandoned the so-called ‘iron rice bowl’ cradle-to-grave social security system in the 1980s. The main labour regulations in China include the Labour Law (promulgated in 1994, last amended in 2018), as well as a set of three laws promulgated in 2007: Labour Contract Law

(amended in 2012), Employment Promotion Law (amended in 2015), and Labour Disputes Mediation and Arbitration Law.

Other sources of labour law include:

- Law on Assemblies, Processions and Demonstrations (1989, amended in 2009), issued by the Standing Committee of the National People's Congress, and its implementing regulations (1992, amended in 2011);
- Regulations on the Composition of Gross Wages (1990);
- Trade Union Law (1992, last amended in 2021);
- Circular on Several Issues Relating to Strengthening the Work of Trade Unions in Enterprises with Foreign Investment (1994);
- Interim Provisions on the Payment of Wages (1994);
- Provisions of the State Council on Working Hours of Employees (1994, amended in 1995);
- Regulations on Labour Protection in Workplaces Where Toxic Substances Are Used (2002),;
- Regulations on Labour Security Supervision (2004);
- Provisions on Minimum Wages (2004);
- Regulations on Work-Related Injury Insurance (2003, amended in 2010);
- Social Insurance Law (2010, amended in 2018);
- Special Provisions on Labour Protection of Female Workers (2012);
- Opinions of the Ministry of Labour and Social Security on Several Issues concerning the Implementation of the Regulations on Work-related Injury Insurance (2004).

13.3. INTERNATIONAL LABOUR STANDARDS

International labour standards are legal instruments drawn up by the International Labour Organization's ('ILO's') tripartite constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either conventions, which are legally binding, international treaties that may be ratified by ILO's member States, or recommendations, which serve as non-binding guidelines. Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member States are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, ratifying countries commit themselves to applying the convention in national law and practice and to reporting on its application at regular intervals.

The ILO has identified 11 instruments as fundamental, i.e. covering subjects that are considered as fundamental principles and rights at work:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol;
- Abolition of Forced Labour Convention, 1957 (No. 105);

- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Occupational Safety and Health Convention, 1981 (No. 155);
- Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Out of the 28 conventions ratified by China, 22 are in force, three have been automatically denounced, two have been abrogated and one instrument has been withdrawn by the ILO decisions¹⁶⁰⁷. Out of the 11 fundamental instruments, China ratified seven: the Equal Remuneration Convention in 1990, the Minimum Age Convention in 1999, the Worst Forms of Child Labour Convention in 2002, the Discrimination (Employment and Occupation) Convention in 2006, the Occupational Safety and Health Convention in 2007, the Forced Labour Convention and the Abolition of Forced Labour Convention in 2022. Correspondingly, China has not ratified four: the Freedom of Association and Protection of the Right to Organise Convention, the Right to Organise and Collective Bargaining Convention, the 2014 Protocol to the Forced Labour Convention and the Promotional Framework for Occupational Safety and Health Convention¹⁶⁰⁸.

Freedom of association and the right to organise and collective bargaining are of special importance to examine the existence of a labour market with equal rights attributed to employers and employees.

13.4. 14TH FYP ON BOOSTING EMPLOYMENT

The 14th FYP on boosting employment¹⁶⁰⁹, issued by the State Council in August 2021, provides that labour should be subject to market forces and government intervention at the same time: *“Adhere to the dominant role of the market and the regulatory role of the government. Foster a better combination of an efficient market with a capable government; Not only stick to the trend of a more market-oriented and society-oriented employment, speed up the removal of institutional and systemic barriers restricting employment, and give full play to the decisive role of the market in allocating labour resources, but also strengthen the government’s responsibilities and optimise and integrate various types of resources, so as to duly provide employment promotion with a strong policy support and basic services.”* Furthermore, the plan sets various objectives to be reached by 2025, e.g.: *“Overall stabilisation of employment trends: create over 55 million urban jobs; strive to effectively expand employment still further; keep the urban surveyed unemployment rate under 5.5%; keep the employment rate of key categories stable. Gradually narrow the employment opportunities’ gap between urban and rural areas*

¹⁶⁰⁷ For a detailed list see: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103404 (accessed on 22 August 2023).

¹⁶⁰⁸ See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F (accessed on 24 May 2023).

¹⁶⁰⁹ The State Council on issuance: Notice of the 14th FYP for Employment Promotion, available at: http://www.gov.cn/zhengce/content/2021-08/27/content_5633714.htm (accessed on 12 June 2023).

as well as between regions; ensure the fundamental balance of supply and demand on the labour force market.”

13.5. WAGES AND BENEFITS

Minimum wages

An important instrument in China designed to influence wage trends in labour markets and ensure basic job-quality standards, especially for workers in a weak bargaining position, is the local minimum wage¹⁶¹⁰. China first introduced provisions on minimum wages in 1993 in the Provisions on Minimum Wages in Enterprises, with additional provisions in the 1994 Labour Law, the 2004 Provisions on Minimum Wages and 2007 Ministry of Labour and Social Security Notice on Further Developing the Minimum Wage System¹⁶¹¹. In accordance with the Labour Law, the State has to implement a system of guaranteed minimum wages. The minimum wages shall be determined by the governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record. The Labour Law requires that wages paid to the labourers by employing units should not be lower than the local standards of minimum wages¹⁶¹².

Minimum wages in different regions are determined and adjusted with reference to the following factors: (i) living expense; (ii) the average wage level in the society; (iii) labour productivity; (iv) employment situation; and (v) different levels of economic development between regions¹⁶¹³.

Minimum wages vary considerably across different regions. There is no national minimum wage floor in China and minimum wage levels are set by local governments only. Statistics in 2019 showed that the minimum wage was 65% higher in Shanghai, where the rate is highest, than in Qinghai, where it is lowest. In addition, although there is only one minimum wage rate in Beijing, Shanghai, Tianjin and some other provinces, in the majority of the provinces there are multiple minimum rates, for example, there are 5 different rates covering 21 municipalities in Guangdong¹⁶¹⁴. More recent statistics confirm this picture, with the 2022 Shanghai minimum wage rate remaining the highest among provinces, significantly exceeding the minimum wages in the provinces with the lowest rates, namely Heilongjiang (Shanghai minimum wage being some 85% higher), as well as Xinjiang and Jilin (Shanghai minimum wage some 75% higher)¹⁶¹⁵. Similarly, most provinces maintain a system in which different classes of minimum

¹⁶¹⁰ There are also wage guidelines; however, their role is unclear and they will not be discussed further: “A second issue is the role of wage guidelines, which are based on surveys that often do not fully represent the local labor market, and in any event, play an unclear role in the discussions over wages at the firm level.” See World Bank and the Development Research Center of the State Council, P. R. China. (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, page 323.

¹⁶¹¹ 2007 Ministry of Labour and Social Security Notice on Further Developing the Minimum Wage System was repealed in 2017 by the Ministry of Human Resources and Social Security.

¹⁶¹² Labour Law of the PRC, Art 48, available at: https://www.gov.cn/banshi/2005-05/25/content_905.htm (accessed on 12 June 2023).

¹⁶¹³ *Ibid.*, Art 49.

¹⁶¹⁴ ILO Global Wage Report 2020-2021, available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_762534.pdf (accessed on 12 June 2023).

¹⁶¹⁵ See China Salary and Wages (2024), available at: <https://www.china-briefing.com/doing-business-guide/china/human-resources-and-payroll/minimum-wage> (accessed on 1 March 2024).

wage levels exist for different areas based on the level of development and cost of living in that region¹⁶¹⁶.

Real wages

Between 2008 and 2019, real wages more than doubled in China¹⁶¹⁷. Between 2008 and 2022 real wage growth in China was highest among all G20 countries: in 2022 real monthly wages were equivalent to about 2.6 times their real value in 2008¹⁶¹⁸. Wages in the monopoly sectors (usually SOE dominated) were higher than in the competitive sectors¹⁶¹⁹. It has been argued that the wage premiums of SOEs reflect the underlying distortions in the operating environment of the enterprise and are not justifiable on grounds of efficiency or equity¹⁶²⁰. Recruitment as well as salaries in SOEs are not market-led, but rather follow the remnants of the former system. The Explanatory Notes for the Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform included provisions on improving SOEs policies with regard to labour: “[...] SOEs should appropriately increase the proportion of market-oriented recruitment, and rationally determine and strictly regulate the salary standards, position benefits, position related expenses and business spending of SOE management personnel”¹⁶²¹. The SOE wages reform, effective as from January 2019, introduced more flexibility and linked salaries to company’s performance. The legal basis are the two documents issued by the State Council and State-owned Assets Supervision and Administration Commission: Opinions on Reforming the Mechanism for Determining Wages in State-owned Enterprises¹⁶²² and Administrative Measures for Gross Wages Distributed by Central Enterprises¹⁶²³.

Labour contracts

Data vary on the extent Chinese workers benefit from contracts. Chinese authorities report that over 90% of enterprise employees have signed labour contracts in 2019¹⁶²⁴. However, the signing rate of labour contracts was much lower for rural migrant workers. Based on the ‘2016 Survey Report of Chinese Rural Migrant Workers’ published by the National Bureau of Statistics in April 2017, only 35.1% of rural migrant workers in China signed labour contracts

¹⁶¹⁶ *Ibid.*

¹⁶¹⁷ ILO Global Wage Report 2020-2021.

¹⁶¹⁸ ILO Global Wage Report 2022-2023, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_862569.pdf (accessed on 12 June 2023).

¹⁶¹⁹ World Bank and the Development Research Center of the State Council, P. R. China. (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 320.

¹⁶²⁰ *Ibid.*, p. 325.

¹⁶²¹ Explanatory Notes for the Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform, available at: http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31210122.htm (accessed on 12 June 2023).

¹⁶²² Available at: http://www.gov.cn/zhengce/content/2018-05/25/content_5293656.htm (accessed on 13 June 2023).

¹⁶²³ Available at: <http://www.sasac.gov.cn/n2588035/n2588320/n2588335/c20166687/content.html> (accessed on 13 June 2023).

¹⁶²⁴ See Ministry of Human Resources and Social Security's 2019 Report, available at: <http://www.MOHRSS.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/202006/W020200608534647988832.pdf> (accessed on 13 June 2023).

in 2016, a 1.1% drop compared to 2015¹⁶²⁵ -- thus, most rural migrant workers were not legally entitled to the minimum wage nor covered by China's labour laws. By contrast, according to a joint report by the World Bank and the Chinese State Council, almost all formal and informal workers in urban areas – whether migrant or local – received labour income above the city-level minimum wage around the same period¹⁶²⁶.

Average labour taxation in China (45% marginal rate on income above RMB 80 000/month¹⁶²⁷) is much higher than in other countries in the East Asian region and still higher than in most OECD countries. This leads low-income workers to avoid formal employment or to 'selective formalisation' of employment contracts in the formal sector¹⁶²⁸. Research in 2010 shows that having a labour contract is associated with wages that are 11% lower (due to social contributions, taxes etc.). Therefore, rural migrant workers as well as employers might have a preference to stay in the grey zone in order to receive higher wages¹⁶²⁹. A later OECD economic survey, however, finds that rural workers having a labour contract are associated with higher wages, so the trend may have changed¹⁶³⁰.

However, the fact that many migrant workers (who constitute more than 33% of China's total workforce¹⁶³¹) have no labour contract, and are thus not covered by social protection insurance, constitutes a significant cost advantage for their employers.

13.6. COLLECTIVE BARGAINING OF WAGES BETWEEN LABOUR AND ENTERPRISES

As the level of wages is an important factor in the determination of the total cost of production, it is vital to establish whether wage levels are undistorted. Market based wages should be understood as wages freely bargained between the workers and management in an undistorted economic environment. In China collective bargaining is not organized by trade unions and is mainly a mechanism that enables workers to enjoy the basic legal rights, although it may also

¹⁶²⁵ Survey Report of the Chinese Migrant Workers 2016, available at: https://www.gov.cn/xinwen/2017-04/28/content_5189509.htm#1 (accessed on 12 June 2023).

¹⁶²⁶ World Bank and the Development Research Center of the State Council, PRC (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 324.

¹⁶²⁷ See Individual Income Tax Law of the People's Republic of China (1980, last amended in 2018), available at: <http://www.npc.gov.cn/npc/c30834/201809/d794583352034bd0b15e5d6f638f6a0b.shtml> (accessed on 15 June 2023).

¹⁶²⁸ World Bank and the Development Research Center of the State Council, PRC (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 328.

¹⁶²⁹ Gallagher, M., Giles, J., Park, A. and Wang, M. (2014). *China's 2008 Labour Contract Law: Implementation and implications for China's workers*. Human Relations, 68(2), pp.197-235, pp. 223-224.

¹⁶³⁰ OECD (2017), *OECD Economic Surveys: China 2017*, p. 117, available at: http://dx.doi.org/10.1787/eco_surveys-chn-2017-en (accessed on 15 June 2023).

¹⁶³¹ According to the '2021 Survey Report of Rural Migrant Workers' issued by the National Bureau of Statistics, in 2021, the total number of rural migrant workers in China stood at 292.51 million, up 2.4 percent y-o-y. A more recent analysis put the number of rural migrant workers at 295.6 million, thereby making up 33.7% of the total workforce counting 876 million, available at: <https://clb.org.hk/en/content/migrant-workers-and-their-children> (accessed on 19 June 2023). According to the World Bank, the workforce as of 2021 was about 780 million, available at: <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=CN> (accessed on 19 June 2023).

win workers certain benefits beyond the law. Moreover, the practice of collective bargaining is not geographically uniform and depends on local conditions¹⁶³².

Legal basis

In accordance with the Labour Law of 1994 and the Trade Union Law of 1992, a trade union may represent workers in negotiating and signing a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare.

The 1992 Trade Union Law was the first law concerning collective negotiations, followed by the 1994 Labour Law, the 1994 and 2004 Provisions on Collective Contracts, the 2000 Interim Measures for Collective Wage Consultation, the 2006 Comments Regarding the Development of Regional and Industry-based Collective Consultations, the 2007 Labour Contract Law, the 2009 ACFTU Guide on Actively Carrying Out Industrial Collective Wage Consultations, and the 2011 Provisions on Enterprise Labour Dispute Negotiation and Mediation.

The 2007 Labour Contract Law requires employers to consult with trade unions or workers' representatives in making decisions on such matters as dismissal and redundancy (Article 41) and also in drafting or revising work and company rules (Article 4). Furthermore, the provisions on collective contract negotiations give the employees of the enterprise the right to negotiate on an equal basis with the enterprise regarding matters relating to labour remuneration, working hours, rest and vacation, occupational safety and health, insurance and welfare (Article 51).

CCP leadership

China's trade unions are subject to the leadership of the CCP. According to Article 4 of the Trade Union Law, "*Trade unions shall [...] uphold leadership by the Communist Party of China [...]*" The Constitution of the Chinese Trade Unions (amended in 2018) also clearly states in its General Principles that "*Chinese trade unions are mass organizations of the working class under the leadership of the Communist Party of China, formed by the workers and staff members on a voluntary basis*", and in Article 32 that "*trade union cadres shall: [...] (2) execute the basic lines, guidelines and policies of the Party [...]*"¹⁶³³. In addition, the nomination and selection of the chairperson, vice-chairperson and committee members of the trade union must be approved by the Party organization at the same level.¹⁶³⁴

Article 4 of the Trade Union Law further stipulates that: "*Trade Unions shall comply with and protect the Constitution [...] stick to the socialist line, [...] stick to the Chinese Communist Party's leadership, stick to the Marxist-Leninist theory of Deng Xiaoping, stick to the reform and opening up policy, and develop their work independently in accordance with the Constitution of the Chinese Trade Unions*". The Constitution of the Chinese Trade Unions

¹⁶³² Chloé Froissart (2017). *Negotiating authoritarianism and its limits: Worker-led collective bargaining in Guangdong Province*, p.4-5, available at: https://www.researchgate.net/publication/321227386_Negotiating_authoritarianism_and_its_limits_Worker-led_collective_bargaining_in_Guangdong_Province (accessed on 15 June 2023).

¹⁶³³ See Constitution of the Chinese Trade Unions, available at: https://www.acftu.org/jgsz/ghzc/202009/t20200907_328474.html (accessed on 15 June 2023).

¹⁶³⁴ See Regulations on Election of Basic-level Trade Union Organizations, ACFTU, 9 October 2016, available at: https://www.acftu.org/ghjj/ghjczjs/zdwj/202011/t20201116_730378.html (accessed on 15 June 2023).

mentioned in the Article 4 above stipulates in its Preamble: *“General Principles: Chinese trade unions [...] are the Party’s bridges and ties to the employees’ mass, they are the main social pillar of the State power”, “Chinese trade unions do consciously accept the Chinese Communist Party’s leadership, they fulfil the political responsibility to gather and guide the working class to listen to the Party’s word and follow the Party’s policy” and “Chinese trade unions safeguard the socialist state authority, as led by the working class and based on the alliance of workers and peasants. They support the People’s Government’s work and ensure democratic participation and social supervision in accordance with law.”*¹⁶³⁵

Finally, the CCP also intends to further strengthen its leadership over trade unions, as set out by the CCP Central Committee in its 2019 Opinions on Strengthening and Improving the Party Building in Central and State Organs: *“Section VI: Keep improving the Party’s work among masses. Article 19: Fully use mass organisations as bridges and connections: [...] Organs’ Party Committees shall support the administration’s Party groups (Party Committees) to strengthen their leadership over organs’ trade unions, the Communist Youth League, Women organisations and other mass organisations.”*¹⁶³⁶

All-China Federation of Trade Unions

All-China Federation of Trade Unions (‘ACFTU’), officially founded in 1925, is China’s only legally recognised trade union at the national level. Article 2 of the Trade Union Law¹⁶³⁷ provides that *“the All-China Federation of Trade Unions and all the trade union organizations under it represent the interests of the workers and staff members and safeguard the legitimate rights and interests of the workers and staff members according to law.”* Moreover, according to Article 12: *‘the establishment of basic-level trade union organizations, local trade union federations, and national or local industrial trade union organizations shall be submitted to the trade union organization at the next higher level for approval.’* Since *“a trade union organization at a higher level shall exercise leadership over a trade union organization at a lower level”* (Article 10), ACFTU ultimately leads all legally recognized trade unions. For example, the establishment of a trade union and certain major matters – such as selection of its chairperson and vice-chairperson and committee members, and dissolution – are subject to approval by the higher-level organisation.

As of writing of this Report, ACFTU, according to official figures, has around 314 million members and more than one million full-time officials¹⁶³⁸. According to some sources, those numbers may not reflect the actual situation -- exaggerating the real bargaining power of the

¹⁶³⁵ See Constitution of the Chinese Trade Unions, available at: https://www.acftu.org/jgsz/ghzc/202009/t20200907_328474.html (accessed on 15 June 2023).

¹⁶³⁶ See CCP Central Committee’s 2019 Opinions on Strengthening and Improving the Party Building in Central and State Organs, available at: https://www.gov.cn/zhengce/2019-03/28/content_5377892.htm (accessed on 15 June 2023).

¹⁶³⁷ See Trade Union Law of the PRC, available at: http://www.mohrss.gov.cn/xgk2020/fdzdgknr/zcfg/fl/202011/t20201102_394624.html (accessed on 15 June 2023).

¹⁶³⁸ See China Labour Bulletin – Supporting the workers’ movement in China, available at: <https://clb.org.hk/en/content/about-us> (accessed on 15 June 2023); see also Partners of Friedrich Ebert Stiftung, available at: <https://china.fes.de/partners> (accessed on 15 June 2023).

unions, and they are more likely to be the result of the local unions' competition to report the achievement of membership target numbers rather than of genuine trade union organising¹⁶³⁹.

According to the ILO Convention 87, to which China is not a signatory, all workers should have the right to establish and join organisations of their own choosing (Article 2) and elect their representatives in full freedom (Article 3(1)), and public authorities should refrain from any interference which would restrict this right (Article 3(2)). Moreover, the ILO Declaration on Fundamental Principles and Rights at Work commits all ILO member states to respect the main ILO principles and rights at work, including freedom of association¹⁶⁴⁰. As noted above, however, ACFTU-affiliated trade unions are the only trade unions recognised by the State, and their leadership is subject to approval by the Party and by the next higher level trade union organization. Therefore, some observers see ACFTU as part of the Chinese state and not a voluntary association of workers as set out in ILO Convention 87¹⁶⁴¹.

The Trade Union Law also provides a legal basis for tripartite and bipartite consultations at various levels to address labour issues. Tripartite Consultation Committees have been established across China. They consist of representatives of the local government, the local ACFTU-affiliated trade unions, and the local branches of the China Enterprise Confederation ('CEC') and China Enterprise Directors Association ('CEDA') (who together represent the interests of enterprises). The CEC and CEDA are the only officially designated employers' organisations at the national level in China. The aim of these consultations is to improve coordination among the three parties. Given the official status of each of the parties involved in the tripartite consultations, in the literature the consultation process has been described as a 'multi-headed monologue'¹⁶⁴². However, there are also signs of growing divergence among the three parties¹⁶⁴³.

Right to strike

The freedom of association and the right to strike are fundamental conditions to arrive at equitable labour market outcomes¹⁶⁴⁴. But whether Chinese workers have the right to strike is a debatable point. Since the right to strike was removed from the Chinese constitution in 1982, no other laws or regulations have explicitly permitted such right. However, the Trade Union Law as well as some local regulations do recognize that work stoppages may occur under some circumstances. According to Article 28 of the Trade Union Law, "*In case of stoppage or slowdown in an enterprise or institution, the trade union shall, on behalf of the workers and*

¹⁶³⁹ Lee, C.H. (2009). *Industrial relations and collective bargaining in China*. In: ILO Working Papers, p. 12.

¹⁶⁴⁰ '[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; [...]' ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010), Article 2.

¹⁶⁴¹ Lee, C.H., Brown, W. and Wen, X. (2016). *What Sort of Collective Bargaining Is Emerging in China?*, British Journal of Industrial Relations, pp 214-236, p. 233.

¹⁶⁴² Lee, C.H. (2009) *Industrial relations and collective bargaining in China*. In: ILO Working Papers, p. 9.

¹⁶⁴³ *Ibid.*

¹⁶⁴⁴ *Ibid.*

staff members, hold consultation with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forth proposals for solutions.”

On the local level, the Shenzhen legislature, for example, passed and amended regulations on the promotion of harmonious labour relations in 2008 and 2019, which essentially mirror the provisions of the Trade Union Law on this issue. The absence of official recognition of the right to strike, however, deprives the workers of an important instrument of collective pressure in a deadlock situation, further weakening their position¹⁶⁴⁵.

With respect to freedom of association, Article 35 of the Constitution explicitly provides for freedom of assembly and association. However, as described above, such freedom is de facto not available to employees wishing to create their own workers representation, and the Trade Union Law requires them to turn to ACFTU.

In February 2016 the International Trade Union Confederation filed a complaint at the ILO Committee on Freedom of Association against the Chinese Government following the detention of labour activists in a coordinated police action in Guangdong in December 2015. The interim report of 2016 stated that the activists *“appear to have been arrested, detained and charged for being involved in a labour dispute and considers that the detentions of persons connected with their activities in defence of the interest of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular”*.¹⁶⁴⁶ In 2023, the issue was still pending, with the interim report stating that: *“The Committee expresses its concern that the facts of this case, under examination since October 2016, indicate a systemic problem which has been seen to have had an impact on workers’ freedom of association by virtue of the numerous persons arrested, disappeared, and intimidated for having tried to defend workers’ collective interests and for whom the Government has consistently failed to provide the detailed information requested by the Committee, including as to whether charges are still pending against any of the labour activists and on the steps taken to ensure complete respect for freedom of association. In light of the persistent failure by the Government to provide detailed information on the above and to take steps to address the Committee’s long-standing recommendations, the Committee finds itself obliged to draw the Governing Body’s attention to the serious and urgent nature of this case.”*¹⁶⁴⁷

The ILO Committee on Freedom of Association found in a number of instances that even though there are provisions in the constitution guaranteeing freedom of association, many provisions of the Trade Union Law were contrary to the fundamental principles of freedom of association¹⁶⁴⁸ and thus the workers cannot take advantage of this formal right in practice.

¹⁶⁴⁵ *Ibid.*

¹⁶⁴⁶ See ILO Case No 3184, Report 380, para 236, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3302077 (accessed on 15 June 2023).

¹⁶⁴⁷ Report No 404, October 2023, available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4364370 (accessed on 1 March 2024).

¹⁶⁴⁸ *Ibid.*, Case No 3184, Report 380, para 233; Case No. 2031, Report 321, para 165; Case No. 1652, 286 Report; Case No. 1930, Report 310.

Ineffectiveness of Chinese trade unions

Despite a number of written laws that have been promoting collective bargaining, a significant hurdle in the practical implementations of those provisions is the lack of a detailed legal framework and procedures¹⁶⁴⁹. Another factor adding to the difficulty in collective bargaining is the fact that the gap in negotiating power of the enterprise and employee is very wide, with both the public and private enterprises having much more power than the employees¹⁶⁵⁰.

Historically, workers often have not turned for help to the union, because the unions have often been seen as relatively incompetent or incapable to act on the workers' behalf¹⁶⁵¹. A survey found that whether a union existed or not at the workplace did not make any difference in wages and other working conditions¹⁶⁵².

Labour non-governmental organisations do not act on behalf of workers but rather pursue workers' psychological and practical empowerment and help them strategically frame their collective action¹⁶⁵³. Since employers usually disregard workers' claims, they help workers design strategies to bring employers to the negotiation table. Workers find leverage in negotiations by making and breaking boundaries, striking a balance between pressure to counterbalance power relations and self-restraint to avoid repression¹⁶⁵⁴.

The ineffectiveness of unions has partly been due to their lack of independence. Deep incorporation of trade unions into the formal state structure gives the State direct control over trade unions¹⁶⁵⁵. Trade union chair posts are occupied by senior party figures in SOEs or by managers in non-state enterprises. Even in companies consisting largely of unskilled workers, the trade union leadership usually comes from the higher management. Trade unions where leaders are actually managers cannot be effective in performing the role of workers' representation in enterprises¹⁶⁵⁶.

Nevertheless, even though trade unions under ACFTU historically served mainly as a transmission channel for state policy and as the administrators of welfare at the workplace, they have engaged in collective negotiations and become more effective in securing benefits such as higher wages, shorter working hours, and better insurance coverage in some localities¹⁶⁵⁷. It seems that there is a slowly rising acceptance of ACFTU, as it has begun, at least at some local levels, to take a more progressive approach towards advocacy and started some attempts on

¹⁶⁴⁹ Brown, R. (2015). *Collective bargaining in China: Guangdong regulation a harbinger of national model?* China EU Law Journal, Volume 4, Issue 2, pp 135-154, p. 141.

¹⁶⁵⁰ *Ibid.*

¹⁶⁵¹ Taylor, B. and Li, Q. (2007). *Is the ACFTU a union and does it matter?* Journal of Industrial Relations, Vol.49, No.5, p. 709.

¹⁶⁵² Lee, C.H., Brown, W. and Wen, X. (2016). *What Sort of Collective Bargaining Is Emerging in China?*, British Journal of Industrial Relations, pp 214-236, p. 221.

¹⁶⁵³ Chloé Froissart (2017). *Negotiating authoritarianism and its limits: Worker-led collective bargaining in Guangdong Province*, p.4; available at: https://www.researchgate.net/publication/321227386_Negotiating_authoritarianism_and_its_limits_Worker-led_collective_bargaining_in_Guangdong_Province (accessed on 15 June 2023).

¹⁶⁵⁴ *Ibid.*, p.7.

¹⁶⁵⁵ Lee, C.H. (2009). *Industrial relations and collective bargaining in China*. ILO Working Papers. p. 16.

¹⁶⁵⁶ *Ibid.*

¹⁶⁵⁷ *Ibid.*, p. 17.

democratisation of union leadership¹⁶⁵⁸. In order to increase its effectiveness, ACFTU issued new directives and committed funds of RMB 10 million to build the expertise of union negotiators, as well as set up negotiation committees throughout China to support collective negotiation activities¹⁶⁵⁹. There are claims that in 2012 some 145 million workers were covered by 1 310 100 collective contracts countrywide covering 88.4% of all enterprises in the country¹⁶⁶⁰. According to the official data, in 2017, 1.405 million comprehensive collective contracts had been signed across the country, covering 3 699 700 enterprises and 175 million employees; and 1 298 500 special wage contracts had been signed, covering 3 577 300 enterprises and 162 million employees¹⁶⁶¹. According to the Ministry of Human Resources and Social Security ('MOHRSS') in 2019, there were 1.75 million registered collective contracts covering 149 million workers¹⁶⁶², and according to their 2020 report, 140 million employees were covered by collective contracts¹⁶⁶³.

Collective bargaining testifies to an organized solidarity that can be successful in changing the rules of the game in the workplace as well as the balance of political power. The limits of such collective bargaining are that they remain subject to the tolerance of and self-perceived interests of trade unions and local authorities, which is why they remain isolated experiments circumscribed at the enterprise level, with no immediate prospect of becoming systematized and institutionalized¹⁶⁶⁴.

13.7. LABOUR MOBILITY AND ITS IMPACT ON LABOUR COSTS

The development of the *hukou* system

Historically, China used to have a rigid household registration system which separated the population into the rural and urban areas. The household registration system, the so-called *hukou* system, largely divided the society between urban *hukou* holders with access to social security and public welfare and rural residents with access to land, but no or limited access to the social benefits outside of their formal registered birthplace as stated in the *hukou*.

The issuing of Regulations on Household Registration of the People's Republic of China in 1958 formally established the *hukou* system which restricted migrations between rural and urban areas and across regions. The system was modelled after the Soviet style internal passport

¹⁶⁵⁸ Brown, R. (2015). *Collective bargaining in China: Guangdong regulation a harbinger of national model?* China EU Law Journal, Volume 4, Issue 2, pp 135-154, p. 138.

¹⁶⁵⁹ *Ibid.*

¹⁶⁶⁰ *Ibid.*, p. 139 quoting 2012 Annual Human Resources and Social Security Enterprise Development Statistical Bulletin.

¹⁶⁶¹ See The China Trade Union news, available at: <http://acftu.people.com.cn/n1/2018/1206/c67560-30446694.html> (accessed on 15 June 2023).

¹⁶⁶² See the MOHRSS report, available at: <http://www.mohrss.gov.cn/SYrlzyhshbzb/zwgk/szrs/tjgb/202006/W020200608534647988832.pdf> (accessed on 15 June 2023).

¹⁶⁶³ See the 2020 MOHRSS report, page 9, chapter IV, available at: <http://www.mohrss.gov.cn/wap/fw/rssj/202106/W020210604378756386429.pdf> (accessed on 15 June 2023).

¹⁶⁶⁴ Chloé Froissart (2017). *Negotiating authoritarianism and its limits: Worker-led collective bargaining in Guangdong Province*, p.13; available at: https://www.researchgate.net/publication/321227386_Negotiating_authoritarianism_and_its_limits_Worker-led_collective_bargaining_in_Guangdong_Province (accessed on 15 June 2023).

and had the official objective of ‘consolidation of the socialist system and public interests’¹⁶⁶⁵. As described by the World Bank¹⁶⁶⁶:

[A]nyone at birth should be registered in the locality where his or her mother is registered, and has little chance to change this registration locality in his or her entire life. In practice, residential movement across localities was controlled by the departments of public security. It was impossible for rural residents to move to cities without official approval. Labor mobility across sectors was planned by the departments of labour and personnel and no independent labour market was allowed. During the period from the 1950s to the onset of reform, the hukou system was strictly enforced and effectively prevented labour from migrating from rural to urban areas.

Reforms since the late 1980s largely eliminated the mobility restriction function of *hukou*¹⁶⁶⁷. In 1984, the government introduced a system of temporary residence permits that allowed rural *hukou* holders to move to cities. This resulted in more than 60 million migrants coming to cities in the first 10 years after the reform. The 12th FYP, released in 2011, for the first time specifically mentioned household registration reform in a standalone chapter on urbanization. The ‘New Urbanisation Programme’ was introduced at the 18th National Congress of the Communist Party of China in November 2012, and in July 2014 the State Council introduced a single national resident registration system (*jumin hukou*) for both rural and urban populations with a 100 million urban *hukou* conversion target by 2020¹⁶⁶⁸. Though this target has been achieved, the achievement was offset by faster growth in migration, resulting in a much larger migrant population¹⁶⁶⁹. While the 2020 census indicated that the number of migrant workers - defined as those without local household registration - had expanded to 376 million, from 155 million in 2010¹⁶⁷⁰, the latest available data for 2022 concerning rural migrant workers puts their number at 295.6 million (see Section 13.5). In March 2022, the NDRC issued the Key Tasks for New Urbanization and Urban-Rural Integrated Development with a new set of goals and targets to relax the *hukou* requirements. However, despite numerous attempts to reform the

¹⁶⁶⁵ Regulations on Household Registration in the PRC, 9 January 1958. Chan, K. W. and Zhang, L. (1999) *The Hukou System and Rural-Urban Migration in China: Processes and Changes*, Center for Studies in Demography and Ecology of the University of Washington, *The China Quarterly* 160 (1999): 818-855.

¹⁶⁶⁶ World Bank (2005). *China - Integration of national product and factor markets : economic benefits and policy recommendations*, p.73., available at: <http://documents.worldbank.org/curated/en/812981468025215645/China-Integration-of-national-product-and-factor-markets-economic-benefits-and-policy-recommendations> (accessed on 15 June 2023).

¹⁶⁶⁷ World Bank and the Development Research Center of the State Council, PRC (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 330.

¹⁶⁶⁸ See Opinions of the State Council on Further Promoting the Reform of the Hukou System, available at: http://www.gov.cn/zhengce/content/2014-07/30/content_8944.htm (accessed on 15 June 2023).

¹⁶⁶⁹ See Knomad Policy Brief, available at: <https://www.knomad.org/sites/default/files/2022-02/Policy%20Brief%2016%20Internal%20Migration%20in%20China-Integrating%20Migration%20with%20Urbanization%20Policies%20and%20Hukou%20Reform-Nov%2021.pdf> (accessed on 15 June 2023).

¹⁶⁷⁰ See Knomad Policy Brief.

hukou system, it seems that it is still hampering worker mobility and their access to social protection in China¹⁶⁷¹.

As already mentioned above, reforms to the household registration system have been unable to keep up with the increasing number of rural migrants¹⁶⁷². Overall, the government has only made minor progress on the implementation of *hukou* reforms, not to mention that such initiatives were largely watered down by the local governments -- who were not willing to grant *hukous* to low-skilled migrants¹⁶⁷³.

The *hukou* system steering migration away from certain areas

The *hukou* registration system maintains the principle of population control and encourages rural migrants to settle down in smaller cities, keeping the criteria for gaining residency in the most popular destination cities for migrants still prohibitively strict¹⁶⁷⁴. There are different rules on obtaining a *hukou* depending on the size of the city. The largest cities ('*megacities*') have the most prohibitive rules, which gradually become less strict according to the size of the city. A circular of the State Council in 2016 suggests that in large and super cities, different *hukou* policies should be created for downtown areas, suburbs, and new districts according to occupation, residence, participation in social security, and years stayed, and that medium and large cities should not set barriers on *hukou* for house purchasing, investment, or tax payment. It also requires that cities with a downtown permanent population below 3 million should not implement the credit-based *hukou* system¹⁶⁷⁵.

It is still very difficult for rural migrant workers to get an urban *hukou* for the largest cities, where the public goal is to limit the population influx¹⁶⁷⁶. Even if – except in particular for the largest cities - moving between rural areas and towns has become much easier over time, the *hukou* system nevertheless remains in place, resulting in putting large portions of the workforce in vulnerable situation and a position of disadvantage, as highlighted by the Covid pandemic¹⁶⁷⁷.

The disadvantages of not having a *hukou* for the place of residence

¹⁶⁷¹ See Center for Strategic and International Studies ('CSIS'). *China's Hukou Reform in 2022*, available at: <https://www.csis.org/blogs/new-perspectives-asia/chinas-hukou-reform-2022-do-they-mean-it-time-0> (accessed on 15 June 2023).

¹⁶⁷² *Ibid.*

¹⁶⁷³ *Ibid.*

¹⁶⁷⁴ OECD (2017). *OECD Economic Surveys: China 2017*, p. 117, available at: http://dx.doi.org/10.1787/eco_surveys-chn-2017-en (accessed on 15 June 2023).

¹⁶⁷⁵ See The General Office of the State Council issued and promoted 1 million non-registered people in cities, available at: http://www.gov.cn/zhengce/content/2016-10/11/content_5117442.htm (accessed on 15 June 2023); See also State Council website, *China to resolve hukou issue for 100 million rural migrants*, http://english.gov.cn/policies/latest_releases/2016/10/11/content_281475463620362.htm (accessed on 15 June 2023).

¹⁶⁷⁶ See Chan, K.W. (2021). *Internal Migration in China-Integrating Migration with Urbanization Policies and Hukou Reform*, available at: https://www.knomad.org/sites/default/files/2022-02/Policy%20Brief%2016_Internal%20Migration%20in%20China-Integrating%20Migration%20with%20Urbanization%20Policies%20and%20Hukou%20Reform-Nov_21.pdf (accessed on 19 June 2023).

¹⁶⁷⁷ *Ibid.*

Even though there are no more formal restrictions on mobility *per se* and workers can relocate freely, migrant workers who do not possess a local *hukou* continue to have difficulties obtaining access to education for their children, health care, pension, welfare and affordable housing in their place of work¹⁶⁷⁸. Those restrictions in practice are a factor discouraging or effectively hindering workers' mobility across China.

Rural migrant workers' income is still lagging behind the average urban income. According to the National Bureau of Statistics of China, the average monthly income of rural migrant workers in 2021 was RMB 4 432, an increase of RMB 360 or 8.8% over the previous year¹⁶⁷⁹ (for comparison it was RMB 3 072 in 2015¹⁶⁸⁰). At the same time the average wage of persons employed in urban private units was around RMB 5 240 monthly¹⁶⁸¹ and RMB 8 903 for urban non-private units¹⁶⁸². However, research by China Development Research Foundation pointed to a relatively small impact of the *hukou* status on this difference, attributing only 5% of the wage difference to *hukou* in 2010 (down from 11% in 2001)¹⁶⁸³. The other factors responsible for wage differences include difference in education, skills and other work-related qualifications. According to the World Bank data from 2010, average wages of migrant and local workers appear to be converging, indicating that the labour market is slowly converging to a system based on demand and supply¹⁶⁸⁴.

According to MOHRSS, in 2011, rural migrant workers still accounted for 90% of the workforce in construction, cleaning, domestic services and services in restaurants in urban areas¹⁶⁸⁵. By providing a massive supply of low-cost labour, rural migrant workers contributed significantly to China's extensive growth model¹⁶⁸⁶. Though the current structure is changing and gradually converging with internationally recognised labour standards, it seems that at the moment the system is still partly impacted by the distortions of the past.

13.8. LAW ENFORCEMENT

¹⁶⁷⁸ World Bank and the Development Research Center of the State Council, PRC (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 331.

¹⁶⁷⁹ See the National Bureau of Statistics 2021 report, available at: http://xjzd.stats.gov.cn/xwfb/xxfx/202205/t20220513_130349.html (accessed on 15 June 2023).

¹⁶⁸⁰ See National Bureau of Statistics website (2016). *China's Economy Realized a Moderate but Stable and Sound Growth in 2015*, available at: http://www.stats.gov.cn/english/PressRelease/201601/t20160119_1306072.html (accessed on 15 June 2023).

¹⁶⁸¹ See National Bureau of Statistics of China. *The Average Annual Wage of Persons Employed in Urban Private Units In 2021*, available at: http://www.stats.gov.cn/english/PressRelease/202205/t20220523_1857682.html (accessed on 15 June 2023).

¹⁶⁸² *Ibid.*

¹⁶⁸³ China Development Research Foundation (2013). *The Turning Period of China's Income Distribution: An Impact Assessment on Income Distribution-related Policies in China* (Executive Summary), p.5, available at: <http://www.cn.undp.org/content/china/en/home/library/poverty/executive-summary--the-turning-period-of-china-s-income-distribu.html> (accessed on 15 June 2023).

¹⁶⁸⁴ World Bank and the Development Research Center of the State Council, PRC (2013). *China 2030: Building a Modern, Harmonious, and Creative Society*. Washington, DC: World Bank, p. 328.

¹⁶⁸⁵ International Labour Organization, Promoting Decent Employment for Rural Migrant Workers, ILO, 2011.

¹⁶⁸⁶ Das, M and N'Diaye, P. (2013). *Chronicle of a Decline Foretold: Has China Reached the Lewis Turning Point?* IMF Working Paper No. 13/26, Research Department and Asia and Pacific Department, page 3.

Chinese labour regulations are relatively strict. With regard to the 2007 Labour Contract Law¹⁶⁸⁷, using the Employment Protection Legislation (‘EPL’) strictness applied to OECD countries, China would rank third in EPL strictness among OECD countries if this law was fully implemented¹⁶⁸⁸.

However, it is necessary to look at the compliance rate to understand the practical implications of the written laws. The subjective assessments of workers and firm managers suggest that the compliance rate is high and that the government has made a serious effort to implement the new Law¹⁶⁸⁹. It seems that the enactment of the Labour Contract Law indeed puts a stronger burden on employers, as according to some accounts, some labour-intensive manufacturers decided to relocate out of China after the law came into force. For example, numerous manufacturers in Guangdong moved their production to other countries such as Vietnam and Burma, where labour was cheaper and legally less protected, and Wal-Mart reportedly dismissed a number of white-collar employees in 2007 to minimize the impact of the new law¹⁶⁹⁰.

Since implementation of the Labour Contract Law in 2008, employers have tried to evade the legal requirements in several ways. It has been noted that there was a rise in labour subcontracting following implementation of the new law. Subcontracted workers, even though in possession of a formal contract, typically have lower wages, lower social insurance and less security¹⁶⁹¹. Another practice was to disregard the provisions of the contract, for example with respect to the number of working hours and wages. In August 2021, the Supreme Court and Ministry of Human Resources issued guidance that imposed limitations and the legal workweek is supposed to be 40 hours a week and eight hours a day, with a cap of 44 hours in a week¹⁶⁹². However, according to Chinese labour laws, employers may extend employees’ work hours by an hour per day, if agreed upon by the applicable trade union, yet the maximum number of extra hours cannot exceed three hours per day or 36 hours in a month and employees must be given at least one rest day for every week of work. Due to the lack of statistical evidence, there is no data to clearly establish whether the changes to the law are upheld and enforced or such practices still are relatively common.

The labour dispute resolution system, introduced in the 1994 Labour Law, provides for a three-step system beginning with voluntary mediation, followed by compulsory arbitration and finally ending with possible appeals of the arbitration decision in civil courts¹⁶⁹³. Between 1995

¹⁶⁸⁷ See Labor Contract Law of the PRC, available at: <https://flk.npc.gov.cn/detail2.html?MmM5MDlmZGQ2NzhiZjE3OTAxNjc4YmY3NGQ3MTA2YjM> (accessed on 15 June 2023).

¹⁶⁸⁸ Gallagher, M., Giles, J., Park, A. and Wang, M. (2014). *China’s 2008 Labor Contract Law: Implementation and implications for China’s workers*. Human Relations, 68(2), pp.197-235, p. 199.

¹⁶⁸⁹ *Ibid.*, p. 201-206.

¹⁶⁹⁰ Wang, H., Appelbaum, R.P., Degiuli, F. and Lichtenstein, N. (2009). *China’s New Labour Contract Law: is China moving towards increased power for workers?* Third World Quarterly, 30:3, 485-501, p. 488.

¹⁶⁹¹ Gallagher, M., Giles, J., Park, A. and Wang, M. (2014). *China’s 2008 Labor Contract Law: Implementation and implications for China’s workers*. Human Relations, 68(2), pp.197-235, p. 211.

¹⁶⁹² *China labor laws: An overview for global employers*. (11 January 2022), available at: <https://www.safeguardglobal.com/resources/blog/china-labor-laws> (accessed on 15 June 2023).

¹⁶⁹³ Labour Law, Article 79: “After a labour dispute occurs, the parties concerned may apply to the Employers’ labour dispute mediation committee for mediation; where no agreement is reached through mediation and

and 2007, labour disputes increased on average by about 25% annually, and in 2008 arbitrated labour disputes almost doubled nationally¹⁶⁹⁴. Since the implementation of the Labour Contract Law in 2008, the number of labour disputes, has grown further and remains high. According to the National Bureau of Statistics of China, there were 894 thousand of national labour dispute cases in 2018 and more than 1 million in 2019 and in 2020¹⁶⁹⁵.

A practical problem of labour law enforcement is the lack of resources for dispute resolution. According to official sources, in 2010 there were 600 000 arbitrated disputes and only 946 arbitration centres throughout the country. The number of labour disputes has continued to increase in recent years, e.g., Chinese mediation and arbitration authorities handled some 1 771 000 disputes in 2016¹⁶⁹⁶, and 1 834 000 disputes in the first three quarters of 2021¹⁶⁹⁷. Though the Labour Disputes Mediation and Arbitration Law provides that an arbitral award shall be made within 60 days of the acceptance of the arbitration application, it was observed that in practice a resolution can take one to two years¹⁶⁹⁸. China Urban Labor Survey using a sample of 75 disputes between 1997 and 2010 showed that the dispute initiation rate of local residents and migrant workers was very similar (less than 1% of workers in each group initiated a dispute, mostly about wages). Whereas the local residents were dissatisfied with the results of the dispute resolution, most migrants expressed their satisfaction, perhaps because their expectations entering into the process were lower¹⁶⁹⁹.

13.9. FORCED LABOUR

ILO definition and indicators of forced labour

In the ILO Forced Labour Convention, 1930 (No. 29) forced labour is defined as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily*”¹⁷⁰⁰. Forced labour constitutes a serious violation of human dignity and fundamental human rights¹⁷⁰¹. The ILO has declared the elimination of all forms of forced or compulsory labour as a principle concerning fundamental

-
- a party requests arbitration, it may apply to the labour dispute arbitration committee for arbitration. Either party may also directly apply to the dispute arbitration committee for arbitration. Where a party is dissatisfied with the arbitration award, it may file a lawsuit to a people's court.*”
- ¹⁶⁹⁴ Gallagher, M., Giles, J., Park, A. and Wang, M. (2014). *China's 2008 Labor Contract Law: Implementation and implications for China's workers*. Human Relations, 68(2), pp.197-235, p. 215.
- ¹⁶⁹⁵ 894,053 in 2018, 1,069,638 in 2019 and 1,094,788 in 2020; see Liu, Z., Shen, J., Sun, L., and Cui, Y. (AnJie Broad Law Firm) (2022). *The Labour and Employment Disputes Review: China.*, available at: <https://www.vow.be/sites/vow.be/files/Disputes%20Review%202021%20-%20Belgium.pdf> (accessed on 15 June 2023).
- ¹⁶⁹⁶ See MOHRSS website, available at: http://www.MOHRSS.gov.cn/tjzcgl/TJZCgongzuodongtai/201704/t20170401_268936.html (accessed on 15 June 2023).
- ¹⁶⁹⁷ See at: http://www.MOHRSS.gov.cn/xxgk2020/fdzdgknr/ldgx_4234/ldrdsjzc/202111/t20211102_426617.html (accessed on 19 June 2023).
- ¹⁶⁹⁸ Gallagher, M., Giles, J., Park, A. and Wang, M. (2014). *China's 2008 Labor Contract Law: Implementation and implications for China's workers*. Human Relations, 68(2), pp.197-235, p. 217.
- ¹⁶⁹⁹ *Ibid.*
- ¹⁷⁰⁰ See at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (accessed on 15 June 2023).
- ¹⁷⁰¹ As recognised in the Preamble to the 2014 Protocol to ILO Convention No. 29.

rights. According to ILO research, in 2014 the annual profit from using forced labour in the Asia-Pacific region accounted for around USD 5 000 annually per forced labour victim¹⁷⁰².

The ILO has developed a set of eleven indicators pointing to the possible existence of forced labour: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime¹⁷⁰³.

The ILO has published guidelines for the measurement of forced labour¹⁷⁰⁴. The ILO has also encouraged its members to collect data on forced labour in their respective countries (including by means of standard questionnaires, manuals and sampling tools for statistical surveys) and provided recommendations for the collection and analysis of forced labour statistics, in order to facilitate their international comparability. The ILO's Forced Labour Observatory¹⁷⁰⁵ provides comprehensive global and country information on forced labour related to international and national legal and institutional frameworks, enforcement, prevention, including fair recruitment and due diligence, protection, access to justice, remedies, and cooperation. The Observatory aims to provide an overview of the situation of forced labour in the world, with country profiles available for all 187 ILO member states.

The 2022 report on Global Estimates of Modern Slavery¹⁷⁰⁶ elaborated by the ILO, Walk Free Foundation, and International Organisation for Migration ('IOM'), estimates the global number of people in forced labour at 27.6 million in 2021 (which represents an increase of 2.7 million since 2016)¹⁷⁰⁷, and Asia and the Pacific alone account for more than half of the global total (15.1 million). According to this report, five economic sectors alone account for 87% of all forced labour: services (including trade, transport, hospitality, but not including domestic work), manufacturing, construction, agriculture (not including fishing), and domestic work.

As mentioned in Section 13.3, in 2022, China ratified the ILO Forced Labour Convention, 1930 (No. 29), as well as the Abolition of Forced Labour Convention, 1957 (No. 105) – both are in force since August 2023. As highlighted by the ILO¹⁷⁰⁸, the latter requires ratifying member states “to suppress and not to make use of any form of forced or compulsory labour: (a) as a means of political coercion or education or as a punishment for holding or expressing political

¹⁷⁰² See ILO, *Profits and Poverty: The Economics of Forced Labour*, page 14, published in 2014, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf (accessed on 15 June 2023).

¹⁷⁰³ ILO Indicators of Forced Labour, ILO, Geneva, 2012; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (accessed on 15 June 2023).

¹⁷⁰⁴ ILO Guidelines concerning the measurement of forced labour. International Labour Office (ICLS/20/2018/Guidelines).

¹⁷⁰⁵ See at: <https://www.ilo.org/flodashboard/> (accessed on 15 June 2023).

¹⁷⁰⁶ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*. ILO, Walk Free, and IOM, Geneva, 2022; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (accessed on 15 June 2023).

¹⁷⁰⁷ Forced marriage and early marriage are included in the definition of modern slavery but they are not considered forced labour.

¹⁷⁰⁸ ILO (2022), *Global Estimates of Modern Slavery, Forced Labour and Forced Marriage*, see at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (accessed on 15 June 2023).

views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; or, (e) as a means of racial, social, national or religious discrimination”¹⁷⁰⁹.

Concerns about state-imposed forced labour presence in China

During its review of China’s periodic report in August 2018, the UN Committee on the Elimination of Racial Discrimination (‘CERD’) expressed alarm over numerous reports of the detention of large numbers of ethnic Uyghurs and other Muslim minorities, under the pretext of countering religious extremism in the Xinjiang Uygur Autonomous Region (‘XUAR’)¹⁷¹⁰. The Chinese Government stated that “vocational training centres exist for people who had committed minor offences”¹⁷¹¹. In subsequent policy papers, the Government has presented such centres as part of its strategies to counter terrorism and to prevent or counter “extremism” in XUAR, while at the same time contributing to development, job creation and poverty alleviation in the region¹⁷¹².

China has put in place a number of legislative instruments to pursue these strategies in XUAR. The most important include:

- The 2010 Notice on improving the Autonomous Region the transfer and training of surplus rural labour force¹⁷¹³, setting out the principle ‘one household, one person’ as a quantitative objective, which means that in the four poor southern XUAR areas, each household must transfer one person for training and employment purposes.
- The 2014 Xinjiang Notice on Combatting Religious Extremism¹⁷¹⁴ setting out that “for religious reasons, refuse to receive governmental management, governmental allowance or support” amounts to religious extremism which shall be combatted.
- The 2016 Notice of the Autonomous Region Party Committee on effectively implementing the CCP and State Council decision on poverty eradication¹⁷¹⁵ setting out quantitative objectives according to which by 2020 “2.61 million rural poor population shall be lifted out of poverty, 3029 poor villages shall be completely lifted out of poverty, 35 districts shall be completely ‘reformed’¹⁷¹⁶ so as to solve the overall poverty problem in the four South Xinjiang areas”.

¹⁷⁰⁹ ILO (12 August 2022), China ratifies the two ILO Fundamental Conventions on forced labour, ILO Press release.

¹⁷¹⁰ *Concluding Observations on the combined fourteenth to seventeenth periodic reports of China* (Including Hong Kong, China and Macao, China), CERD/C/CHN/CO/14-17, para, 40(a), 19 September 2018.

¹⁷¹¹ *Ibid.*

¹⁷¹² The State Council (2019), *White Paper on Vocational Education and Training in Xinjiang*.

¹⁷¹³ Available at: <https://rst.xinjiang.gov.cn/rst/c100465/201005/31f0ccd8dce341c18c4e1f752dc98c31.shtml> (accessed on 24 May 2023); see Section II.

¹⁷¹⁴ Available at <http://news.sina.com.cn/c/2014-12-24/093231321497.shtml> (accessed on 19 June 2023); see point 16.

¹⁷¹⁵ Decision of the CPC Central Committee and the State Council on Winning the Battle against Poverty. Section II-2, available at: http://www.china.com.cn/lianghui/fangtan/2016-02/18/content_37818171.htm (accessed on 15 June 2023).

¹⁷¹⁶ Here, the Chinese term translated as ‘reformed’ is an expression widely used during the Cultural Revolution to mention someone who was on the ‘rightist’ side and was reformed to have the ‘correct’ political opinions.

- The 2019 State Council White Paper on Xinjiang counterterrorism, de-radicalisation and human right protection¹⁷¹⁷ which mentions the transfer of labour force as major means to fight against terrorism.

In March 2021, the UN human rights experts¹⁷¹⁸ raised “serious concerns about the alleged detention and forced labour of Muslim Uyghurs in China, calling for unhindered access to the country to conduct fact-finding missions and urging global and domestic companies to closely scrutinize their supply chains”¹⁷¹⁹.

The ILO Committee of Experts on the Application of Conventions and Recommendations noted that “training facilities that house the Uyghur population and other Turkic and Muslim minorities separate them from the mainstream educational and vocational training, vocational guidance and placement services available to all other groups in the region throughout the country at large. Such separation may lead to active labour market policies in China being designed and implemented in a manner that generates coercion in the choice of employment and has a discriminatory effect on ethnic and religious minorities”¹⁷²⁰. In its follow-up observation, the Committee reiterates “its deep concern in respect of the serious allegations of discrimination against ethnic and religious minorities in Xinjiang, which appears to be based on policy directions expressed in numerous national and regional policy and regulatory documents”¹⁷²¹.

According to the International Trade Union Confederation (‘ITUC’), some 13 million members of the ethnic and religious minorities in XUAR “are targeted on the basis of their ethnicity and religion with a goal of social control and assimilation of their culture and identity.” In its observations of 2020 and 2021, the ITUC alleged that “the Government of China has been engaging in a widespread and systematic program involving the extensive use of forced labour of the Uyghur and other Turkic and/or Muslim minorities for agriculture and industrial activities throughout [...] Xinjiang [...], in violation of the right to freely chosen employment set out in Article 1(2) of [Employment Policy] Convention No 122”¹⁷²². The ITUC also alleged

¹⁷¹⁷ See *Xinjiang’s fight against terrorism and extremism and human rights protection*, See Section 5 *Put Counter-terrorism first*, available at: http://www.gov.cn/zhengce/2019-03/18/content_5374643.htm (accessed on 15 June 2023).

¹⁷¹⁸ The experts are the UN Working Group on human rights and transnational corporations and other business enterprises (the Working Group on Business and Human Rights), Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Special Rapporteur on freedom of religion or belief, Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Working Group on Arbitrary Detention, Special Rapporteur on trafficking in persons, especially women and children, Special Rapporteur on minority issues, Special Rapporteur in the field of cultural rights.

¹⁷¹⁹ OHCHR *China: UN experts deeply concerned by alleged detention, forced labour of Uyghurs*, published on 29 March 2021, available at: <https://www.ohchr.org/en/press-releases/2021/03/china-un-experts-deeply-concerned-alleged-detention-forced-labour-uyghurs> (accessed on 15 June 2023).

¹⁷²⁰ Application of International Labour Standards 2022 Report III (Part A) Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference 110th Session, 2022, p.687, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf (accessed on 15 June 2023).

¹⁷²¹ Observation (CEACR) - adopted 2022, published 111st ILC session (2023), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4323397,103404:NO (accessed on 1 March 2024).

¹⁷²² *Ibid.*, p.515 and p.683-684.

prison labour, mainly in cotton harvesting and the manufacture of textiles, apparel and footwear¹⁷²³. According to the ITUC’s allegations, “the Government offers incentives and tax exemptions to enterprises that train and employ detainees; subsidies are granted to encourage Chinese-owned companies to invest in and build factories near or within the internment camps; and compensation is provided to companies that facilitate the transfer and employment of Uyghur workers outside the Uyghur Region”¹⁷²⁴. The ITUC also added that “where wages are paid, they are often subject to deductions that reduce the salary to almost nothing”¹⁷²⁵.

In August 2022, the Office of the United Nations High Commissioner for Human Rights (‘OHCHR’) in its Assessment of human rights concerns in the Xinjiang Uyghur Region, People’s Republic of China stated that “serious human rights violations have been committed in XUAR in the context of the Government’s application of counter-terrorism and counter-‘extremism’ strategies. The implementation of these strategies, and associated policies in XUAR has led to interlocking patterns of severe and undue restrictions on a wide range of human rights. These patterns of restrictions are characterized by a discriminatory component, as the underlying acts often directly or indirectly affect Uyghur and other predominantly Muslim communities”¹⁷²⁶.

In November 2022, CERD called upon China “to immediately investigate all allegations of human rights violations in the XUAR, including those of torture, ill-treatment, sexual violence, forced labour, enforced disappearances and deaths in custody”¹⁷²⁷. Acting under its Early Warning and Urgent Action Procedure, CERD, concerned by the reports of serious human rights violations committed in the XUAR and the discriminatory character of severe and undue restrictions on a wide range of human rights, targeting predominantly Uyghur and other ethnic Muslim communities in the XUAR, called “to immediately release all individuals arbitrarily deprived of their liberty in the XUAR” and recommended to “undertake a full review of [China’s] legal framework governing national security, counter terrorism and minority rights in the XUAR to ensure their full compliance with the State party’s obligations under the International Convention on the Elimination of All Forms of Racial Discrimination”, as well as urged “to immediately cease all intimidation and reprisals against Uyghur and other ethnic Muslim communities, the diaspora and those who speak out in their defence, both domestically and abroad” and “to ensure that victims of human rights violations, including Uyghurs and other ethnic Muslim communities, are provided with adequate and effective remedies and reparation”. It also urged “to effectively implement the Concluding Observations of the Committee on the Elimination of Racial Discrimination, the Committee against Torture, as well

¹⁷²³ *Ibid.*, p.515.

¹⁷²⁴ *Ibid.*, p.516 and p.684.

¹⁷²⁵ *Ibid.*, p. 516 and p.684.

¹⁷²⁶ HCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, PRC, available at: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf> (accessed on 15 June 2023).

¹⁷²⁷ UN press release, 24 November 2022, China: UN Committee on the Elimination of Racial Discrimination calls for probe into Xinjiang right violations, available at: <https://www.ohchr.org/en/press-releases/2022/11/china-un-committee-elimination-racial-discrimination-calls-probe-xinjiang> (accessed on 16 June 2023).

*as the recommendations included in the OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China [...]*¹⁷²⁸.

13.10. CHAPTER SUMMARY

According to China's Trade Union Law, Chinese workers have no possibility to freely choose or establish a trade union in which they want to organise themselves, because there is only one legally recognized trade union, the ACFTU. Furthermore, although collective bargaining of wages exists, it is not well developed.

Among the eleven instruments (10 conventions and one protocol) that the International Labour Association itself classifies as fundamental, China has not yet ratified the following four instruments: Convention No. 87 (Freedom of Association and Protection of the Right to Organise Convention), Convention No 98 (Right to Organise and Collective Bargaining Convention), Convention No. 187 (Promotional Framework for Occupational Safety and Health Convention), and Protocol No. 29 (to the Forced Labour Convention). The two instruments on freedom of association (C87) and collective bargaining (C98) are of critical importance for the structure of the labour market in that they attribute rights to workers and employers and promote market-based wages (see Section 13.3).

The ACFTU has around 300 million members and is present in 6.5 million enterprises. However, the ACFTU is not independent, but rather is closely intertwined with the Party and the State. There is evidence that senior positions in ACFTU are occupied by senior party figures in SOEs or by managers in non-state enterprises. In other words, the union leaders appear to also be high level managers. This hampers their ability to represent workers' interests in full independence. All this can lead to situations where the management or, in the case of SOEs, the government negotiates with itself.

There is no official national level right to strike. In fact, this right was removed from the Constitution in 1982. In practice, strikes do happen in China and some local laws recognize some form of right to strike, but there are also a number of reports of labour activists being arrested, detained, imprisoned or made forcibly disappeared (see Section 13.6).

Collective bargaining exists and ACFTU engages therein. In the past, the results have often been considered as insufficient by workers, but more recently some improvement has been reported. There are now a number of written rules and policy documents (at the provincial level and below) promoting collective bargaining, and ACFTU is also stepping up its efforts. However, the relatively vague and underdeveloped legal and procedural framework as well as the absence of a clearly recognized right to strike still constitute considerable hurdles to effective bargaining.

Furthermore, the Chinese workforce is impacted by the *hukou* household registration system (see Section 13.7). Only *hukou* holders have access to the full range of social protection and

¹⁷²⁸ Decision 1 (108) of the Committee on the Elimination of Racial Discrimination of 23 November 2022 "Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedure", available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FEWU%2FCHN%2F9624&Lang=en (accessed on 15 June 2023).

public welfare benefits. Originally, this system restricted migration between rural and urban areas, though this restriction has been considerably relaxed. In 2014, a single national resident registration system was introduced, but there are different rules for obtaining a *hukou*, depending on the size and the area of a city, with the largest cities having more restrictive rules. It seems to be virtually impossible for workers with the lowest qualifications (the least paid workforce) to obtain a residence permit in large cities. Migrant workers who do not possess a local *hukou* find themselves in a vulnerable employment position in their place of residence and receive lower income than the *hukou* holders, though this may be a reflection of lower skills. The considerable number of migrant workers without labour contracts also means that the actual labour force employed by Chinese companies can be difficult to reliably determine, with the ensuing uncertainty about the labour cost.

Last but not least, the issue of state-imposed forced labour has come to the fore in the last few years - notably with respect to XUAR - impacting or likely impacting labour as factor of production in various sectors (see Section 13.9).

PART III

DISTORTIONS IN SELECTED SECTORS

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14.1. REGULATORY FRAMEWORK

The various policy documents described in this Section detail the extent of intervention and control exerted by the Government in the steel sector¹⁷²⁹. They include:

- the 14th FYP,
- the 14th Raw Materials FYP (or also the ‘*Plan*’ in this Chapter),
- the Guiding Opinion on Promoting High-Quality Development of the Iron and Steel Industry (‘*Steel Industry Development GO*’),
- various implementing and guiding documents related to steel, in particular the 2023 Work Plan on the Stable Growth of the Steel Industry, the Plan for Adjusting and Upgrading the Steel Industry, as well as previous measures guiding the development of the steel industry and those addressing overcapacity problems.

¹⁷²⁹ This Section focuses on those plans, directives and any type of policy issued since the early 2000s, as it was the period where the Chinese steel sector started growing significantly, becoming the largest steel producer in the world.

The 14th Raw Materials FYP and the Steel Industry Development GO give top-level guidance for the development of the steel sector for the period 2021-25.

Breaking with past practice, MIIT did not publish a central-level FYP focusing solely on the steel industry for the 14th planning cycle. Instead, the development goals for the steel industry were incorporated into the 14th Raw Materials FYP, making it the most comprehensive central-level plan for steel for 2021-25.

14.1.1. 14th FYP

The 14th FYP is examined in detail in Section 4.2.5. Therefore, only the relevant provisions concerning the steel sector are presented in this Chapter.

The 14th FYP sets out some general objectives regarding the steel industry, with emphasis on the development of high-end new materials and the greening of the steel sector. Among other priorities, the plan aims at accelerating the development of the industrial system and consolidating the foundation of the real economy. This includes optimization and structural adjustments of the steel industry, as well as promoting breakthroughs in advanced metals, including high-quality special steels¹⁷³⁰.

Compared to previous FYPs, environmental concerns and greening the steel sector feature more prominently in the 14th planning cycle. The 14th FYP thus envisages promoting a green transformation of steel as part of the green transformation of the Chinese economy. This includes curbing carbon emissions in the steel industry, aiming to complete ultra-low emission transformation for 530 million tons of steel production capacity¹⁷³¹. General objectives on greening the steel industry are also found in a number of other central-level plans, such as the 14th FYP on Circular Economy¹⁷³², the 14th FYP on Promoting Clean Production¹⁷³³, the 14th FYP on Supporting Industrial Transformation and Upgrading of Traditional Industrial Cities and Resource-Based City Demo Zones¹⁷³⁴ or the 14th FYP on the Green Development of Industry¹⁷³⁵.

14.1.2. 14th Raw Materials FYP

As mentioned above, the MIIT did not publish a separate central-level FYP focusing solely on the steel industry for the 14th planning cycle. Instead, the development goals for the steel industry have been incorporated into the 14th Raw Materials FYP, which covers several sectors. Emphasising from the outset that the raw material industry is the bedrock of the real economy, the Plan states that it was “*formulated in order to implement the [14th FYP] and improve the*

¹⁷³⁰ 14th FYP, Section VIII-4.

¹⁷³¹ 14th FYP, Section XXXIX-4.

¹⁷³² Available at: https://www.ndrc.gov.cn/xwdt/tzgg/202107/t20210707_1285530.html?code=&state=123 (accessed on 28 September 2023).

¹⁷³³ Available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202111/t20211109_1303467.html?code=&state=123 (accessed on 28 September 2023).

¹⁷³⁴ Available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202111/t20211130_1306223.html?code=&state=123 (accessed on 28 September 2023).

¹⁷³⁵ Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_4ac49eddca6f43d68ed17465109b6001.html (accessed on 28 September 2023).

development quality and profitability of the raw materials industry". Complementing the Plan, MIIT, together with NDRC and MEE, issued, in January 2022, the Steel Industry Development GO¹⁷³⁶ which set additional quantitative targets. Since the stated purpose of the Steel Industry Development GO is to implement the 14th FYP and the 14th Raw Materials FYP¹⁷³⁷, it is appropriate to examine the Plan and the Steel Industry Development GO together, as they give top-level guidance for the development of the steel sector from multiple angles.

General development objectives

Some of the basic principles for the development of the steel industry outlined in the various planning documents are formulated in rather contradictory terms. The Plan mentions among the basic principles the objective to *"give full play to the decisive role of the market in resources allocation and boost the dominant role played by enterprises in investment decision making"*. At the same time and under the same basic principle, the Plan calls to *"better leverage the role of the government, lay greater emphasis on the guiding role of strategic plans and the formulation of standards, law and regulations, maintain the market order [...]"*. The Steel Industry Development GO elaborates further the Chinese authorities' vision of the development of the steel industry:

[We shall] strengthen the regulation and management of steel enterprises' production and operations, strengthen requirements as to quality, equipment, environmental protection, energy consumption, safety, and other factors. [We shall] strengthen the establishment of a system based on enterprises' honesty, create a fair and honest market environment, punish in accordance with laws and regulations any unauthorised increase of production capacity, counterfeiting, or illicit pollutant emission, and integrate them into a joint sanction mechanism. [We shall] give full play to the role of industry organizations, enhance the enterprises' social responsibility awareness and the industry sector's self-discipline, avoid disorderly and vicious competition and maintain the industry's smooth operating.

The Plan envisages a further decline in the production capacity of crude steel and calls for continuing industrial concentration to optimize production capacities. Quantitative targets in that regard include cultivating *"five to ten pioneering enterprises with ecological leadership and core competitiveness in the industry chain"* as well as developing *"at least five world-class advanced manufacturing clusters in the field of raw materials"*¹⁷³⁸. In October 2022, the Chinese Iron and Steel Association ('CISA') announced that it would accelerate efforts to promote M&As to increase the industry concentration and profits amid challenges such as an increasingly complex international landscape, domestic COVID-19 resurgences and soaring

¹⁷³⁶ Available at: https://www.gov.cn/zhengce/zhengceku/2022-02/08/content_5672513.htm (accessed on 28 September 2023).

¹⁷³⁷ Steel Industry Development GO, Preface.

¹⁷³⁸ The Plan, Section II (III).

raw material prices¹⁷³⁹. China's policy is to create large, globally competitive steel companies, in part through mergers that are not reviewed by competition authorities in other jurisdictions.

Finally, in pursuit of green development, the Plan projects delivery of “*phased outcomes in controlling the total energy consumption and total carbon emissions of key sectors including steel*”, while “*comprehensive energy consumption per ton of steel in the steel sector will drop by 2 percent*”¹⁷⁴⁰. On top of that, the Steel Industry Development GO sets an ambitious goal of promoting the transformation of over 80% of steel enterprises to achieve ultra-low emissions¹⁷⁴¹.

Striving for the High-end Industry Supply

The Plan sets an important role for the authorities when it comes to promoting innovation in the industry. Local governments are encouraged to adopt a mix of measures to build national key platforms for the pilot scale tests of new materials. In addition, the Plan envisages that a national public platform for scientific research facilities of new materials will be built.

In market economies, these tasks related to research and development activities would be performed by private actors and not by the public authorities, the role of which is to only promote them. The Chinese authorities further intervene in the area of strengthening of international exchanges and cooperation, insofar as they support key international enterprises and research institutes to make investments, set up plants and develop R&D centres in China¹⁷⁴².

The Plan also sets out a number of objectives for breakthroughs in key technologies and key materials, as well as establishing new standards to improve product quality. In the steel sector, emphasis is to be put on the following aspects of technological innovations:

- developing key generic technology for efficient, low-cost and clean steel melting;
- setting up an integrated application system for the manufacturing technology of general-purpose and special-purpose equipment, parts and components (advanced electric arc furnace technology and its manufacturing process, near net shape manufacturing, special-purpose smelting, and high-end detection);
- pushing for the industrial application of such technologies as filling mining, low-grade refractory ores, sintering flue gas recycling, mechanized raw materials yards, the fine desulfurization of blast furnace gas, efficient desulfurization and denitrification, residual heat recovery, the utilization of medium- and low-temperature residual heat, and the high added-value resource utilization of steel slags¹⁷⁴³.

In the area of key materials, the Plan identifies the need “*to lay equal emphasis on advance in materials and on the leading role of demand*”. At the same time there should be a “*focus on the*

¹⁷³⁹ See <https://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=29d6106bb6c72b1f9b7cbecbd29209c32fa7416c73bd22aab0a6e25471096907&columnId=58af05dfb6b4300151760176d2aad0a04c275aaadb1315039263f021f920dcd> (accessed on 28 September 2023). at:

¹⁷⁴⁰ The Plan, Section II (III).

¹⁷⁴¹ Steel Industry Development GO, Section I (III).

¹⁷⁴² The Plan, Section III (I).

¹⁷⁴³ The Plan, Section III (II), Feature 1.

key needs related to the building of the national defence". Another example is that the Plan mentions *"the need to lay emphasis on the leading role of demand"* and at the same time indicates that a *"catalogue of key building materials and products"* will be drawn up. Thus, it appears to leave little space for the market forces to drive the development of key materials.

The Plan also enumerates the *"application fields"* considered as key: *"giant aircraft, aero-engines, integrated circuits, information communication, biological industries and energy industries"* and foresees that *"a range of key materials"* will be developed for these fields, listing high-performance special-purpose steel as one of the key New Materials for application in these key fields¹⁷⁴⁴. The Steel Industry Development GO further specifies that when it comes to enhancement of supply of advanced steel products *"breakthroughs will be made in about five critical steel materials every year"*¹⁷⁴⁵. This evidence points to the substantial role played by the State for the development of the sector.

Moreover, the Plan envisages the establishment of quality assessment and certification systems. To that end, the steel sector will be enticed to launch tiered quality assessment to achieve effective alignment among product standards, measurement and detection technology. The Plan specifies that this will include setting up a new material certification system as well as supporting professional third-party market players to establish high-end quality certification agencies¹⁷⁴⁶.

Industrial structure and overcapacity

SOEs are the most important players in the Chinese steel market and a considerable part of the steel industrial structure, often receiving important preferential treatment from the State (see Chapter 5). According to an OECD study¹⁷⁴⁷, a considerable amount of financial support to Chinese SOEs is provided via instruments deemed to be potentially amongst the most market distortive (for example cash grants).

Since decades, the Chinese steel sector has been characterised by massive overcapacity, a fact acknowledged in various official planning documents. The Chinese authorities have unsuccessfully tried to solve this problem. An essential factor which makes resolving the overcapacity issue difficult is the misalignment of local and national goals. Local governments want to maximize employment and tax revenue and avoid the massive hit to employment that would come from closing down steel mills. Because some steel producers were owned by local and provincial governments, it has been complicated for the Government to compel reductions. The failure to solve the overcapacity is also due to the authorities pursuing additional objectives, such as to create national champions able to compete internationally. As the mergers, reorganizations and the industrial concentration are rather source of upgrade of the industry and

¹⁷⁴⁴ The Plan, Section III (III), Feature 2.

¹⁷⁴⁵ Steel Industry Development GO, Section I (III).

¹⁷⁴⁶ The Plan, Section III (IV).

¹⁷⁴⁷ OECD (2022). *State-owned enterprises and subsidisation in the steel sector: evidence from China*.

capacity increase¹⁷⁴⁸, the contradiction with the proclaimed goal of capacity reduction remains unresolved.

The thrust of the transformation of the Chinese steel industry as set out in the policy documents is in fact a straightforward one, characterized by the objectives to optimize the industrial structure, as well as to concentrate and upgrade the steel industry. This can be seen from the following excerpts of the Steel Industry Development GO¹⁷⁴⁹:

Optimize production capacity control policies, deepen the reform of factor allocation, strictly implement capacity replacement and prohibit any new increase of steel production capacity. Support the best ones and eliminate the weak ones, encourage cross-regional and cross-ownership mergers and reorganizations and increase industry concentration.

[...] Punish any unauthorised new increase of production capacity [...]

Strictly implement laws and regulations on environmental protection, energy consumption, [...] so as to eliminate outdated production capacity and strictly prevent the resurgence of substandard steel and overcapacity.

In this respect, the Plan lists measures to make leading enterprises “*bigger and stronger*”, while the Steel Industry Development GO expressly seeks “[t]o promote corporate mergers and reorganization, [...] encourage leading enterprises to implement mergers and reorganization and build a number of world-class super-large iron and steel groups”. In the same vein, the 2023 Work Plan on the Stable Growth of the Steel Industry aims at “*encourag[ing] industry-leading enterprises to implement mergers and acquisitions, build[ing] world-class super-large iron and steel enterprise groups, and foster[ing] the optimal layout of national iron and steel production capacity. Support[ing] specialized enterprises with leading power in particular steel market segments to further integrate resources and create a steel industry ecosystem*”. To reach the goal the authorities are intent on removing obstacles to trans-regional mergers and reorganisation and encouraging financial institutions to provide comprehensive financial services for enterprises that have implemented mergers and reorganisation, as well as transformation and upgrading. In other words, it can be observed from the relevant planning and policy document that the objective of the Chinese authorities is to create more concentrated and stronger steel industry with leading enterprises even better able to compete internationally.

The objectives spelled out in the Plan and the Steel Industry Development GO are indeed implemented in practice, as the following example shows. On 22 September 2022, strategic cooperation agreements were signed between the Shanghai Government and China Baowu Iron and Steel Group Co., Ltd. The objective of these agreements is to optimize policy supply, create a first-class business environment, help China Baowu become better and stronger in Shanghai,

¹⁷⁴⁸ According to the World Steel Association (worldsteel), China Baowu Group was the world’s largest producer of crude steel in 2020. Since China Baowu Group was established in 2016, the company has merged and acquired a series of Chinese steelmakers, increasing its steel production by 80.67% in merely three years from 63.81 million metric tonnes in 2017 to 115.29 million in 2020 (worldsteel, 2021[33]). See: Steel Market Developments 4/2021 (oecd.org).

¹⁷⁴⁹ Steel Industry Development GO, Section I.(II).

and become a global industry leader¹⁷⁵⁰. Similarly, in his speech given at the occasion of the signature of a strategic cooperation framework agreement between Jiangxi Provincial Government and Baowu in November 2022, the Baowu's Secretary of Party Committee and Chairman pointed out that Baowu was vigorously promoting the construction of a world-class great enterprise in accordance with the spirit of the 20th CCP Congress (see Section 2.2.4) and the spirit of President Xi's important instructions¹⁷⁵¹. To be noted in this connection that the report of the 20th CCP Congress emphasized the focus of the economic development as one which should be placed on the real economy, speeding up the construction of a strong manufacturing country, promoting state-owned capital and state-owned enterprises to become stronger, better and bigger, and enhance the core competitiveness of enterprises¹⁷⁵².

At the same time, the Government projects a harsh stance against overcapacity, with the Plan spelling out that “*efforts to investigate and punish illegal acts of production capacity increase*” will be intensified, while “*strict crackdown campaigns*” will be maintained. To that end, intense surveillance methods are to be deployed, such as satellite monitoring, big data and other technology¹⁷⁵³. However, when read in parallel with the Global Forum on Steel Excess Capacity (‘GFSEC’) figures for Chinese capacity increase in 2019, 2020 and 2021 and given that the Plan does not contain any prohibition of capacity increase, nor a binding objective for capacity reduction, these efforts are rather illusory.

Access to resources

To improve the comprehensive utilization of resources, well-placed regions will be encouraged to establish industrial parks for the coupling of the raw materials industry, so as to realize the cascading use of energy and resources. Notably, the Plan maintains that “*the mechanism for determining resource prices will also be improved*”¹⁷⁵⁴, clearly indicating that such price formation is not to be completely market based.

The Plan also prepares for expanding resource supply channels by tapping into “urban wastes” and supporting dominant enterprises to establish recycling bases and industrial agglomeration areas for large steel scraps¹⁷⁵⁵. Furthermore, the Plan proclaims that the domestic self-sufficiency rate of ferrous metals will be greatly increased by 2025, with the ratio of steel scraps among them set to exceed 30%¹⁷⁵⁶. These elements are important as they show that the Government intends to build out the entire steel ecosystem.

Implementation of the Plan

The Plan stipulates that “[a]ll localities need to strengthen compliance with this Plan and ensure the main contents and major projects of the Plan are included in their key local tasks”, while “steel and other key sectors shall formulate specific implementation opinions based on the

¹⁷⁵⁰ See at: <http://sh.people.com.cn/n2/2022/0922/c134768-40135680.html> (accessed on 3 October 2023).

¹⁷⁵¹ See Article from Mysteel website, November 2022, available at: https://m.mysteel.com/22/1114/07/101575DDBBAFACF4_abc.html (accessed 26 May 2023).

¹⁷⁵² See at: https://english.www.gov.cn/news/topnews/202210/25/content_WS6357df20c6d0a757729e1bfc.html; p. 23 (accessed on 3 October 2023).

¹⁷⁵³ *Ibid.*

¹⁷⁵⁴ The Plan, Section V (III).

¹⁷⁵⁵ *Ibid.*, Section VII (I).

¹⁷⁵⁶ *Ibid.*, Section VII.(I), Feature 5.

objectives and tasks of this Plan.” The relevant departments of the State “*shall ensure the implementation of relevant initiatives, according to the division of duties and responsibilities*”, while measures will be taken to establish general monitoring mechanisms as well as “*mid-term assessment mechanisms to follow through the implementation of the Plan*”¹⁷⁵⁷. Sectoral organizations are ‘*bridge*’ (see also Section 2.3.3) between enterprises and the government through providing feedback on problems and suggestions on the implementation of the Plan.

When it comes to the funding necessary for its implementation, the Plan calls on the government to “[f]ully use existing funding channels to support major projects related to the Plan”, adding that “[t]he industry–finance cooperation shall be deepened, and the national industry–finance cooperation platform shall be involved so as to provide financial services and equity investment in order to actively support for projects complying with the Plan.”

While the Plan does not repeat the explicit language contained in previous FYPs concerning its binding character, the above text indicates that its binding nature remains unchanged (see Section 4.3.1). This is also confirmed by the implementation at provincial level etc. (see the following paragraphs).

The overarching goals and objectives for the 14th FYP period, set by the central level plans described above, are translated into more specific goals by various provincial plans. Listed below are three examples of provincial level plans for Shandong, Jiangsu and Hebei. These provinces were selected, as they represent main steel producing provinces in China¹⁷⁵⁸.

The 14th FYP (2021-25) on Developing Steel Industry in Shandong Province (the ‘14th Shandong FYP on Steel’)¹⁷⁵⁹ commits the province to “*strive to build a steel industry ecology, further optimize the steel industry’s layout, further adjust its structure, further consolidate its foundation and further extend its industry chain, and deepen further the integration of the steel industry with the equipment manufacturing industry so as to double the output value of steel and its related products to trillion-scale*”¹⁷⁶⁰ during the period of the plan’s validity. In that regard, the main development objectives in the 14th Shandong FYP on Steel include:

- Increasing the income of main businesses by 10% annually, increasing the proportion of short-process steelmaking to about 20%, and doubling the labour productivity of steel enterprises to 1,500 tons per person per year¹⁷⁶¹.
- Exceeding one trillion RMB in the total output value of the steel smelting, rolling, deep processing and distribution industry by 2025 (wherein high-end and high-quality steel shall account for around 50%, high quality deep processing 25%, and the use of scrap steel as raw material 30% of the output value)¹⁷⁶².

¹⁷⁵⁷ The Plan, Section VIII.(I).

¹⁷⁵⁸ See at: <https://finance.sina.com.cn/money/future/roll/2022-01-20/doc-ikyamrmz6317417.shtml> (accessed on 3 October 2023).

¹⁷⁵⁹ See at: <http://gxt.shandong.gov.cn/module/download/downloadfile.jsp?classid=0&filename=1f79d908601e479f83707e67b133e347.pdf> (accessed on 3 October 2023).

¹⁷⁶⁰ 14th Shandong FYP on Steel, Preface.

¹⁷⁶¹ *Ibid.*, Section II (III)-1.

¹⁷⁶² *Ibid.*, Section II (III)-3.

- Increasing R&D in steel products to over 3% of the business income¹⁷⁶³.
- Creating ten enterprise tech centers at provincial-level and two to three at national level and making breakthroughs in three to five key steel materials yearly¹⁷⁶⁴.
- As regards industrial layout, the proportion of steel production capacity in the Dongjiakou port of Qingdao, the Lanshan district in Rizhao, the Lingang economic development zone of Linyi, and other coastal areas shall be increased to more than 70%, whereas cities such as Jinan, Zibo, Liaocheng, Binzhou, Weifang and those along the Qingdao-Jinan route shall cut their production as much as possible¹⁷⁶⁵.
- Finally, the industry's overall energy and water consumption per ton of steel is to decrease below 535 kg of standard coal and 2.85 cubic meters of water, respectively: *"The total energy consumption and intensity will be reduced by more than 5%, the water consumption intensity by more than 10%, and the reuse rate of water to more than 98%"*¹⁷⁶⁶.

The second example, Jiangsu Work Plan for Layout Optimization in the Transformation and Upgrading of the Steel Industry Throughout the Province (the '*Jiangsu Steel Industry Work Plan*')¹⁷⁶⁷, was released by the Government of Jiangsu in 2019. With Jiangsu being China's second biggest steel producing province, the Jiangsu Steel Industry Work Plan was issued well before the 14th Raw Materials FYP. Therefore, the Jiangsu Steel Industry Work Plan formally does not implement the 14th Raw Materials FYP but is rather inspired by the 19th CCP Congress (see Section 2.2.4) and President Xi's speech on the development of the Yangtze River economic belt and it implements the Notice of General Office of Provincial Party Committee and General Office of Provincial Government on Issuing the Implementation Opinions on Accelerating the Transformation, Upgrading and High-quality Development of Province's Chemical, Iron, Steel, Coal and Power Industry (document no 2018/32)¹⁷⁶⁸. The Jiangsu Steel Industry Work Plan sets several goals regarding the industrial layout, concentration and emissions:

- Optimizing the ratio of steel smelting capacity along the Yangtze River and coastal areas from the existing 7:3 to 5:5 by 2025¹⁷⁶⁹.
- Enhancing agglomeration in the industry, striving to reduce the number of iron and steel enterprises in the province from 45 to about 20 while also enhancing the production capacity of the top five enterprises to account for 70% of province's steel output by 2020¹⁷⁷⁰.

¹⁷⁶³ *Ibid.*, Section II (III)-4.

¹⁷⁶⁴ *Ibid.*

¹⁷⁶⁵ *Ibid.*, Section II (III)-2.

¹⁷⁶⁶ *Ibid.*, Section II (III)-5.

¹⁷⁶⁷ Despite the Jiangsu Steel Industry Work Plan not being adopted as part of the 14th FYP cycle, it covers the whole of 14th FYP period (until the end of 2025) and is thus equally relevant as other provincial FYPs. See http://www.jiangsu.gov.cn/art/2019/5/5/art_46144_8322422.html (accessed on 3 October 2023).

¹⁷⁶⁸ See http://www.jiangsu.gov.cn/art/2018/9/5/art_60096_7805753.html (accessed on 3 October 2023).

¹⁷⁶⁹ See Jiangsu Steel Industry Work Plan, Section I (II), available at: http://www.jiangsu.gov.cn/art/2019/5/5/art_46144_8322422.html (accessed on 3 October 2023).

¹⁷⁷⁰ *Ibid.*

- Cutting the total emission of sulphur dioxide, nitrogen oxide and particulate matter in the province's steel industry by 30%, 50% and 50% respectively by 2020¹⁷⁷¹.
- Integrating the decentralized smelting enterprises in the Xuzhou region with steel production below 2 million tonnes towards the cluster of leading enterprises¹⁷⁷².
- The plan further specifies that “*in principle, all relocation and capacity merger and acquisition projects in the province are only allowed to be implemented in coastal areas*”¹⁷⁷³.

To attain these objectives, all relevant departments in the province are required to “*study and introduce more supportive policies in terms of capital, taxation, finance, land, personnel resettlement and debt disposal*”¹⁷⁷⁴. Annexes to the Jiangsu Steel Industry Work Plan specify in detail the requirements for adjusting the industrial layout. Annex I¹⁷⁷⁵ specifies requirements on planning and construction in coastal areas (in coastal deep-water port areas, total crude steel production capacity must reach 8 million tons, effective volume of blast furnaces must be greater than 3 000 m³ etc.) and on transformation and upgrading in other regions (e.g. iron and steel enterprises with a production capacity of less than 2 million tons or within 20 km from Taihu Lake can only be relocated). Annex II¹⁷⁷⁶ contains a number of indexes to be adhered to in construction and/upgrading steel plants in different parts of the province (indexes on total capacity of crude steel; land occupation per ton of steel; size, capacity, and height of furnaces and other equipment; energy consumption indexes etc.).

Finally, the third example examined here is the Three-Year Action Plan for Cluster Development of Steel Industry Chain in Hebei Province (*‘Hebei Three-Year Action Plan’*)¹⁷⁷⁷, the province with the largest steel production in China. This plan was adopted for the period 2020-2022, before the start of the 14th planning cycle, but reflects the same objectives found in the central-level 14th FYPs. Some examples of objectives in the Hebei Three-Year Action Plan include:

- Constructing a batch of demonstration blast furnaces and converters with a plant size of 3 000m³ and production capacity of 200 tonnes and above by the end of 2022.
- Supporting and safeguarding downstream industry upgrading, with the share of ordinary low-alloy steel and alloy steel to reach 25% by the end of 2022.
- Accelerating the process of mergers and restructuring to build a large, world-class conglomerate, with the prospect of top 10 producers reaching 65% of the total output by the end of 2022. Efforts were also to be made to set up one or two world-class large groups, three to five powerful regional groups and eight to ten high-end niche enterprise groups.

¹⁷⁷¹ *Ibid.*

¹⁷⁷² *Ibid.*, Section I (III).

¹⁷⁷³ *Ibid.*, Section V (I).

¹⁷⁷⁴ *Ibid.*, Section VI (II).

¹⁷⁷⁵ *Ibid.*, Annex I.

¹⁷⁷⁶ *Ibid.*, Annex II.

¹⁷⁷⁷ Hebei Province Three-Year Action Plan for Cluster Development of Steel Industry Chain, available at: <https://huanbao.bjx.com.cn/news/20200717/1089773.shtml> (accessed on 3 October 2023).

- In the ambit of optimizing the industrial layout, three relocation projects (involving Shisteel, Laoting and Taihang) were set to have been completed and become operational in 2020. Xuansteel's production capacity was to be closed down in 2021, and the relocation project for the urban steel plant was to be completed in all essential respects in the course of 2022. Furthermore, the province was to focus on building the two major industrial clusters in Qian'an and Wu'an and to promote steady increases in iron and steel production capacity along the ports and railways, focusing on the construction of four high-quality steel production bases in the ports of Caofeidian and Jingtang (Laoting County), Fengnan Coastal Industrial Zone and Bohai New District.
- When it comes to greening of steel production, by 2020, the utilisation and disposal rate of solid wastes such as steel slag, blast furnace slag and sludge was set to reach 100%. By 2022, industrial fugitive emissions were to be greatly reduced, while energy consumption per tonne of steel was to be reduced to below 560 kg of standard coal.

Measures foreseen to ensure attaining these goals included:

- preferential tax policies (e.g. for company merger and reorganisation, for industrial surplus power generation, for comprehensive utilisation of resources, as well as pre-tax deduction of R&D costs, and export refunds),
- active provision of credit support,
- adjusting the land use and urban and rural planning to support the relocation, transformation and development of urban enterprises,
- improving and supervising incentive mechanisms in order to promote differentiated electricity pricing, water pricing and production outage and limitation policies to encourage enterprises to move towards green, smart, high-end production.

While the research has not revealed specific information to show to what extent the objectives spelled out in the Hebei Three-Year Action Plan have been reached by the end of 2022, what matters in the context of this Report are the interventions by the various levels of government in the economy, shaping all relevant aspects of the steel sector in the province.

The above clearly shows that the goals and objectives of provincial-level planning are closely aligned with the objectives of central-level plans for the 14th FYP period even though in the case of Jiangsu and Hebei provinces, their Work Plan and Action Plan were released already during 13th planning cycle. The plans describe in detail the development objectives the steel industry should follow, most importantly in terms of capacity and layout optimization. All this evidence points to the existence of a high degree of government intervention into the sector. The provisions of these provincial plans are an example of the extremely limited space left to the market to shape the steel sector.

14.1.3. GREEN POLICIES

As mentioned in Section 14.1.1.3, greening of the steel sector is high on the agenda in the 14th planning cycle. The importance of the greening of the steel industry is reflected in numerous incentives and policies put in place by various levels of government to promote this objective. A number of documents laying out these measures are examined below.

The Industrial Green Development during the 14th FYP Period¹⁷⁷⁸ announced that the green and low-carbon development in traditional industries such as iron and steel should be promoted. The same document informs that 620 million tons of crude steel capacities already started the process of ultra-low emission upgrading by the end of the 13th FYP period. The document puts in place several targets for greening the steel production and states that by 2025, China's production capacity of steel with ultra-low emissions is expected to reach 530 million tons, i.e. about 52% of its 2022¹⁷⁷⁹ estimated capacity.

The adoption of the 14th FYP on Developing Scrap Steel Industry (see Section 14.1.1.4 for more details) is another indicator for the importance that the Chinese authorities attribute to the green development of the steel industry.

The 14th Raw Materials FYP contains a full chapter dedicated to “*Accelerating Green Industrial Development*” in which the authorities promote the active implementation of energy-saving and carbon-cutting initiatives. The Plan contains concrete measures for accelerating green industrial development in the steel sector. The most important ones are:

- implementation plans for “*the accomplishment of peaking carbon emissions*” in key sectors, such as steel, which are to be formulated to ensure carbon emissions peak before 2030¹⁷⁸⁰;
- enterprises are to be supported to substitute raw materials and fuels, speed up the replacement of coal with electricity and natural gas in the industry, increase the proportion of renewable resources and clean energy in energy consumption, and generate electricity and develop grid-connected systems through employing residual heat and pressure;
- support is to be given to key sectors such as steel to establish statistical, accounting, monitoring and evaluation systems for carbon emissions throughout production¹⁷⁸¹;
- efforts are to be made to accelerate the transformation and upgrading of raw materials enterprises in energy conservation and carbon emission reduction;
- oversight over energy conservation in key sectors is to be intensified and mandatory standards on energy consumption caps per unit product are to be implemented; services designated to evaluate energy-saving projects in the industry are to be provided;
- measures are to be taken to strictly implement tiered pricing for electricity in key sectors, such as steel, and improve the differentiated electricity pricing policy with the aim of promoting green and low-carbon development¹⁷⁸²;
- pilot projects of low-carbon manufacturing and advanced technologies in the following areas of the steel sector are to be promoted: application of recycled steel materials, short-process near net shape cast-rolling, and bio-metallurgy of low-grade resources¹⁷⁸³;

¹⁷⁷⁸ Industrial Green Development during the 14th FYP Period, MIIT, available at: http://www.gov.cn/zhengce/zhengceku/2021-12/03/content_5655701.htm (accessed on 3 October 2023).

¹⁷⁷⁹ According to Worldsteel.

¹⁷⁸⁰ The Plan, Section V.(I).

¹⁷⁸¹ *Ibid.*

¹⁷⁸² *Ibid.*

¹⁷⁸³ *Ibid.*, Section V (I), Feature 3.

- steel sector enterprises are to be encouraged to launch in-house water-saving reconstruction¹⁷⁸⁴.

The 14th Raw Materials FYP also puts in place numerous incentives and support measures for the greening of the steel sector. Its chapter “*Accelerating Green Industry Development*” contains the objective, mentioned already in Section 14.1.2, to improve “*the mechanism for determining resource prices*”¹⁷⁸⁵, an element which demonstrates clearly the pervasive role of the authorities also in the area of green development for the steel sector.

According to Steel Industry Development GO, the steel industry is the key field that contributes to green and low-carbon development in general. The document identifies unfledged green and low carbon development as one of the major challenges in the 14th FYP period. Several goals and policies are thus laid out to deepen green and low-carbon development of the steel industry:

- pressing ahead with the coupling of sectors to build a system for the recycling of resources;
- promoting the transformation covering over 80% of the steel enterprises to achieve ultra-low emissions;
- cutting per ton of steel total energy consumption by more than 2%, water consumption by more than 10% and ensure the goal of peaking carbon emissions by 2030;
- reducing or shutting down the less competitive existing urban steel mills that are unable to meet the requirement of ultra-low emissions;
- policies for differentiated capacity replacement and environmental protection and management should be implemented in all-scrap electric furnace steelmaking projects;
- efforts should be intensified to promote small and medium-sized electric furnace steel enterprises in line with the requirements of energy conservation and environmental protection;
- promoting the integrated development of recycling, dismantling, processing, classification, and distribution of scrap steel for the construction of a system for better scrap steel processing and distribution¹⁷⁸⁶.

Developing electric furnace steelmaking appears to be an important item in green policies. The Steel Industry Development GO presents it as one of the major development goals and plans to guide that development in the following ways:

- encourage well-placed enterprises featuring blast furnace-converter prolonged processes to transform, upgrade and develop into electric furnace short-process steelmaking locally;
- well-placed areas should be encouraged to construct demonstration areas for electric furnace steel development and explore the application of innovative technologies and new equipment;

¹⁷⁸⁴ *Ibid.*, Section V (II).

¹⁷⁸⁵ *Ibid.*, Section V (III).

¹⁷⁸⁶ Steel Industry Development GO, Section II (VIII).

- eight or so dominant and benchmarking enterprises in electric furnace steelmaking and scrap steel processing and distribution should be selected respectively to form a promotable industrial model¹⁷⁸⁷.

In addition, to deepen green and low-carbon development, the Steel Industry Development GO foresees also the following actions:

- make efforts to implement the plan for carbon peaking in the iron and steel industry;
- support the establishment of the alliance for innovation in low-carbon metallurgy, formulate an action plan for hydrogen metallurgy and accelerate the application of low-carbon smelting technologies;
- support the construction of a system for carbon emission data management throughout the process of iron and steel production and participate in the national carbon emissions trading markets;
- provide industrial energy-saving diagnostic services and support enterprises to increase the share of green energy use;
- promote the transformation of the steel sector to achieve ultra-low emissions in all respects, accelerate clean transportation in iron and steel enterprises and improve the differentiated electricity pricing policy (conducive to green and low-carbon development);
- press ahead with the coupling of sectors including steel and improve the comprehensive utilization efficiency of solid waste resources;
- establish and improve the evaluation system for steel products with the green design to guide the upgrading of steel used in downstream industries.

In an economy based on market forces, a number of these actions would be carried out by private companies. In China, instead, the authorities do not limit themselves to setting the regulatory framework and/or promoting these actions but are the main actor in realising them.

Another example in this respect represents the State Council Notice on the Action Plan for Continuous Improvement of Air Quality¹⁷⁸⁸, adopted in December 2023. The Notice promotes ultra-low emission transformation of key industries such as steel, cement and coking as well as coal-fired boilers with high quality. Among its main objectives feature the optimization of industrial structure, the promotion of green upgrading of industrial products, as well as the in-depth pollution control in key industries. Correspondingly, the actions foreseen in the Notice include to “*resolutely curb the blind launch of high-energy-consuming, high-emission, and low-level projects*”. This target is not new. Years ago, the VTA export exemption policy was already applied in a way making it more difficult for high energy intensive and low-level products to be exported. The Notice also envisages the revision of the Guiding Catalogue for Industrial Structural Adjustment (see Section 4.2.9) in order to include processes and equipment whose

¹⁷⁸⁷ *Ibid.*, Section II.(VIII).

¹⁷⁸⁸ State Council Notice on the Action Plan for Continuous Improvement of Air Quality, December 2023, No 24, available at: https://www.gov.cn/zhengce/content/202312/content_6919000.htm (accessed on 18 December 2023).

pollutant or greenhouse gas emissions are significantly higher than the industry average and have low energy efficiency and clean production levels into the elimination and restricted lists.

Other instruments, such as the 14th FYP on promoting nationwide clean production¹⁷⁸⁹, also show the importance that the authorities attach to the green development. According to this plan, effective ways will be explored to support cleaner production by financial departments at all levels. The plan mentions also preferential taxation policies related to energy and water conservation and environmental protection which are to be implemented and improved.

Regional plans and policies also put in place measures to promote greening of the steel industry. The 14th FYP of Hebei on the green development of industry¹⁷⁹⁰, which also covers steel, is a good example. It foresees the following incentive measures:

A. Strengthen financial and tax support:

- *coordinate the use of relevant industry funds and specific financial funds such as provincial industry transformation and upgrade (technological transformation) funds, strategic and emerging industry development funds and innovation funds;*
- *concentrate strong support towards technology transformation demonstration programmes in the field of energy-saving and low-carbon, water-saving, comprehensive use of resources as well as towards the development of energy-saving and environmental protection industries;*
- *actively implement all national tax preferential policies supporting energy-saving and emission reductions, foster the implementation of preferential policies concerning income tax and VAT for products related to the comprehensive use of resources, and in accordance with the regulations released by the Ministry of Finance, energy saving products shall be included in the scope of policy support for governmental procurement;*
- *strictly implement differentiated electricity prices and punitive electricity prices, explore the possibility to release comprehensive price policies encouraging industry energy saving.*

B. Develop green finance:

- *encourage financial institutions to develop financial products for the green transformation of key industries such as steel and petrochemicals as well as for the production and use of green building materials and new energy vehicles, for the promotion of green products etc.;*
- *actively explore the possibility to include energy use rights, carbon emission rights, polluting emission rights, future benefits resulting from contractual energy management, rights and fees resulting from licensed operations into the scope of funding pledge guarantees;*

¹⁷⁸⁹ 14th FYP on promoting nationwide clean production, available at: http://www.gov.cn/zhengce/zhengceku/2021-11/12/content_5650430.htm (accessed on 3 October 2023).

¹⁷⁹⁰ Hebei 14th FYP on the green development of industry, available at: <https://news.bjx.com.cn/html/20220107/1198177.shtml> (accessed on 3 October 2023).

- encourage eligible enterprises to issue middle and long-term green bonds;
- support eligible green enterprises to get listed for financing and refinancing and to reduce financing costs;
- encourage social capital to set up green development funds and guide business angel investments, venture capital and private equity investment funds towards green crucial core technology research and other fields;
- optimize and improve insurance subsidy schemes for the first installation of large size technological equipment and for the first use of key new materials and support the use of eligible green low-carbon technology and equipment and green materials.

In sum, the Chinese authorities are actively supporting the green development of the steel industry both at national and provincial level. The support takes various forms including financial support.

14.1.4. SCRAP STEEL RESOURCES

The development of the scrap steel recycling remains a priority for the 14th FYP period¹⁷⁹¹, in line with the objective to promote the steel industry's green development. The Steel Industry Development GO foresees to greatly improve resource security. Accordingly, efforts shall be made to significantly enhance diversified resource security and perfect the scrap steel recycling and processing system by large to achieve a remarkable increase of the utilization rate and ensure that the scrap steel resources utilized by the steel industry exceed 300 million tons.

The degree of planning into the steel scraps sector further demonstrates just how all-encompassing the Chinese government's intervention in the steel industry aims to be. As explained in the 14th Raw Materials FYP, "[e]nterprises will be supported to substitute raw materials, [...] increase the proportion of renewable resources [...]". The 14th FYP on Circular Economy¹⁷⁹² sets the goal of achieving the annual utilization rate of 320 million tonnes of scrap steel. Moreover, the 14 FYP on Developing Scrap Steel Industry¹⁷⁹³ (the 'Scrap Steel FYP') was issued by the Scrap Steel Industry Association. Although formally not issued by a government entity, it forms an important part of the planning system, given the prominent role that industry associations have in China (see Section 2.3.3) and the explicit allegiance to the CCP and the Government which these associations pledge in their statutes¹⁷⁹⁴.

The Scrap Steel FYP sets the development agenda expecting continued demand for infrastructure steel and raising demand for high-end steel products¹⁷⁹⁵. The ratio of scrap steel utilization in the steelmaking process has been rising continuously, from 11.3% during the 12th

¹⁷⁹¹ See the 14th Raw Materials FYP, Section VIII.(I), and Steel Industry Development GO, Sections I.(III) and II.(VIII).

¹⁷⁹² 14th FYP on Circular Economy, available at: <https://www.ndrc.gov.cn/xwdt/tzgg/202107/P020210707325480706163.pdf> (accessed on 23 February 2022).

¹⁷⁹³ Available at: http://www.csteelnews.com/xwzx/jrrd/202109/t20210917_55000.html (accessed on 23 February 2022).

¹⁷⁹⁴ See at: <https://www.camu.org.cn/> (document accessed via Baidu on 25 May 2023).

¹⁷⁹⁵ Scrap Steel FYP, Foreword.

FYP period, to 21.8% in 2020¹⁷⁹⁶, and the Scrap Steel FYP sets the following main objectives for the future:

- reach 30% ratio of scrap steel utilization in the steelmaking process by the end of the 14th FYP period;
- reach 200 million tonnes of annual processing capacity of scrap iron and steel;
- improve industrial concentration and cultivate leading enterprises in scrap steel industry;
- develop scrap iron and steel price index to guide spot market prices¹⁷⁹⁷.

The Scrap Steel FYP also predicts several demonstrations and R&D projects: deploying blockchain operation management system, project for dismantling scrapped automobiles, “*zero discharge of iron and steel slags*” project, research into slag micro powder replacing cement for certain uses, etc.

The Scrap Steel FYP shows that the Chinese authorities play an active and intrusive role in the development of scrap steel resources. This could be considered as part of their efforts to ensure green development for the steel industry.

14.2. ACTORS ON THE STEEL MARKET – SOES AND PRIVATE-OWNED STEEL ENTERPRISES FOLLOWING GOVERNMENT POLICY

The State’s presence in the steel sector is very important, also given that it is “*a fundamental pillar industry of the national economy*”¹⁷⁹⁸ in China.

The general description of SOEs and their role in the overall setup of the Chinese economy can be found in Chapter 5. In the case of the steel sector, SOEs play a central role. According to the most recent information available as of writing of this Report, the split between SOEs and privately owned companies is estimated to be almost even in the Chinese steel sector - 60% private and 40% SOEs both in terms of production, as well as capacity¹⁷⁹⁹. Six Chinese steel producers (four of which are SOEs) are ranked in the top 10 of the world's largest steel producers¹⁸⁰⁰. This shows that the Chinese steel market is characterized by significant presence of large SOEs. In addition, there is also a significant presence of SOEs in the mining industry,

¹⁷⁹⁶ *Ibid.*, Section 1.(1)-1.

¹⁷⁹⁷ *Ibid.*, Section 2.(2).

¹⁷⁹⁸ See Introduction of the 2023 Work plan on the stable growth of the steel industry, available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2023/art_2a4233d696984ab59610e7498e333920.html (accessed on 3 October 2023).

¹⁷⁹⁹ See statistics from China Chamber of Commerce for Metallurgical Enterprises (2022), available at: https://m.mysteel.com/23/0322/07/1178B5B47DFE3182_abc.html (accessed on 3 October 2023).

See also an interview with Bayi Steel, a subsidiary of Baowu Steel (September 2022) <https://mp.weixin.qq.com/s?biz=MzA3OTE5NDYwOA==&mid=2649832255&idx=2&sn=f2e10146390b50e80a732ca83d03cd47&chksm=87b2aba0b0c522b6ad44d379d243d24de25fc719e872454c02cf6639fb6affe654757801775c&scene=27> (accessed 26 May 2023).

¹⁸⁰⁰ World Steel Association. (2022). *Top steel-producing companies* World Steel in Figures 2022 - worldsteel.org (The four SOEs are: China Baowu Group, HBIS Group, Ansteel Group and Shougang Group).

which provides key raw materials for steel production¹⁸⁰¹. For example, large steelmaking SOEs like Anshan Iron & Steel Group Corporation and Benxi Steel, also own iron ore mines¹⁸⁰².

When it comes to the performance and efficiency of the steel SOEs, according to an OECD study¹⁸⁰³, Chinese steel SOEs tend to exhibit poorer financial performance compared to privately-owned enterprises ('POEs'). At the same time, Chinese SOEs received more subsidies per metric tonne compared to their private counterparts. Amongst SOEs, larger enterprises tend to receive more subsidies compared to smaller ones. This illustrates the consolidation efforts of the Chinese authorities and demonstrates that the Government is favouring larger SOEs in order to create world-class steel conglomerates (see Section 14.1.2). SOEs were also more likely than POEs to leverage important subsidy amounts to create new capacity. Subsidisation therefore led to an increase of the Chinese steelmaking capacity and only aggravated the already significant overcapacity problem.

As concluded in Chapter 5, SOEs are used as vehicles to pursue the government's economic policies. This is also the case in the steel industry, as also confirmed in several Commission's TDI investigations which established, inter alia, the following: the Government exercises meaningful control over steel SOEs, which are obliged to follow the governmental plans and policies¹⁸⁰⁴; SOEs exercise government authority¹⁸⁰⁵; the main objective of steel SOEs is to reach the targets and objectives set by the Government's plans¹⁸⁰⁶.

Indeed, SOEs are the primary target of state policies aiming at restructuring and consolidating the steel sector by creating fewer but larger steelmakers¹⁸⁰⁷. Some examples of how these policies are being implemented include, on the one hand, the reportedly economically nonviable merger between Baosteel and Wuhan Steel, which gave rise to the largest steel producer of the world¹⁸⁰⁸, Baowu Steel Group¹⁸⁰⁹, and, on the other hand, the refusal for a merger between Shougang Corporation and Hesteel Group Co., Ltd, allegedly prohibited on the basis that there was "*neither an agenda nor a directive for that in the State Council document*"¹⁸¹⁰.

With the high level of government intervention in the steel industry and a high share of SOEs in the sector, even privately-owned steel producers are prevented from operating under market

¹⁸⁰¹ OECD (2012) *Steelmaking Raw Materials: Market and Policy Developments*.

¹⁸⁰² See top 10 list at: OECD. (2012). *Steelmaking Raw Materials: Market and Policy Developments*, table 12.

¹⁸⁰³ OECD (2022). *State-owned enterprises and subsidisation in the steel sector: evidence from China*.

¹⁸⁰⁴ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the PRC, recital 72, OJ L73, 15.3.2013, p.16.

¹⁸⁰⁵ *Ibid.*

¹⁸⁰⁶ *Ibid.*, recital 68.

¹⁸⁰⁷ In particular: Guiding Opinions on Pushing Forward Enterprise Mergers and Acquisitions and Reorganization in Key Industries (2013); Steel Industry Adjustment Policy (2015 Revision) and The Plan for Adjusting and Upgrading the Steel Industry (2016-2020).

¹⁸⁰⁸ World Steel Association (2021). *Top steel-producing companies*. Top Producers - worldsteel.org, available at: <https://www.worldsteel.org/steel-by-topic/statistics/top-producers.html> (accessed on 9 March 2023).

¹⁸⁰⁹ See Baowu website: <http://www.baowugroup.com/en/contents/5319/104013.html> (accessed on 3 October 2023).

¹⁸¹⁰ Bloomberg. Company Overview of Shougang Group Co., Ltd <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=5471051> (accessed on 9 March 2023).

conditions. In this regard, the Commission found, in the anti-subsidy investigation on *Organic Coated Steel from China*¹⁸¹¹ ('OCS') inter alia, that¹⁸¹²:

The SOEs are predominant in the HRS [hot-rolled steel] market in China. This predominance of SOEs in the HRS market is so considerable that the private producers have no choice but to align their prices with the SOEs.

The investigation at the exporters of OCS established that the prices paid by the four exporting producers/groups during the IP for the HRS and CRS [cold-rolled steel] sourced from private producers of HRS and CRS or from traders were consistently very close to the prices of SOEs. Thus, the observed data, together with the predominance of SOEs in this sector, demonstrates that the price of private suppliers effectively tracks the prices paid to SOEs. Furthermore, in the contract submitted by one of the sampled exporting producers for the provision of HRS by a privately owned supplier there is even a condition to link the price to the SOE supplier price.

The government export restriction, government planning and the predominance of SOEs limits the freedom of private suppliers of HRS and CRS, obliging them to act in a non-commercial manner and to accept economically irrational (below-market) prices which they would not do in a free and open market. This confirms that the government policy to supply HRS and CRS (including to the organic coated steel sector) extends to private suppliers.

The following statement by one of the country's largest private steel producer, Jiangsu Shagang, also serves as an illustrative example of how even private companies adhere to government policies¹⁸¹³:

In the future, Shagang Group will conscientiously implement the State policy concerning the steel industry development. With the guideline of the Scientific Concept of Development, Shagang would persistently follow the development strategy of "Doing the Steel Industry Finer and Stronger, Doing the Modern Logistics Stronger and More Excellent, Doing the Non-Steel Industry better and more sufficient". Shagang shall continuously speed up its pace of the transformation and upgrading, and constantly enhance its comprehensive competitiveness. Shagang Group will make new contributions in order to forge a "Hundred-year-Old Factory", construct a harmonious Jiangsu and build a powerful steel country.

¹⁸¹¹ Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China, *OJ L 73*, 15.3.2013, p.15.

¹⁸¹² *Ibid.*, recitals 77, 80 and 97.

¹⁸¹³ See Shagang Group website: <http://www.sha-steel.com/eng/> (accessed on 3 October 2023).

This is consistent with older sources which already years ago pointed to the existence of substantial ownership, control and/or government intervention with respect to POEs¹⁸¹⁴.

14.3. FINANCIAL SYSTEM IN CHINA – IMPACT ON THE STEEL SECTOR

Chapter 6 described in detail the functioning of the banking and overall financial sector in China. Therefore, for the purpose of this Chapter only the financial sector's most relevant features concerning the steel industry are highlighted.

The Commission found in the anti-subsidy investigation into *Hot-Rolled Flat products* from China ('HRF')¹⁸¹⁵ that '*The Guidelines of the People's Bank of China, CBRC, CSRC, and CIRC*', as well as the notice '*Several Opinions on Resolving Overcapacity*', are specifically targeted at companies in the steel sector¹⁸¹⁶:

financial institutions must fully recognize the pillar role and strategic importance of steel and coal industries and continue to give credit support to the steel companies which comply with industrial policy and which adjust and regroup themselves without increasing their production capacity. This support shall extend to the setting of interest rates and the promotion of bonds and loans for mergers and acquisitions. Furthermore, debt restructuring and debt forgiveness is promoted.

The Commission concluded that state-owned financial institutions, in implementing the relevant regulatory framework in China, exercise governmental functions with respect to the steel sector and therefore act as public bodies within the meaning of the basic Regulation and in accordance with the relevant WTO case-law¹⁸¹⁷.

In addition, the Commission found that "*in so far as the steel industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC have been entrusted or directed by the State to pursue governmental policies and provide loans at preferential rates to the steel industry*"¹⁸¹⁸.

¹⁸¹⁴ Price, A.H., Brightbill, T.C., Weld, C.B. and Nance, D.S. (2007). *Government ownership and control of China's "private" steel producers*; available at: <https://www.lexology.com/library/detail.aspx?g=806b748a-5820-4607-9ffe-fb3ab9adb09f> (accessed on 3 October 2023).

¹⁸¹⁵ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, *OJ L 146*, 9.6.2017, p. 17–128. The findings in this regulation related to the financial system in China and its impact on the steel sector were confirmed in the more recent expiry review investigation to extend the measures on HRF which resulted in Regulation 2023/1123 of 7 June 2023 imposing a definitive countervailing duty on imports of certain HRF of iron, non-alloy or other alloy steel originating in PRC following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council, *OJ L 148*, 8.6.2023, p. 84–120. *Ibid.*, recital 113.

¹⁸¹⁷ *Ibid.*, recitals 129 and 139: "*the investigation found that all 35 state-owned Chinese financial institutions that provided loans to the four sampled groups of cooperating exporting producers are public bodies*".

¹⁸¹⁸ *Ibid.*, recital 146.

Overall, the Commission concluded that “*the government has exercised meaningful control over the conduct of the five cooperating state-owned banks with respect to their lending policies and assessment of risk, where they provided loans to the steel industry*”¹⁸¹⁹.

The government control over banks has a direct influence on the manner in which loans, credits and access to finance in general, is provided to steel producers. It is therefore the government's control over the financial sector that, inter alia, has created the so-called ‘*zombie companies*’ and therefore, played a major role in the severe overcapacity problem to which China is the main contributor globally.

The above Commission’s findings clearly show that Chinese steel producers benefit from State support measures from financial institutions, typically by access to finance at non-commercial terms. This preferential and concessionary access to capital gives Chinese steel companies the ability to lower their costs relative to their counterparts overseas.

14.4. STATE SUPPORT MEASURES

The Government has consistently used a wide array of state support measures, including - but going also beyond - the financial support described in Section 14.3, to promote the steel industry, and hence, to implement the industrial policy objectives. These measures grant an artificial advantage to the recipients, *vis-à-vis* those competitors who do not benefit from the measures, thereby contributing to an uneven playing field. The Commission, as well as other investigating authorities, have consistently found evidence of these measures, as described below.

The Commission has established that the Government provided numerous forms of state support, some of which were found to be of a permanent and structural nature in the steel sector. In the HRF investigation, it was established that¹⁸²⁰:

Most of them [support schemes investigated] are permanent by nature, such as land use rights, tax breaks and grant programmes. Moreover, the credits received were a constant feature of Chinese industrial policy to support its steel industry. The Commission concluded that these subsidies were of structural nature.

More specifically, several Commission anti-subsidy investigations determined that Chinese steel producers benefit from numerous subsidy schemes, within the following main categories¹⁸²¹:

- preferential policy loans, credit lines, preferential interest rates, other financing, and guarantees;

¹⁸¹⁹ *Ibid.*, recital 128.

¹⁸²⁰ Commission Implementing Regulation (EU) 2017/969, recital 476. The findings of Regulation (EU) 2017/969 were confirmed in the expiry review resulting in Regulation 2023/1123 of 7 June 2023 imposing a definitive countervailing duty on imports of certain HRF of iron, non-alloy or other alloy steel originating in People’s Republic of China following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council.

¹⁸²¹ A complete list of all subsidy schemes found countervailable in each of the investigations referred to in this section, is available in the relevant texts cited, in particular recitals 49-126 of Regulation (EU) 2023/1123 and recitals 46-203 of Regulation (EU) 2019/688.

- grants;
- direct tax exemption and reduction programmes;
- indirect tax and import tariff programmes;
- Government provision of goods and services for less than adequate remuneration ('LTAR'), including inputs, land use rights, water and electricity;
- equity programs, including debt for equity swaps, equity infusions and unpaid dividends.

Other investigating authorities have also found that Chinese steel producers have consistently received numerous subsidies:

In 2021 the Australian investigating authority finalised two anti-subsidies investigations. In the one on *Precision pipe and tube steel*¹⁸²², the authority determined that the following countervailable subsidies had been provided to Chinese steel producers:

- Program 20: a form of subsidy where a public body provides goods or services at LTAR price levels.

In the one on *Painted steel strapping*¹⁸²³, the authority determined that subsidy schemes within the following categories were countervailable:

- preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and economic and technological development zones.
- one-time awards to enterprises whose products qualify for 'well-known trademarks of China' and 'famous brands of China';
- matching funds for international market development for small and medium enterprises;
- R&D assistance grant;
- patent award of Guangdong province;
- preferential tax policies for foreign invested enterprises— reduced tax rate for productive foreign invested enterprises scheduled to operate for a period of not less than 10 years;
- preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area);
- preferential tax policies for enterprises with foreign investment established in Shanghai Pudong area;
- preferential tax policies in the Western regions;
- tariff and VAT exemptions on imported materials and equipment;
- other subsidies.

In its *Certain cold-rolled steel from China*¹⁸²⁴ investigation in 2018, the Canadian authority determined that countervailable subsidies within the following categories had been provided to Chinese steel producers:

¹⁸²² Australian Anti-Dumping Commission, available at: <https://www.industry.gov.au/trade/anti-dumping-review-panel/past-anti-dumping-review-panel-reviews/precision-pipe-and-tube-steel-exported-peoples-republic-china-and-socialist-republic-vietnam> (accessed on 3 October 2023).

¹⁸²³ Australian Anti-Dumping Commission, available at: www.industry.gov.au/anti-dumping-commission/archive-cases-and-electronic-public-record-epr/553 (accessed on 3 October 2023).

¹⁸²⁴ See *Cold-Rolled Steel 2018 Investigation*, available at: <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/crs2018/crs2018-fd-eng.html> (accessed on 3 October 2023).

- loans from state-owned banks at preferential rates;
- loan guarantee through the government of China/state-owned banks/public bodies;
- debt and interest forgiveness on loans from state-owned banks;
- preferential export financing and export credit guarantee/insurance;
- design, R&D grants;
- export performance grants;
- reductions in land use and /or rental fees;
- grants for the retirement of capacity;
- grants for relocating production facilities;
- interest subsidy for the importation of encouraged products and technology;
- financial subsidy from various levels of governments;
- corporate income tax exemption and/or reduction in special economic zones and other designated areas;
- corporate income tax reduction for high and new tech enterprises;
- corporate income tax reduction for newly profitable enterprises;
- preferential tax policies for foreign-invested enterprises;
- preferential tax policies related to research and investment;
- offsets to taxable income related to purchases of domestic machinery;
- exemption or refund of tariff and import VAT for imported technologies and equipment;
- offset of taxable income on purchases of domestic equipment;
- acquisition of government assets at less than fair market value;
- provision of land for LTAR by government;
- debt-to-equity swaps for less than fair market value;
- other subsidies.

Since the publication of the 2017 version of this Report, the US International Trade Administration ('*US ITA*') finalized twelve anti-subsidy investigations in the steel sector against China¹⁸²⁵. In these investigations, the investigating authority determined that among many others the following countervailable subsidies categories had been provided to Chinese steel producers:

- policy loans;
- export seller's credits;
- export buyer's credits;
- income tax reduction for high and new tech enterprises;
- income tax deductions for R&D;
- import tariff and VAT exemptions on imported equipment for encouraged industries;
- provision of electricity for LTAR;

¹⁸²⁵ See the WTO Trade Remedies Portal at: <https://trade-remedies.wto.org/en/countervailing/measures#eyJpbmI0WWVhcnMiOltLClpbkZvcmlRnJvbVllYXJzIjpbXSvicmVwb3J0aW5nTWVtYmVycyI6W3siY29kZSI6IkM4NDAlLCJsYWJlbCI6IlVuaXRIZCBTdGF0ZXMiY0sImV4cG9ydGluZ01lbWJlcnMiOlt7ImNvZGUlOiJDMTU2IiwibGFiZWwiOiJDaGluYSJl9XSwiaHNTZWNoaW9ucyI6W10sImluRm9yY2UiOiJpbI9mb3JjZSI6bnN1YmplY3RQcm9kdWN0Ijoic3RlZWwifQ> (accessed on 3 October 2023).

- provision of goods for LTAR;
- provision of LUR in industrial and other special economic zones for LTAR;
- other subsidies.

The investigations cited above are not an exhaustive list, as there are other investigating authorities that have also found the existence of countervailable subsidies on Chinese steel products¹⁸²⁶.

The findings by investigating authorities in the selected cases listed above confirm the presence of a wide range of State support measures in the Chinese steel sector, clearly illustrating how the Government actively implements the policy and industrial objectives set out in the planning and other policy documents for the steel sector. Through the provision of State support measures, Chinese steel producers achieve significant reductions in their costs of production for some key elements, e.g. raw materials, LUR, electricity and water. In this respect, it is noted that steel production is energy intensive and therefore energy is a key input for steel producers. Consequently, Government intervention in the energy sector has led to market distortions (see Chapter 10), impacting on the cost and prices of steel products. The provision of State support measures also has an impact on the financial situation of the companies. For instance, through preferential lending, debt for equity swaps, or debts cancellations, the viability of companies, which would otherwise have been forced to file for bankruptcy under commercial considerations, is ensured. As some of these State support measures have been found to be of a structural nature (see e.g. the abovementioned HRF investigation), this situation is not likely to change any time soon.

14.5. RAW MATERIALS AND INPUTS DISTORTIONS

As explained in Chapter 12, the Government has consistently implemented numerous export restrictions on a broad range of raw materials, having a distortive effect on the market¹⁸²⁷. These export restrictions have also affected several key raw materials in steelmaking¹⁸²⁸. The restrictions have taken the form of non-automatic export licensing requirements and export duties. The following examples illustrate the export restrictions that China has imposed on steelmaking raw materials in recent years¹⁸²⁹:

- export licensing requirements (non-automatic licensing) for coke, coking coal, manganese, chromium, molybdenum, silicon and vanadium;
- export taxes on export of metal waste and scrap, nickel, pig iron, tin, tungsten and zinc.

¹⁸²⁶ Some recent examples include: India – “Stainless steel welded pipes” - case No. 6/22/2018- DGAD 1/2 (2018); Brazil-“Hot-rolled steel”- case No 1601160; Chinese Taipei – “Certain flat-rolled steel products, plated or coated with zinc or zinc –alloys” - case No 18-0003-CHN; UK – “Hot-rolled flat, products of iron, non-alloy or other alloy steel”- case No 2020/15CN (original investigation –European Union (ID AS634CN) etc.

¹⁸²⁷ In addition to the findings of the investigations described below in this section, see other restrictions at: OECD Raw Materials Inventory: [Export restrictions on Industrial Raw Materials \(oecd.org\)](https://www.oecd.org/sti/ind/export-restrictions-on-industrial-raw-materials/) (accessed on 3 October 2023).

¹⁸²⁸ For a list with the main steelmaking raw materials see OECD (2012). *Steelmaking raw materials: market and policy developments*. Directorate for Science, Technology and Industry, Steel Committee. <https://www.oecd.org/sti/ind/steelmaking-raw-materials.pdf>, p. 8-9 (accessed on 3 October 2023).

¹⁸²⁹ OECD, data for 2021 available at: <http://www.compareyourcountry.org/trade-in-raw-materials?cr=oecd&lg=en&page=0> (accessed on 3 October 2023).

These measures, which have spanned over many years, confirm the persistent government intervention with respect to raw materials for steelmaking. In addition, in the past, some of export restrictions have been removed by China as a result of adverse WTO rulings, which found the restrictions to be inconsistent with WTO law¹⁸³⁰.

The restrictions impacting raw materials often have an impact on the downstream market, as found in various trade defence investigations. The Commission, in *OCS from China*¹⁸³¹, established that the Government exercised significant control over the market for raw materials. The Commission concluded that there are distortions in the markets of a number of raw materials used for the production of OCS such as: domination of SOEs in the zinc, coal and iron ore mining industry and a 30% export tax on zinc¹⁸³². Therefore, the Commission concluded that the Chinese steel market was distorted due to significant State interference including in relation to the costs of raw materials as these were not the result of free market forces because they are affected by substantial government intervention¹⁸³³.

In its investigation concerning heavy plates¹⁸³⁴, the Commission further found that the Chinese State had a primary role in the setting of prices of raw materials for heavy plate (namely steel and iron ore). With regard to steel, the Commission found that “*in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists. [...] [T]he investigation confirmed that the two largest producers in the steel sector, namely Angang Steel Group [...] and Baowu are either fully state-owned or the State holds a controlling stake*”¹⁸³⁵. Moreover: “[b]oth public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies”¹⁸³⁶.

With regard to the other important raw material used for the production of heavy plates, i.e. iron ore, the Commission pointed out: “*Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to “rationally develop domestic mineral resources. Strengthen the exploration of iron ore [...], implement preferential tax policies, encourage the adoption of advanced technology and equipment to reduce the generation of mining solid waste.*”¹⁸³⁷ In sum: [r]he GOC has measures in place to induce

¹⁸³⁰ See e.g. Appellate Body Report on the case China — Measures Related to the Exportation of Various Raw Materials (WT/DS394/AB/R, WT/DS395/AB/R and WT/DS398/AB/R).

¹⁸³¹ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, *OJ L116*, 3.5.2019, p.5.

¹⁸³² *Ibid.*, recital 72.

¹⁸³³ *Ibid.*, recital 92.

¹⁸³⁴ Commission Implementing Regulation (EU) 2023/968 of 16 May 2023 imposing a definitive anti-dumping duty on imports of certain heavy plate of non-alloy or other alloy steel originating in the PRC following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, *OJ L133*, 17.5.2023, p.214.

¹⁸³⁵ *Ibid.*, recital 98.

¹⁸³⁶ *Ibid.*, recital 99.

¹⁸³⁷ *Ibid.*, recital 107.

operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely”¹⁸³⁸.

Overall, consistent government intervention in the steelmaking raw materials market exists for the benefit of the steel industry and it has market-distortive effects. The investigations mentioned above confirmed that due to these distortions, the price formation mechanisms of the steel products that incorporated these raw materials were not *substantially* the same as they would have been in a market without the government's intervention. Therefore, Chinese steel producers have consistently benefitted from an unfair and artificial advantage.

14.6. OVERCAPACITY

Introduction

In the period 2006-2016, boosted mainly by real estate and large infrastructure projects (and by stimulus packages by the Government to overcome the financial crisis, where growth and demand weakened), China increased its steel production capacity by over 675 mmt. This amounts to around 73% of the worldwide capacity increase in the same period¹⁸³⁹. In 2005, China's capacity was estimated at around 30% of the world's total steel capacity. By 2015, it already accounted for around 50%¹⁸⁴⁰ of the total steel capacity.

In 2014 the *overcapacity* in China was estimated at around 300 mmt,¹⁸⁴¹ and in 2015 even higher (between 350¹⁸⁴² and 400 mmt¹⁸⁴³). To put this figure into context, in 2015 this amount corresponded to the combined production of the EU, Japan and India (the world's three largest producers after China).

Since 2019, when China stopped its participation in the GFSEC, it has become difficult to get precise figures related to the Chinese steel (over)capacity. On the one hand, according to market intelligence, China's iron and steel capacity has been growing quickly since 2019¹⁸⁴⁴. Similarly, according to GFSEC estimates, the Chinese crude steelmaking capacity increased in 2019 and

¹⁸³⁸ Commission Implementing Regulation (EU) 2023/968, recital 107.

¹⁸³⁹ China's crude steelmaking capacity increased from 488.47 mmt in 2006 to 1 164.55 mmt in 2016. See OECD (2017). *Capacity Developments in the World Steel Industry*; table 1.

¹⁸⁴⁰ Zhiyao, L. (2016). *State of Play in the Chinese Steel Industry*, Peterson Institute for International Economics, Table 1, available at: <https://piie.com/blogs/china-economic-watch/state-play-chinese-steel-industry>. (accessed on 3 October 2023).

¹⁸⁴¹ OECD (2015). *Capacity Developments in the World Steel Industry*; <http://www.oecd.org/sti/ind/Capacity-Developments-Steel-Industry.pdf> p.16 (317 mmt); (accessed on 3 October 2023). See also European Chamber of Commerce in China; *Overcapacity in China: An Impediment to the Party's Reform Agenda*, p.16 (328 mmt).

¹⁸⁴² *Steel: Preserving sustainable jobs and growth in Europe*; Communication from the European Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank; COM(2016) 155 final; 16.3.2016, p.2 (fn.2).

¹⁸⁴³ Zhiyao, L. (2016). *State of Play in the Chinese Steel Industry*. See also: *The Economist (Intelligence Unit)*. 2016. The implications of steel capacity cuts, available at: <http://country.eiu.com/article.aspx?articleid=804209864&Country=China&topic=E> (accessed on 12 April 2023).

¹⁸⁴⁴ SBB Daily Briefing (10 April 2023).

again in 2020 and 2021¹⁸⁴⁵. Moreover, China's pig iron and crude steel capacity has been still marking a modest growth for 2023¹⁸⁴⁶. On the other hand, those figures are to a degree contradicted by the OECD figures from 2022, according to which the Chinese steelmaking capacity slightly decreased in 2020 and 2021¹⁸⁴⁷.

In these circumstances it is difficult to obtain a precise picture of the Chinese steelmaking capacity and overcapacity. In any event, the reported steelmaking capacity's increase combined with the slowly recovering end-user demand for steel in China has continued to squeeze steel profit margins but with mills still showing no signs of cutting back on production.

According to the OECD, Chinese steel companies are also investing substantially in capacity projects overseas, which indicates that China is exporting its overcapacity. Chinese companies are involved in 13 cross-border investments and participate in nine JV investments abroad. The Association of Southeast Asian Nations ('ASEAN'), which is the top region among the cross-border investments, is expected to increase capacity to levels that far exceed the region's steel demand¹⁸⁴⁸. This trend is confirmed by the 2023 OECD paper¹⁸⁴⁹ which indicates that the steelmaking excess capacity is on the rise and is expected to be as high as in 2014 when the last steel crisis started. The excess capacity problem has never been solved, but the crisis is currently escalating, with the steelmaking capacity forecast to increase to 2 500 mmt by the end of 2023. The OECD document is clear: China is contributing to the expansion. At the same time, there is clear risk of a serious downturn in Chinese steel demand because of the real estate decline. In these circumstances, Chinese steel companies continue to invest massively overseas. This negative perspective for steel demand and the increasing relocation of Chinese steel capacity to other regions create a worrying outlook for the coming years.

Moreover, the figures included in this Chapter concerning Chinese capacity and overcapacity may be significantly underrepresented. There were strong indications of a large amount of production capacity which China had been consistently underreported¹⁸⁵⁰. When participating in the GFSEC during 2016-2019, China was advertising its efforts to reduce overcapacity by

¹⁸⁴⁵ Global Forum on Steel Excess Capacity, 2021 GFSEC Ministerial Report, available at: <https://steelforum.org/events/gfsec-ministerial-report-2021.pdf> (accessed on 3 October 2023). According to the report, China's steelmaking capacity increased by a cumulative 32.9 mmt during the two-year period of 2019 and 2020, accounting for 45% of the world's capacity increase of 73.7 mmt observed over these two years.

¹⁸⁴⁶ SBB Daily Briefing (10 April 2023).

¹⁸⁴⁷ According to the OECD, the Chinese capacity decreased for four consecutive years until 2018 and again in 2020 and 2021 but has since recovered slightly to 1 149.9 mmt in 2022. See: OECD, Latest developments in steelmaking capacity, document n° DSTI/SC(2022)12/FINAL.

¹⁸⁴⁸ *Latest developments in steelmaking capacity*, OECD DSTI/SC(2023)3, 17 February 2023; See also <https://stats.oecd.org> for OECD historical capacity data and <https://www.oecd.org/industry/steelcapacity.htm> for the latest published analysis on world steelmaking capacity developments (accessed on 3 October 2023).

¹⁸⁴⁹ *Latest developments in steelmaking capacity*, OECD DSTI/SC(2023)10, 17 October 2023.

¹⁸⁵⁰ Data for 2016 gathered by the OECD (crude steelmaking capacity of China equal to 1 153 355 thousand tonnes) compared to the official figures provided by China during the 2017 GFSEC (capacity of 1 073 330 thousand tonnes) differs by 80 million tonnes. See OECD Half-yearly steel statistical report, OECD DSTI/SC(2017)14, page 3 and G20 Global Forum on Steel Excess Capacity, final report 30/11/2017, page 21. OECD report *Capacity developments in the world steel economy* reports 1 164.55 million tonnes of production capacity in China in 2016, which results in a discrepancy of above 90 million tonnes. See OECD (2017), *Capacity developments in the world steel economy* DSTI/SC(2017)2/FINAL.

closing old and outdated facilities. However, as mentioned above, China stopped its participation to the GFSEC in 2019 and it became even more difficult to collect accurate information about its production capacity and overcapacity.

Chinese documents on the issue of overcapacity are contradictory. The 14th Raw Materials FYP praises the “*outstanding outcomes in industry transformation and upgrading*” that have been allegedly achieved since the 13th FYP period in the raw materials industries¹⁸⁵¹. When it comes to headway made in restructuring in the steel sector, the Plan proclaims that the objective¹⁸⁵² of reduction of steel production capacity by 150 million tonnes has been achieved ahead of schedule. The Plan even goes as far as to say that “*the balance has been basically restored between the total supply and demand*” in industries with severe overcapacity¹⁸⁵³. While steel is no doubt an industry with severe overcapacity, its capacity reduction is not that clear, as the Steel Industry Development GO states that “[w]ith a more reasonable layout structure, the iron and steel market’s supply and demand fundamentals shall achieve a dynamic balance¹⁸⁵⁴” and recognises that the “*steel industry is still under a strong overcapacity pressure*”¹⁸⁵⁵. Several policies set out in the 14th Raw Materials FYP also show an intent on keeping overcapacity in check. An example for such policies is the development of an appropriate industrial structure under which the Plan foresees a consolidation of the achievements of overcapacity cuts. More precisely, the Plan states that “[n]ew production capacity increases will be strictly controlled”, and that “*long-term working mechanisms preventing overcapacity shall be improved [...]*”¹⁸⁵⁶ etc.

However, since China discontinued its participation in the GFSEC, no precise figures exist as to whether or to what degree the objectives to reduce capacity have been achieved. According to the Plan, the creation of new capacity is not forbidden, as the Plan mentions that “[n]ew production capacity increases will be strictly controlled.” In that context the Plan foresees a prohibition of new projects that “*are included in the restricted and eliminated categories under the Guiding Catalogue for Industry Structural Adjustment*“. By contrast, the wording of the Steel Industry Development GO is much more concrete and prescriptive as it sets the clear objective “[t]o strictly prohibit new increases of steel production capacity. Resolutely curb the blind construction of the iron and steel smelting projects, strictly implement laws, regulations and policies on capacity replacement, project filing, environmental impact assessment, pollution discharge permits and energy assessment, and prohibit new increases of steel production capacity in the name of mechanical processing, casting, ferroalloys, etc.”¹⁸⁵⁷.

Causes

The existence of certain levels of overcapacity in the steel sector is not uncommon and is inherent, *inter alia*, to business cycles of the market¹⁸⁵⁸. However, sustained high levels of

¹⁸⁵¹ The Plan, Section I.(I).

¹⁸⁵² The objective for reduction of 100-150 mmt was embodied in the 13th FYP.

¹⁸⁵³ The Plan, Section I.(I).

¹⁸⁵⁴ Steel Industry Development GO, Section I (III).

¹⁸⁵⁵ Steel Industry Development GO, Introduction.

¹⁸⁵⁶ The Plan, Section IV (I).

¹⁸⁵⁷ Steel Industry Development GO, Section II (V).

¹⁸⁵⁸ OECD. (2015). *Excess capacity in the global steel industry: The current situation and ways forward*.

overcapacity throughout the years, which in a competitive situation would have otherwise resulted in market adjustments, are a strong indication of government intervention in that market¹⁸⁵⁹. As shown above in Section 14.1.2, this is precisely the situation existing in China, as also recognised by the State Council itself.

The combination of numerous industrial policies applied over a long period, the significant presence of SOE steel producers in the market, the role of state-owned financial institutions with the resulting effect of creating ‘*zombie companies*’, as well as the provision of a wide range of State support measures and other market distortive practices have fuelled massive irrational investment and lending in the steel sector, resulting in the current high levels of overcapacity. In other words, state ownership and various forms of state support have likely contributed to the crisis which has global trade and investment repercussions.

Effects

Amongst other effects, overcapacity causes a surge of exports and depression of steel prices world-wide, and hence destabilises global steel market¹⁸⁶⁰. In addition, overcapacity has also been found to negatively affect profitability¹⁸⁶¹. These negative effects are further amplified due to a situation of weakness in the sector and prospects of slow growth¹⁸⁶².

As a consequence, TDI investigations have continued to surge against Chinese steel imports in recent years¹⁸⁶³. For instance, in 2022 and until December 2023, the Commission launched twelve trade defence investigations against unfair trading practices relating to steel imports from China¹⁸⁶⁴. Other countries have launched numerous trade defence investigations against steel imports from China as well.

Reduction of overcapacity in China's steel sector: previous attempts

The Chinese authorities acknowledged previously that the steel sector was facing a serious problem of overcapacity and was trying to resolve it¹⁸⁶⁵. Already in the early 2000s, the Chinese authorities began to regard overcapacity as a growing problem. Although the context presented a positive situation of global growth, particularly boosted by a large internal demand for steel,

¹⁸⁵⁹ *Ibid.*, p. 3.

¹⁸⁶⁰ *Steel: Preserving sustainable jobs and growth in Europe*; Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank; COM(2016) 155 final, 16.3.2016; OECD, (2015), *Evaluating the Financial Health of the Steel Industry*.

¹⁸⁶¹ OECD, (2015), *Evaluating the Financial Health of the Steel Industry*; Kowalski, P. and Rabaioli D. (2017). *Bringing together international trade and investment perspectives on state enterprises*, OECD Trade Policy Papers, No. 201, OECD; SBB Briefing (10 April 2023).

¹⁸⁶² SBB Briefing (10 April 2023).

¹⁸⁶³ Measures on Iron & Steel sector in the EU amounted to 49% and 40% of the total AD and CVD cases initiated in the period 2018-first half of 2022 (most of which, on Chinese imports). Iron & steel cases represented 47% of the total investigations initiated by the Commission during this period. Amongst WTO members (excluding the EU) the measures on Iron & Steel amounted to 27% and 32% of the AD and CVD cases initiated in that period. In total, the investigations initiated by the other WTO members in the period 2018-first half of 2022, in the Iron & Steel sector amounted to 28% of all the investigations initiated.

¹⁸⁶⁴ See at: <https://tron.trade.ec.europa.eu/investigations/ongoing> (accessed on 5 December 2023).

¹⁸⁶⁵ It is acknowledged, *inter alia*, in the Plan for Adjusting and Upgrading the Steel Industry. However, a decade earlier, in 2006, the State Council had issued the Circular on Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy, where the overcapacity problem was already acknowledged for, *inter alia*, the iron and steel sector.

the Chinese authorities were concerned about a likely worsening of the situation in the future. There have therefore been several attempts to curb overcapacity over the years.

As noted above, already in 2003, the State Council issued a Notice highlighting the incipient problem of overcapacity in some sectors, including steel¹⁸⁶⁶. In 2006, the State Council issued the Circular on Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy¹⁸⁶⁷ warning about serious risks of further aggravation of the problem. The NDRC also issued the Notice on Preventing the Blind Re-expansion of High-Energy Consuming Industries¹⁸⁶⁸. In 2009, through the Blueprint for Steel Industry Adjustment and Revitalisation and the Urgent Notice of the MIIT requiring Local Governments to Curb Excessive Growth in Crude Steel Output¹⁸⁶⁹, the existence of even higher levels of overcapacity continued to be acknowledged.

Further attempts were made to resolve the overcapacity problem in 2013 through the Guiding Opinion of the State Council Regarding Resolving the Contradiction of Serious Overcapacity¹⁸⁷⁰, in 2015 through the Circular on Measures for the Implementation of Capacity Replacement in Industries with Serious Overcapacity¹⁸⁷¹ and in 2016 through the State Council's Opinions on Reducing Overcapacity in the Steel Industry to Achieve Development by Solving Difficulties¹⁸⁷².

However, the effectiveness of such policies appears inadequate.

The limited attempts that were made to reduce overcapacity in accordance with the 2013 plan were largely ineffective. For example, in late 2013, China's Hebei province staged an event during which demolition squads blew up blast furnaces owned by 15 mills, all shown on Chinese state television. According to the Wall Street Journal, however, "*[a]ll of the furnaces targeted for destruction turned out to be so outmoded that the companies that owned them didn't consider them spare capacity, steel-industry officials [said], meaning they didn't help reduce the province's extra volume*". In part due to the lack of progress closing capacity in Hebei, "*there is no reason to assume that [the government's 80-million tonne closure] target will be met*", let alone the larger level of capacity closure envisioned by China's newly announced plan¹⁸⁷³.

¹⁸⁶⁶ Notice of the General Office of the State Council Issuing the Several Opinions of the National Development and Reform Commission and Other Agencies Regarding Checking Blind Investment in the Steel, Aluminium, and Cement Sectors, Guo Ban Fa [2003] No. 103 (Dec. 23, 2003).

¹⁸⁶⁷ Circular on Accelerating the Structure Adjustment of the Industries with Production Capacity Redundancy, No. 11 (2006) of the State Council.

¹⁸⁶⁸ NDRC Notice on Preventing the Blind Re-expansion of High-Energy Consuming Industries, No. 1332 (2006), NDRC.

¹⁸⁶⁹ Urgent Notice of the MIIT requiring Local Governments to Curb Excessive Growth in Crude Steel Output, No. 191 (2009) of the MIIT.

¹⁸⁷⁰ Guiding Opinion of the State Council Regarding Resolving the Contradiction of Serious Overcapacity (6 October 2013).

¹⁸⁷¹ Circular on Measures for the Implementation of Capacity Replacement in Industries with Serious Overcapacity, No. 127 (2015), MIIT.

¹⁸⁷² See at: https://www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (accessed on 3 October 2023)

¹⁸⁷³ Price, A. Weld, C. El-Sabaawi, L. and Teslik, A. (2016). *Unsustainable: Government intervention and overcapacity in the global steel industry*, Wiley Rein LLP, pp. 7-8.

An official commitment to reduce steel overcapacity was also set out in the 13th FYP for Steel, i.e. the government sought to reduce China's steel overcapacity by 100-150 mmt by 2020. Once again, since China left the GFSEC in 2019, it has become difficult to get reliable data to assess whether or to what degree China has achieved this goal.

The most recent official documents, adopted at central level, dealing with the steel overcapacity issue are the 14th Raw Materials FYP and the Steel Industry Development GO. The Plan announced that the objective of reducing 150 mmt of steel production capacity has been achieved ahead of schedule and that for sectors struggling with serious overcapacity, balance had been restored between the total supply and demand. As to the future, the Plan set the following goals:

- *New production capacity increases will be strictly controlled. The production capacity replacement policies for steel will be improved and strictly implemented.*
- *Robust long-standing mechanisms will be established. Constraint mechanisms that employ such indexes as carbon emissions, pollutant emissions and total energy consumption to contain the expansion of excess production capacity will be put in place.*
- *Less competitive urban steel mills that are unable to meet the requirement of ultra-low emissions and those based in key areas for air pollution prevention and control will be shut down, reformed locally, or relocated and reformed, or seek transformation, so as to enable the transformation and upgrading of the industry.*
- *[...] mechanisms to shift production peaks shall be explored in the steel sector.*
- *Energy conservation reviews need to be implemented to strictly control the thermal coal consumption of major coal consumers, including sectors like steel. Long-term working mechanisms preventing overcapacity shall be improved and unimpeded reporting channels shall be made available.*
- *Joint law enforcement shall be strengthened, and sectoral early warnings shall be reinforced; fully use satellite monitoring, big data and other technological tools to intensify efforts to investigate and punish illegal acts of production capacity increase and keep up a high-pressure repression state.*

Notably, all these objectives lack specific, measurable targets. The capacity reduction is in a way mixed up with the objectives for emissions reduction. By monitoring the steel industry's emissions - which are expected to be lowered - the government wants to ensure that actual production capabilities fall, thereby reducing the steel overcapacity. Yet, the steel capacity reduction has no clear measurable targets, the outcome is meant to be derivative of emissions reduction. The Steel Industry Development GO simply notes that overcapacity remains a major issue alongside low industry concentration and other issues, and strict control over increased steel production capacity features nominally among the major tasks.

However, the fact that the 14th Raw Materials FYP and the Steel Industry Development GO do not contain any precise target for capacity reduction for the period 2021-25 is a sign that the level of ambition to tackle the overcapacity problem has decreased. This is also the case of the regional steel Plans. According to some mill sources, in April 2023, NDRC was still soliciting

opinions from major Chinese steel mills on details of the 2023 crude steel output cuts¹⁸⁷⁴. According to market intelligence, steel mills typically only receive verbal orders to cut output¹⁸⁷⁵.

Several conclusions can be drawn from the past attempts by Chinese authorities to curb overcapacity in the steel sector:

- *Root of the problem:* In the first place, the Government recognised, since more than a decade, that overcapacity has been a problematic issue that could grow out of control. This has in fact happened.
- *Ineffective attempts to solve the problem:* In this regard, it is important to highlight that, with the successive plans/directives, the Chinese authorities have de facto directly contributed to exacerbating a problem that was created by their own policies. The plans and directives have focused on the reduction of outdated/backward capacity and the closure of mills/furnaces of a certain (small) size. At the same time, an upgrade of the production system - moving towards the production of higher added value steel products - and a higher level of concentration in the sector have been encouraged, seeking to have a few ‘*national champions*’ in the sector¹⁸⁷⁶. This rendered the overcapacity reduction policies ineffective and resulted in an increase of total capacity, despite eliminating certain backward capacity.

Another obstacle identified for an effective implementation of the Government's policies has been the absence of market-based policies which in turn allow local governments to resist plant closures in order to avoid the consequences of loss of employment etc¹⁸⁷⁷.

Therefore, not only has China been unable to meet the capacity reduction requirements in the past, but it has also continued to build-up massive overcapacity throughout the years¹⁸⁷⁸, driven by the very measures directed at reducing it.

¹⁸⁷⁴ Soliciting opinions on steel output was done with a view to cutting output.

¹⁸⁷⁵ SBB Briefing (10 April 2023).

¹⁸⁷⁶ See Commission Implementing Regulation (EU) 2017/969, recital 247: ‘[...] it confirmed that there is a governmental policy in the PRC to develop large national champions (mostly state-owned) in the steel industry over smaller (mostly private) mills’. Also, in line with these objectives, the merger between Baosteel and Wuhan (both SOEs), gave rise to the world's first largest steel producer (2021): Baowu. See Reuters. (2016) *China completes merger that creates nation's biggest steel company* <http://www.reuters.com/article/us-china-steel-m-a-idUSKBN13Q3B0> (accessed on 3 October 2023). This policy continues in 2023, see: China to bring up more than 200 mmt/year of new capacity through swaps (SBB Daily Briefing, 10 April 2023).

¹⁸⁷⁷ OECD. (2015). *Excess capacity in the global steel industry: the current situation and ways forward*; The Economist Intelligence Unit. (2016). *The implications of steel capacity cuts*: <http://country.eiu.com/article.aspx?articleid=804209864&Country=China&topic=E>; European Chamber of Commerce in China. (2016). *Overcapacity in China: An Impediment to the Party's Reform Agenda*, p.16; Australian Anti-dumping Commission. *Analysis of steel and aluminium markets report to the Commissioner of the Anti-dumping Commission*, p. 48, 2016; Alloway, T. (2015). *Why China's Steel Mills Won't Cut Back Production*, Bloomberg <https://www.bloomberg.com/news/articles/2015-11-24/why-china-s-steel-mills-won-t-cut-back-on-production>; Stanway, D. and Lian, R. (2012) *Analysis: China steel mills too big to fail – or succeed*, Reuters, 3 May 2012. <https://www.reuters.com/article/us-china-steel/analysis-china-steel-mills-too-big-to-fail-or-succeed-idUSBRE84203620120503> (accessed on 3 October 2023).

¹⁸⁷⁸ OECD. (2017). *Capacity developments in the world steel industry*; Table 1: Crude steelmaking capacity developments.

14.7. CISA

CISA is the national Chinese association representing the Iron and Steel industry. According to its AoA¹⁸⁷⁹, the objectives of CISA are:

- Guided by the Party's line, principles and policies, adhere to the working principles by relying on members running the association, represent the interests of members and safeguard the legal rights and interests of members.
- Strive to serve members and the industry, keep providing services, expressing requests, carrying out activities complying with laws and regulations; strive to play the role of bridge and link between the government and members.
- Further build the association, build a high-quality and capable professional and expert team, and strive to build the association into an industry organization with domestic reputation and international influence.
- With the goal of being committed to the healthy development and sustainable prosperity of China's iron and steel industry, the Association actively promotes the high-quality development of China's iron and steel industry in order to strive and build a strong steel producing country.

Since the publication of the 2017 version of this Report, the CISA's AoA were modified in order to strengthen the links of the association with the CCP (see also Section 2.3.3).

According to Article 2 of the AoA, the Association “*abides by the Constitution, laws, regulations and national policies, implements the core values of socialism, promotes the spirit of patriotism, abides by social morality, and consciously strengthens the construction of integrity and self-discipline.*”

According to Article 3 of the AoA, CISA “*adheres to the overall leadership of the Communist Party of China. In accordance with the provisions of the Constitution of the Communist Party of China, it establishes an organization of the Communist Party of China, carries out Party activities and provides necessary conditions for the activities of the Party organization.*”

The entity in charge of the registration and management of CISA is the Ministry of Civil Affairs and the entity in charge of its Party building is central SASAC's Party Committee. According to its AoA, CISA accepts the guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management.

The position of the President of the Association is subject to a rotation system. The term of office is one year, which can be extended due to special circumstances. One of the conditions to be eligible for holding office within CISA's managerial structures is also the requirement to “[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the Party's line, principles and policies, and have outstanding political qualities”¹⁸⁸⁰, which again demonstrates the narrow links between CISA and the CCP.

¹⁸⁷⁹ See CISA Articles of Association, Article 2.

¹⁸⁸⁰ See Article 36 of the AoA.

14.8. CHAPTER SUMMARY

The steel industry is regarded as a key/pillar industry by the government. This is confirmed in numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. The government guides the development of the sector in accordance with a broad range of policy tools and directives related, *inter alia*, to market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading etc. Through these and other means, the government directs and controls virtually every aspect in the development and functioning of the sector (see Section 14.1).

For the last several decades Chinese policies have been to support the rise of '*national champions*' in the steel industry. To accomplish this, the Chinese authorities have employed an elaborate set of financial and other subsidies for the sector and engineered strategic mergers that consolidated the industry players. In this respect, SOEs are a key instrument through which the government continues to develop the steel sector, not least by promoting the creation of ever-larger steel producers. This is achieved through policies intended to shape the structure of the market, e.g. through mergers and regulation of market access. In addition, Chinese financial institutions play a key role in implementing the government's policies in the steel sector. They provide access to finance following the government's direction and implementing the government's policy objectives (see Section 14.3).

These elements combined present a picture of a sector heavily influenced by the government. In this regard, numerous trade defence investigations in various jurisdictions have confirmed that Chinese steel producers benefit from a wide array of State support measures and other market distortive practices such as export restrictions affecting raw materials and inputs (see Sections 14.4 and 14.5).

The overarching control of the government prevents free market forces from prevailing in the steel sector in China. The problem of overcapacity is arguably the clearest illustration of the implications of the government's policies and the distortions resulting therefrom. Overcapacity built up by China over years triggered a surge of low-priced Chinese exports causing a depression of steel prices globally and having a negative impact on, *inter alia*, the financial situation of steel producers worldwide. While the government has committed to addressing the overcapacity problem, in particular through the 14th Raw Materials FYP and the Steel Industry Development GO, it remains to be seen whether this and other targets for the sector are successfully met, given in particular that (i) during the 14th planning cycle, the declared objectives for the steel sector appear contradictory as far as overcapacity reduction is concerned¹⁸⁸¹ and (ii) following China's departure from GFSEC, it became very difficult to get any accurate information related to the reduction of overcapacity in China (see Section 14.6).

¹⁸⁸¹ According to the Plan, the "*increases will be strictly controlled*" while the Steel Industry Development and GO "*strictly prohibits new increases of steel production capacity*".

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15.1. INTRODUCTION

Following a brief overview of the Chinese aluminium industry, this chapter will first examine the policy documents steering the sector. Second, the chapter will give some concrete examples of distortions present in the aluminium sector, both with respect to corporate and institutional players, as well as concerning factors otherwise influencing the functioning of the aluminium market, for example in relation to costs of production. In addition, the chapter lists some examples of past distortions found in various trade defence investigations.

15.2. THE CHINESE ALUMINIUM MARKET

15.2.1. PRODUCTION

The production process of aluminium requires few main raw materials. The basic ingredient necessary for the production of aluminium is bauxite, mined in various locations around the world using open-cast mining technique. China is a major bauxite importer, as its domestic resources are not sufficient to meet its demand. Bauxite is then refined into alumina, a white powder, which is smelted into pure aluminium metal using a very energy-intensive process of electrolysis. As already explained in Chapter 10, electricity can represent up to 40% of the total production cost of aluminium. The finished products will then be manufactured using cast or wrought aluminium, depending on final use. In most cases pure aluminium is not suitable for industrial applications, but certain alloying elements need to be added, in order to improve the properties of the metal, such as corrosion resistance, machinability, ductility, weldability and strength at high temperatures. Alloying elements include manganese (strength and formability),

magnesium and silicon (strength and corrosion resistance), copper and zinc (higher strength), and titanium and chromium (grain size control)¹⁸⁸².

China is the world's main producer of primary aluminium, accounting for around 60% of the approximately 68.5 million tonnes of global output¹⁸⁸³ in 2022¹⁸⁸⁴. The two datasets in Figures 15.1 and 15.2 below provide full details of the primary aluminium and alumina production in various regions around the world, including China.

Figure 15.1: Primary aluminium production¹⁸⁸⁵

Period	Africa	North America	South America	Asia (ex China)	Western & Central Europe	Russia & Eastern Europe	Oceania	Gulf Cooperation Council	China (Estimated)	Estimated Unreported to IAI	Total
2022	1,620*	3,743	1,288*	4,591	2,913	4,081	1,843	6,074*	40,430*	1,878	68,461*
2021	1,590	3,880	1,163	4,499	3,329	4,139	1,888	5,889	38,837	1,878	67,092
2020	1,605	3,976	1,006	4,140	3,334	4,153	1,912	5,833	37,337	2,029	65,325
2019	1,643	3,809	1,079	4,395	3,449	4,157	1,916	5,654	35,795	1,760	63,657
2018	1,668	3,774	1,164	4,415	3,733	4,049	1,917	5,331	36,485	1,630	64,166
2017	1,679	3,950	1,378	3,951	3,776	3,999	1,817	5,149	35,905	1,800	63,404

¹⁸⁸² European Aluminium “The Aluminium Automotive Manual”, available at: <https://european-aluminium.eu/wp-content/uploads/2022/11/aam-materials-1-resources.pdf> (accessed on 14 August 2023).

¹⁸⁸³ OECD (2019), Measuring distortions in international markets: the aluminium value chain, OECD Trade Policy Papers, No. 218, OECD Publishing, Paris, p.41.; available at: <https://doi.org/10.1787/c82911ab-en> (accessed on 5 July 2023).

¹⁸⁸⁴ See World Aluminium Statistics, available at: <https://international-aluminium.org/statistics/primary-aluminium-production/> (accessed on 5 July 2023).

¹⁸⁸⁵ Available at: <https://international-aluminium.org/statistics/primary-aluminium-production/> (accessed on 8 August 2023).

Figure 15.2: Alumina production¹⁸⁸⁶

Period	Alumina Grade	Africa & Asia (ex China)	North America	South America	Western & Central Europe	Russia & Eastern Europe	Europe (inc Russia)	Oceania	China (Estimated)	Estimated Unreported to IAI	Total
2022	Total	13,792	2,414	11,634			8,219	20,116	79,760*	4,148	140,083*
2021	Total	13,210	2,523	12,111			10,400	20,936	75,259	4,148	138,587
2020	Total	12,395	2,671	11,780	5,618	4,597		21,171	71,010	3,836	133,078
2019	Total	10,329	2,932	10,739	5,738	4,447		20,491	71,284	5,950	131,910
2018	Total	8,936	2,869	9,991	5,855	4,479		20,365	71,547	6,500	130,542
2017	Total	8,382	3,033	12,713	5,890	4,499		20,783	70,699	6,391	132,390

Despite its production levels, in 2019, China exported only about 578 000 tonnes of primary aluminium, which represented less than 2% of its production volume in that same year¹⁸⁸⁷. This is because China's policies, including export taxes on primary aluminium and incomplete VAT rebates on exports of certain aluminium products, discourage exports of primary aluminium and encourage production (and export) of semi-finished products ('*semis*')¹⁸⁸⁸ and fabricated articles of aluminium¹⁸⁸⁹ (see Section 15.5.2). The access to cheap inputs has enabled Chinese producers of semis to expand production and compete in global markets at lower cost. Primary aluminium accounts for about 75-86% of total production costs for semis, which makes competitiveness in the semis segment largely dependent on the cost of procuring such primary aluminium¹⁸⁹⁰. Therefore, any distortions in relation to primary aluminium in China would likely be carried over down the supply chain and are reflected as trade distortions also in the market for semis.

Finished aluminium products include cast aluminium and wrought aluminium, depending on the last step in the production: either casting or rolling, forging or extruding into its final shape. The main wrought aluminium categories are flat-rolled products, extrusions and wire and cables, with China leading in all three categories.

¹⁸⁸⁶ Available at: <https://international-aluminium.org/statistics/alumina-production/> (accessed on 8 August 2023).

¹⁸⁸⁷ OECD (2021), "Measuring distortions in international markets: Below-market finance", *OECD Trade Policy Papers*, No. 247, OECD Publishing, Paris, p. 51; available at: <https://doi.org/10.1787/a1a5aa8a-en>. (accessed on 8 August 2023). In value terms, according to the China Statistical Yearbook (see the 2021 edition, Section 11-4, available at: <http://www.stats.gov.cn/sj/ndsj/2021/indexeh.htm> (accessed on 31 August 2022), in 2020, China exported roughly RMB 170 billion worth of aluminium and aluminium products.

¹⁸⁸⁸ Aluminium semi-finished products (also called semis) include sheet, strip, plate, profiles, rod and bar, tube, wire, forgings etc.

¹⁸⁸⁹ Measuring distortions in international markets: the aluminium value chain, p.6.

¹⁸⁹⁰ *Ibid.* p. 15.

Since the publication of the 2017 version of this Report, the Commission conducted investigations and established distortions (and dumping) in the following aluminium products: aluminium converter foil, aluminium extrusions, aluminium flat-rolled products, aluminium foil (certain), aluminium foil in rolls and aluminium road wheels (see also Section 15.6).

15.2.2. GEOGRAPHICAL DISTRIBUTION OF THE ALUMINIUM INDUSTRY

As a result of the drive to consolidate the industry and create large producers, the so-called ‘*national champions*’, China’s aluminium SOEs are now among the largest producers in the world (see Section 15.4.1). The aluminium industry is concentrated in a number of provinces, which for geographical reasons have better conditions to support the industry. Provinces with rich resources, mainly bauxite, are attractive locations for aluminium producers, along with provinces allowing access to cheap electricity. In China, the largest bauxite deposits are located in Shanxi, Henan, Guangxi Zhuang autonomous region and Guizhou¹⁸⁹¹. The main Chinese alumina producing provinces are Henan, Shandong, Guangxi, Xinjiang, Inner Mongolia, Shanxi and Guizhou. Main electrolytic aluminium producers are Shandong, Xinjiang and Inner Mongolia, but there are production plants also in other provinces, such as Yunnan and Guangxi, which recently became an attractive location due to cheap renewable electricity¹⁸⁹².

Hongqiao (the world’s largest aluminium producer) and Xinfu Group were ordered to close a combined 3.21 million tonnes of illegal capacity in 2017 in Shandong, giving Henan the lead in the Chinese aluminium production at that time¹⁸⁹³. According to certain data, Shandong was again in the lead in 2022 producing again more aluminium than Henan¹⁸⁹⁴. Due to an increased focus on environmental issues, some capacity is being moved from heavily coal-dependent provinces to provinces with clean energy sources. For example, in 2021, Hongqiao announced a move of 1.93 million tonnes of aluminium capacity to Yunnan, where hydropower constitutes 75% of electricity sources, as from 2023¹⁸⁹⁵. The ultimate goal is to relocate about 60% of

¹⁸⁹¹ China Daily: Guizhou province becoming major hub for aluminium producer, available at: <https://www.chinadaily.com.cn/a/201909/03/WS5d6db643a310cf3e35569508.html> (accessed on 8 August 2023).

¹⁸⁹² “According to statistics, as of December 2022, the built-up production capacity of electrolytic aluminium in Shandong, Xinjiang, Inner Mongolia, and Yunnan provinces were 7.92, 6.38, 6.37, and 5.38 million tons, respectively, accounting for the national total. 17.6%, 14.2%, 14.2% and 12.0% of the built-up production capacity, the four provinces together accounted for 57.9%, [of China’s aluminium production]. From the perspective of power generation sources, the production of electrolytic aluminium in Shandong, Xinjiang and Inner Mongolia mainly relies on thermal power, while Yunnan and Guangxi mainly rely on hydropower, and the total production capacity of the two places accounts for 18.8%.” See Sealand Securities, Special Research on Electrolytic Aluminum Industry, page 13, available at: https://pdf.dfcfw.com/pdf/H3_AP202303141584260663_1.pdf?1678831864000.pdf (accessed on 8 August 2023).

¹⁸⁹³ Reuters. China’s Henan leapfrogs Shandong to become top aluminium producing region, available at: <https://www.reuters.com/article/china-economy-output-aluminium-idAFL2N1PH099> (accessed on 8 August 2023).

¹⁸⁹⁴ See detailed production distribution among provinces, available at: <https://m.chinabgao.com/top/output/67169.html> (accessed on 8 August 2023).

¹⁸⁹⁵ Reuters, China Hongqiao to move aluminium smelting capacity to Yunnan province, available at: <https://www.reuters.com/markets/commodities/china-hongqiao-move-aluminium-smelting-capacity-yunnan-province-2021-12-28/> (accessed on 8 August 2023).

Hongqiao's 6.46 million metric tons of production capacity from Shandong to Yunnan province¹⁸⁹⁶.

The table below identifies the main provinces producing aluminium and the main producers, with information about ownership status, where available:

Province	Main producers
Henan Province ¹⁸⁹⁷	Shenhua Henan branch (SOE) Zhongfu Industry Group Chalco Henan branch (SOE) <i>Jiaozuo Wanfang Aluminium Manufacturing Company</i> Linfeng Aluminium Henan Yugang Longquan Aluminium Industry <i>Henan Wanji Aluminium (SOE)</i>
Shandong Province ¹⁸⁹⁸	Hongqiao/Weiqiao Xinfa Group Shandong branch Shandong Nanshan Aluminium (SOE)
Xinjiang Uyghur Autonomous Region ¹⁸⁹⁹	Shandong Xinfa Aluminium Xinjiang East Hope Nonferrous Metals Xinjiang Tianshan Aluminium Xinjiang Qiya Aluminium & Power Xinjiang Shenhua Coal and Electricity (SOE) Xinjiang Jiarun Resources Holdings Xinjiang Joinworld Xinjiang Tianlong Mining (SOE)
Inner Mongolia Autonomous Region	Inner Mongolia Chuangyuan Metal Baotou Aluminium Factory (SOE) Baotou Oriental Hope Aluminium Co
Qinghai Province	Qinghai Provincial Investment Group (SOE) Qinhai Qiatou Aluminium and Power Co. Ltd. (SOE) Chalco Qinghai branch (SOE)

¹⁸⁹⁶ Aluminium Insider. Hongqiao To Move Additional 1.93 MM MTPA Of Aluminium Smelting Capacity To Yunnan Province, available at: <https://aluminiuminsider.com/hongqiao-to-move-additional-1-93-mm-mtpa-of-aluminium-smelting-capacity-to-yunnan-province/> (accessed on 8 August 2023).

¹⁸⁹⁷ Capacity of the province in 2022: 10.94 million tonnes; see at: <https://m.chinabgao.com/top/output/67169.html> (accessed on 8 August 2023); Henan Shenhua moved some capacity to Yunnan; see at: Reuters. China's Henan Shenhua to start up Yunnan aluminium smelter on Dec. 31: <https://www.reuters.com/article/china-aluminium-shenhua-idUSL4N2900FH> (accessed on 8 August 2023).

¹⁸⁹⁸ Capacity of the province in 2022: 13.43 million tonnes, out of which large part to be moved to Yunnan; *Ibid.*

¹⁸⁹⁹ Capacity of the province estimated at around 1.77 million tonnes in 2022; *Ibid.*

Gansu Province	Gansu Dongxing Aluminium Jiayuguan Branch (SOE) Chalco Lanzhou branch (SOE) Chalco Liancheng branch (SOE)
Guangxi Province	Chalco Guangxi branch (SOE) Guangxi Baise Yinhai Aluminium (SOE) Xinfa Aluminium Guangxi branch Guangxi Laibin Yinhai Aluminium (SOE)
Yunnan Province	Yunnan Aluminium (SOE) Hongqiao (announced transfer of capacity from Shandong, as from 2023) Yunnan Dongyuan Coal Industry Group Qujing Aluminium Industry (SOE)
Guizhou Province	Chalco Guizhou branch (SOE)
Ningxia Hui Autonomous Region	SPIC Ningxia Energy and Aluminium (SOE)
Sichuan	Sichuan Aostar Guangyuan Aluminium Smelter Chongqing Qi'neng Power and Aluminium (SOE) Sichuan Emei Aluminium Plant
Shanxi	SPIC Shanxi Aluminium (SOE) Chalco Shanxi branch (SOE)
Liaoning	China Zhongwang Holdings
Zhejiang	Hangzhou Jinjiang Group

15.2.3. OVERCAPACITY

15.2.3.1. OVERVIEW

Since the early 2000s, and particularly in the last decade, the Chinese aluminium industry has experienced massive growth, both in alumina and primary aluminium production and accounted for the vast majority of the production capacity increase in the aluminium sector worldwide¹⁹⁰⁰. Several factors have played a role in this massive capacity expansion in China. The upward trend can be partially explained by an increase in the domestic and global demand, which attracted investment in the sector. At the same time, as explained in Section 15.1.5.3., there are examples of State-owned aluminium producers benefitting from lower energy costs due to government intervention, in addition to the generally favourable access to finance for Chinese

¹⁹⁰⁰ European Union Chamber of Commerce in China. (2016): *Overcapacity in China: An Impediment to the Party's Reform Agenda*, p.19.

SOEs (see Chapter 6.). Aluminium production is energy-intensive¹⁹⁰¹ and unlike other major aluminium producing countries, China does not enjoy a particular comparative advantage resulting in lower energy costs. Therefore, any government action influencing such an important cost element provides an artificial advantage to Chinese aluminium producers. As a consequence, this and other types of government support have contributed to an increase in production capacity, which would not have otherwise occurred in the absence of such support. This has led to the existing problem of overcapacity in the sector.

15.2.3.2. CURRENT SITUATION AND PREVIOUS ATTEMPTS TO CURB OVERCAPACITY

As is true for certain other sectors of the Chinese economy, most notably steel (see Section 14.6), the Chinese aluminium sector has faced a serious problem of overcapacity. According to official Chinese data, electrolytic aluminium production capacity increased from 5.54 million tonnes in 2003 to 26 million tonnes in 2012, with an average annual growth rate of 18.7%¹⁹⁰². From 2008 to 2011, the capacity utilization rate did not exceed 75%. In 2012, when the aluminium production capacity reached 26 million tonnes, the actual output was 19.88 million tons, and the capacity utilization rate was about 76%¹⁹⁰³. It is estimated that in 2015 there were 9.2 million tonnes of overcapacity in the Chinese aluminium sector, increasing from 4.9 million tonnes in 2008¹⁹⁰⁴. The growth in capacity was uncontrolled and for example in 2013, even 85% of newly added capacity lacked approval¹⁹⁰⁵. In recent years, the growth slowed down. For example, between 2019 to 2020, the increase in production amounted to some 3.3%¹⁹⁰⁶. For 2022, the Chinese aluminium sector's production capacity was estimated at 44.3 million tonnes and functioning at a 92% capacity utilisation rate¹⁹⁰⁷.

The problem of overcapacity has been widely acknowledged by the Government which, since the early 2000s, has launched several attempts aimed at reducing overcapacity and curbing production in the sector. Though the Government has tried to limit project approvals and even halt them, new capacity has still emerged, often without authorisation but with implicit support from local governments. A 2015 analysis by the State Information Centre under the NDRC identified the following problems:

- *in 2012, 93% of electrolytic aluminium enterprises in the country [were] in a state of loss, relying on local government subsidies; [...]*

¹⁹⁰¹ Communication from the Commission to the European Parliament, the European Council and the Council: *Towards a robust trade policy for the EU in the interest of jobs and growth* (2016), p.2; European Union Chamber of Commerce in China. (2016): *Overcapacity in China: An Impediment to the Party's Reform Agenda*, p. 19.

¹⁹⁰² State Information Centre: Analysis of China's aluminium industry overcapacity issues and solutions, available at: <http://www.sic.gov.cn/News/455/4113.htm> (accessed on 8 August 2023).

¹⁹⁰³ *Ibid.*

¹⁹⁰⁴ European Union Chamber of Commerce in China. (2016): *Overcapacity in China: An Impediment to the Party's Reform Agenda*.

¹⁹⁰⁵ Economic Information Daily: 'Crazy' expansion of aluminium capacity to the western regions; available at: http://www.jjckb.cn/2013-04/01/content_436837.htm (accessed on 8 August 2023).

¹⁹⁰⁶ Reuters, Home, A., Column: China's aluminium juggernaut may be running out of road,; available at: <https://www.reuters.com/article/us-metals-aluminium-ahome-column-idUSKBN27F1TY> (accessed on 8 August 2023).

¹⁹⁰⁷ Stainless Espresso: Chinese aluminium output close to legal capacity limit?; available at: <https://steelnews.biz/chinese-aluminium-output-close-legal-capacity-limit/> (accessed on 8 August 2023).

- enterprises [were] small and scattered;
- intervention of local governments
 - [which] attracts and encourages investment in electrolytic aluminium enterprises through various preferential conditions, resulting in blind expansion of production capacity
 - in order to prevent enterprises from stopping production or moving out, implement subsidies for electrolytic aluminium enterprises, such as using electricity price subsidies, carrying out direct power supply for large users
- short-sighted behaviour of enterprises
 - [as] threshold of the electrolytic aluminium industry is low, [...] most enterprises with sufficient funds will have the impulse to invest in the electrolytic aluminium industry¹⁹⁰⁸.

Apart from permitting new projects, local governments also implemented policies that directly ran counter to central directives. For example, in May 2010, the NDRC published the Notice on Cleaning Up Preferential Electricity Prices for High Energy Consumption Enterprises¹⁹⁰⁹, prohibiting local governments from providing cheap electricity to energy intensive enterprises including certain aluminium enterprises¹⁹¹⁰. However, because of an abundance of coal and cheap coal-fired electricity, western provinces like Shaanxi, Ningxia, Qinghai and Gansu did not cease their preferential electricity price policies¹⁹¹¹ (see Section 10.2.1.2.2). For example, from 2012 to 2016, Xinjiang's yearly aluminium output increased from 1.02 million to 6.37 million tonnes, making up approximately 20% of domestic production. By June 2017, total aluminium capacity in Xinjiang amounted already to 7.68 million tonnes. According to certain data, in 2021 the production capacity of electrolytic aluminium in Xinjiang was 6.53 million tons per year with projections of an output of 5.99 million tons in 2022¹⁹¹². This is likely because in 2015, in Xinjiang, the cost of electricity was 37.3% lower than the average electricity price for the national electrolytic aluminium industry¹⁹¹³. In recent years, with the increasing environmental requirements regarding electricity production, provinces with clean electricity sources have become attractive locations for electrolytic aluminium production, such as Yunnan, which is rich in hydropower¹⁹¹⁴.

¹⁹⁰⁸ State Information Centre: Analysis of China's aluminium industry overcapacity issues and solutions; available at: <http://www.sic.gov.cn/News/455/4113.htm> (accessed on 8 August 2023).

¹⁹⁰⁹ Available at: http://www.gov.cn/zwqk/2010-05/17/content_1607555.htm (accessed on 9 August 2023).

¹⁹¹⁰ Yicai: Aluminium capacity expansion continued, despite suffering from overall losses; available at: <https://www.yicai.com/news/1960999.html> (accessed on 9 August 2023).

¹⁹¹¹ Economic Information Daily: Worrying over growth downturns, western region releasing preferential policies to support high energy consumption industries; available at: http://jckb.xinhuanet.com/2012-07/24/content_389459.htm (accessed on 9 August 2023).

¹⁹¹² See MySteel: https://m.mysteel.com/23/0313/10/A887BF330F8504BE_abc.html (accessed on 9 August 2023).

¹⁹¹³ China Bond Rating (original source unavailable): Xinjiang Uyghur Autonomous Region's aluminium industry development for the past seven years; available at: <https://news.cnal.com/2017/06-20/1497923483480254.shtml> (accessed on 9 August 2023).

¹⁹¹⁴ Shandong Weiqiao to move 2.03 MT aluminium capacity from Shandong to hydro power rich Yunnan; available at: <https://www.alcircle.com/news/shandong-weiqiao-to-move-203-mt-aluminium-capacity-from-shandong-to-hydro-power-rich-yunnan-49505> (accessed on 9 August 2023).

In view of the above, China still is reorganising the aluminium industry in order to reach the goals of capacity control, consolidation and greener production methods. Over the last nearly twenty years, a number of measures to this end were put in place¹⁹¹⁵, including more recently:

- NDRC, MIIT, Ministry of Land and Resources (‘MLR’) and MEP Notice on a Special Action Work Plan for Rectifying Illegal and Irregular Projects in the Electrolytic Aluminium Industry (2017/ 656)¹⁹¹⁶;
- MIIT Notice on Matters Concerning the Implementation of Capacity Replacement by Electrolytic Aluminium Enterprises through Mergers and Reorganizations and Other Methods (2018/12)¹⁹¹⁷.

In 2017, China set a cap on total aluminium production capacity at 45 million tonnes¹⁹¹⁸, after which no new capacity additions will be allowed. The initiatives at the central level to curb aluminium capacity are also reflected in a number of regulations at the provincial level, such as the 2017 Henan Province Action Plan to Resolve Excess Capacity¹⁹¹⁹, and the 2017 Shandong Province Coal Consumption Reduction Alternative Work Action Plan, requiring closure of illegal aluminium production capacity of 2.68 million tonnes by Weiqiao and 530 000 tonnes by Xinfu Group¹⁹²⁰.

However, since the Government started adopting policies to reduce overcapacity, there have been consistent concerns about the actual effectiveness of these measures, due to opposition from some local governments with a strong aluminium industry presence¹⁹²¹. The reluctance of local authorities to comply with the Government's measures was, inter alia, due to the fact that closing aluminium smelters would lead to unemployment and risk of social instability¹⁹²². As a result, overcapacity still persists in the Chinese aluminium market.

¹⁹¹⁵ See Section 15.5.2. of the 2017 version of this Report for more details concerning the earlier policy measures.

¹⁹¹⁶ Available at: <https://img06.mysteelcdn.com/wz/uploaded/youse/2017/05/12/145058.pdf> (accessed on 9 August 2023).

¹⁹¹⁷ Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/yclgy/art/2020/art_3ead75b190a9484fa08ae90bce6cf4ba.html (accessed on 9 August 2023).

¹⁹¹⁸ See at: https://pdf.dfcfw.com/pdf/H3_AP202112281537153569_1.pdf (accessed on 9 August 2023). In fact, the figure 45 million tons per year is not explicitly provided in any policy documents to be the aluminium production cap. However, it is the factual figure of China's aluminium production capacity by 2018 - see the Letter on Reply to Proposal No. 2236 (GJST 161) of the First Meeting of the 13th National Committee of the Chinese People's Political Consultative Conference, available at: https://www.miit.gov.cn/zwgk/jytafwgk/art/2020/art_9c5716cb5317439db5c637db2315be25.html (accessed on 9 August 2023). The Catalogue of Investment Projects Subject to the Approval of Governments (issued by the State Council in December 2016, available at: http://www.gov.cn/zhengce/content/2016-12/20/content_5150587.htm, accessed on 9 August 2023), explicitly prohibited any new filing or approval of any electrolytic aluminium projects, hence the figure of 45 million tons per year is widely quoted as China's production capacity cap.

¹⁹¹⁹ See at: <https://www.henan.gov.cn/2017/07-03/239754.html> (accessed on 9 August 2023).

¹⁹²⁰ See at: <http://finance.sina.com.cn/chanjing/gsnews/2017-08-08/doc-ifyitamv7144463.shtml> (accessed on 9 August 2023).

¹⁹²¹ Sanderson, H. (2017). *Call to tackle China's soaring aluminium output*, Financial Times; available at: <https://www.ft.com/content/2f255636-0b21-11e7-ac5a-903b21361b43> (accessed on 15 March 2023).

¹⁹²² AME Research. (2015). *Smelting Subsidies Grow as Aluminium Price Falls*, available at: <http://www.amegroup.com/Website/FeatureArticleDetail.aspx?faId=156> (accessed on 9 August 2023);

15.3. REGULATORY FRAMEWORK

Aluminium is a very strictly regulated industry, and the Government plays a key role in the development of the sector. The plans, directives, guidelines and other documents described in this section show the extent of Government influence and intervention exerted over the sector.

15.3.1. THE CENTRAL LEVEL SECTORAL 14TH FYPs AND STANDARD CONDITIONS APPLICABLE TO THE ALUMINIUM INDUSTRY

The 14th Raw Materials FYP¹⁹²³ includes provisions concerning aluminium. Aluminium products are covered by the provisions of the 14th Raw Materials FYP that are horizontally applicable to raw materials¹⁹²⁴, but the Plan also contains a number of provisions that refer explicitly to aluminium products, such as the requirement to “[i]mplement actions to consolidate and improve bulk basic materials and, on the basis of optimised production processes, guide enterprises to use the new generation information technologies such as industry internet so as to improve the overall competitiveness of [...], high-strength aluminium alloy, [...]”¹⁹²⁵ or the calls for capacity control in the aluminium sector: “[s]trictly control newly increased production capacity. Improve and strictly implement production capacity replacement policies for [...] the electrolytic aluminium sector, prevent the blind and disorderly development of [...] and aluminium oxide”¹⁹²⁶.

The 14th Raw Materials FYP also entails geographical distribution of different industries in China. The chapter “Ensure guidance towards a reasonable layout” reads as follows: “Improve the layout of new production capacities. Implement national and regional key strategies, coordinated regional development strategies, and key functional areas strategies, and encourage the raw materials industry to optimize and adjust spatial layout. [...] Ensure the orderly arrangement of projects using overseas resources such as aluminium oxide projects in coastal areas” The plan further envisages creation of industrial clusters: “Foster the development of standardized industry clusters. [...], foster the shift in the layout of the electrolytic aluminium sector from “coal — electricity — aluminium” to “hydropower, wind power and other clean energy sources — aluminium”¹⁹²⁷.

The 14th Raw Materials FYP lastly provides for transformation of the aluminium sector, through the promotion of advanced technologies: “We [shall] do research and promote ultra-low emissions in key sectors including chemical, coking, electrolytic aluminium [...]”¹⁹²⁸.

1923 Reuters. (2009). *China tries, again, to curb industrial overcapacity*. Available at: <https://www.reuters.com/article/idUSPEK159245> (accessed on 15 March 2023). Full text of the plan available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 9 August 2023).

1924 For example Sections II.(II)-(IV) and IV(II)-(IV) of the 14th Raw Materials FYP.

1925 Section III.3 of the 14th Raw Materials FYP.

1926 Section IV.1 of the 14th Raw Materials FYP.

1927 See Section IV(II) of the 14th Raw Materials FYP.

1928 See Section V(II) of the 14th Raw Materials FYP.

A number of industry guidance elements for the aluminium sector are also included in the 14th FYP on the Green Development of Industry¹⁹²⁹. The Plan underlines the importance of capacity control: “Strictly implement capacity replacement policies for industries such as steel, cement, flat glass and electrolytic aluminium”¹⁹³⁰. Furthermore, the Plan envisages technological reforms to reduce red mud discharge from the alumina production process as well as to promote efficient low-carbon aluminium electrolysis.

In addition to the sectoral FYPs, the Standard Conditions Applicable to the Aluminium Industry (2020) (‘Standard Conditions’)¹⁹³¹, issued by the MIIT in 2020 (replacing the 2013 version of the document), set the overall framework for the operation of the aluminium industry at the central level. Nominally, the Standard Conditions pursue the objective to: “promote the supply-side structural reform of the aluminium industry, promote the technological development of the industry, and promote the high-quality development of the industry” and specify their scope as follows: “The standard conditions are applicable to bauxite mining, alumina, electrolytic aluminium, and secondary aluminium enterprises”.

The Standard Conditions provide that all industry participants within their scope are obliged to comply with the industrial policies and plans¹⁹³²:

Bauxite mining, alumina, electrolytic aluminium and secondary aluminium production must comply with national and local industrial policies, mineral resource plans, environmental protection and energy conservation laws, regulations and policies, mining laws, regulations and policies, safety production laws, regulations and policies, industry development plans and other requirements.

Consequently, the Standard Conditions complement the relevant legal framework, making it even more explicit that both SOEs and private enterprises must comply with governmental guidance concerning the development of the aluminium sector.

15.3.2. 14TH FYPs AND OTHER POLICY MEASURES AT SUB-CENTRAL LEVELS

While the central level 14th FYPs provide rather general guidance concerning the development of the aluminium industry, the provincial and local plans are much more detailed and specific, providing detailed goals and targets encompassing every aspect of the industry’s development. The extent of China’s management of the aluminium industry at the sub-central level is evident in the guidance documents released by these provincial and local authorities. For example, as will be shown below, Shandong province sets out specific industrial targets falling under the chapeau of aluminium industry modernisation. The provinces of Henan and Yunnan also adopt a number of measures intervening deeply into the aluminium industry, including with respect

¹⁹²⁹ See 14th FYP on the Green Development of Industry. Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_4ac49eddca6f43d68ed17465109b6001.html (accessed on 9 August 2023).

¹⁹³⁰ See Section III.2 of the Plan.

¹⁹³¹ Standard Conditions Applicable to the Aluminium Industry (Announcement 6), issued by MIIT on 28 February 2020, https://www.miit.gov.cn/zwgk/zcwj/wjfb/yclgy/art/2020/art_824a381780ea4607821b89b4b848976e.html (accessed on 9 August 2023).

¹⁹³² See Point 1.1. of the Standard Conditions.

to reorganisations, mergers, relocations, strict production targets, and capacity caps -- with additional funding foreseen for those purposes.

In addition, in recent years, China has put a strong focus on the green development of various industries, including the very energy-intensive aluminium sector. However, the measures implemented according to the plans often go beyond strictly environmental actions and the aluminium sector remains closely monitored, steered and, to a large extent, shaped by governmental intervention which goes well beyond general support to a country's industry, amounting instead to strict control and governmental management of every aspect concerning the industry.

15.3.2.1. MEASURES AT THE PROVINCIAL LEVEL

15.3.2.1.1. Shandong

One example of provincial level policy measures is the Shandong Province 14th FYP on Aluminium Industry Development (‘*Shandong Plan*’)¹⁹³³. The Shandong Plan starts by listing the achievements in developing the aluminium industry during the 13th FYP period, including construction of leading aluminium enterprises: “*A constellation of aluminium-processing backbone enterprises has been formed, including Shandong Weiqiao Pioneering Group Co. Ltd., Shandong Xin Fa Group Co. Ltd., Shandong Nanshan Aluminium Co. Ltd., Shandong Innovation Metal Co. Ltd., Longkou Conglin Aluminium Material Co. Ltd., Shandong Huajian Aluminium Group Co., Ltd. and Shandong Sanxing Group [...].*”

Further, the Shandong Plan sets out general goals for the local aluminium industry development, including: “[...] *give full play to advantages of the scale of the aluminium industry in the province and focus on the aluminium deep-processing industry, effectively enhance the industry’s innovation capacity, deeply promote the extension of industry chains, strive to achieve a reasonable structure for the aluminium industry, optimise the layout, improve quality and efficiency and speed up the shaping of Shandong as a world-class, high-end aluminium industrial base*”¹⁹³⁴.

The Shandong Plan then lists some very specific targets, for example: “*By 2025, the value of aluminium industry output will reach RMB 800 billion, the end-products’ market size shall continue to expand, with high value-added products accounting for over 60%, and the ratio of aluminium material production volume / electrolytic aluminium production volume will exceed the national average, reaching 2.5:1. The province will evolve into a major aluminium industrial cluster with significant domestic and overseas influence.*” And further: “*By 2025, the production capacity of electrolytic aluminium and aluminium oxide will be controlled, the electrolyzers will reach the advanced production capacity of 400 kA and beyond, and the energy consumption (direct current) per tonne of aluminium for electrolytic aluminium will be reduced to about 12 500 kWh*”¹⁹³⁵.

¹⁹³³ See <https://h5.drcnet.com.cn/docview.aspx?version=integrated&docid=6289467&leafid=3046&chnid=1024> (accessed on 9 August 2023).

¹⁹³⁴ See Section II.1 of the Shandong Plan.

¹⁹³⁵ See Section II.3 of the Shandong Plan.

The Shandong Plan also contains a number of instructions as to the location of the aluminium plants. The Plan calls for the strengthening of specific areas: “*the three core areas: Binzhou, Liaocheng and Yantai, and the two functional areas: Weifang and Linyi.*” For each of those areas, the Shandong Plan is very specific as to the production facilities and materials to be manufactured in each location. As an example illustrating the level of detail of the Plan, for the Binzhou location, the following is envisaged:

Build the core area of Binzhou, characterized by the presence of the entire industry chain, and shape the city industry layout with Zouping, Binzhou Economic and Technological Development Zone and Beihai Economic Development Zone as centres. Give play to the role of leading and backbone enterprises so as to further expand the production scale and the advantages of a whole industrial chain, focus on the development of five main areas including lightweight and high-strength aluminium alloys, aluminium sheets and foils, 3C electronics, lightweight vehicles, and aluminium home furnishing. Ensure breakthroughs in the development of mid-to high-end products such as pistons, car wheels and hubs, automotive plates, and high-performance aluminium-alloy forgings for automotive chassis, and end-products made with aluminium instead of steel, wood, plastic and others. With the support of scientific and technological research and development platforms such as Weiqiao Guoke Binzhou Science and Technology Park, breakthroughs will be made in the areas of high-purity aluminium, aluminium-based composite materials, special-sized component preparation technologies and aluminium-alloy welding technologies. Speed up the construction of the Shandong Aluminium Valley public-service platform and unleash the supporting and driving forces of public services, commodity trading, finance, logistics and technological innovation, in order to create a “China Aluminium Valley”¹⁹³⁶.

In addition, the Shandong Plan identifies four sectors in the aluminium industry which need to be developed/strengthened: aluminium smelting, aluminium alloys, aluminium-based composites, aluminium processing and deep-processing. For each of these aluminium processing types, the plan sets out concrete goals and objectives to be achieved in the next 5 years, such as “[t]o focus on making breakthroughs in energy-saving and consumption-reducing technologies” and “to improve the preferential fiscal and tax policies for aluminium recycling, to support the upgrading and transformation of equipment of aluminium-recycling enterprises” with respect to aluminium smelting, “[t]o speed up the development of aluminium matrix composite materials in the fields of aerospace, nuclear energy, automobile transport, and electronic packaging, for instance, [t]o enlarge the research scope of reinforcing phases for aluminium matrix composites and to deepen the understanding of the reinforcement-phase strengthening mechanism” in the case of aluminium-based composites etc¹⁹³⁷.

Furthermore, the Shandong Plan suggests that the local municipalities formulate their own FYPs to ensure coordinated development of the industry throughout the province:

¹⁹³⁶ See Section III.1 of the Shandong Plan

¹⁹³⁷ See Sections IV.1-4 of the Shandong Plan.

*“Municipalities should build on this plan to draw up regional aluminium industry development plans so as to achieve a coordinated development of the industry”*¹⁹³⁸.

Finally, the Shandong Plan sets out financial and other support measures for the local aluminium enterprises: *“Increase policy and regulatory support. Actively implement various national and provincial-level support policies, provide support to eligible industrial clusters, key products and key technologies. Support enterprises undertaking major national and provincial projects. Make good use of the package of policies supporting key energy transition projects, foster pioneering enterprises by providing support from aspects including fiscal incentives, land supply, green energy allocation, tax cuts, and technological innovations, and implement tax incentives for aluminium recycling. Encourage provincial-level equity investment funds to invest in the R&D and industrialisation of new key products, and attract investment from social capital”*¹⁹³⁹.

Other than the Shandong Plan, the province also has in place the Shandong Province Implementing Plan on Fostering Advanced Manufacturing Clusters and Creating High Quality Manufacturing Development and Demonstration Areas 2021-2025¹⁹⁴⁰, which includes specific local measures to support the aluminium industry. Point 2.10 of the document provides the following¹⁹⁴¹:

Binzhou Lightweight Aluminium New Material Industry Cluster. Take the Binzhou Aluminium Industry Association as the main body to promote the development of the cluster, with the "World Aluminium Valley" in Binzhou City as the centre, rely on Shandong Weiqiao, and take Bohai Science and Technology Innovation City, Bohai Advanced Technology Research Institute, Weiqiao National Science Research Institute (i.e., "one City and two institutes") as engines, focus on the lightweight, smart and high-end aluminium materials, focus on the R&D and production of auto parts, vehicle preparation, rail transit, aluminium-based new materials, etc., deepen global strategic cooperation and accelerate R&D on new lightweight aluminium materials and components for aerospace, shipbuilding and marine engineering, etc., promote the combination of industry, academia and research, contribute to the development of aluminium deep processing industries in Yantai and Weifang through a spillover effect, and create a lightweight aluminium new material industry cluster with worldwide influence in Binzhou.

15.3.2.1.2. Yunnan

The Yunnan Province Action Plan on Reshaping the Whole Chain of Nonferrous Metals and New Material Industries with New Advantages 2021-2023 (*‘Yunnan Plan’*)¹⁹⁴² also contains measures steering the development of the aluminium industry. For example, the section titled

¹⁹³⁸ See Section VIII.1 of the Shandong Plan.

¹⁹³⁹ See Section VIII.2 of the Shandong Plan.

¹⁹⁴⁰ Available at: <http://www.junan.gov.cn/info/1021/112763.htm> (accessed on 9 August 2023).

¹⁹⁴¹ See Point 2(10) of the Plan.

¹⁹⁴² Available at: http://www.yn.gov.cn/ztgg/lqhm/lqzc/djzc/202202/t20220223_236886.html (accessed on 9 August 2023).

“[c]reate specific advantages of green aluminium industry” lists measures that go far beyond environmental concerns¹⁹⁴³:

1. *Promote the projects under construction so as to start production as soon as possible; promote the proposed projects in a scientific and stable manner; further increase the efforts to attract investment; introduce, gather and foster a group of key enterprises in the industry chain, leading backbone enterprises, and supporting enterprises, and strive to achieve aluminium alloy and aluminium processing capacity of more than 8 million tons; expand the advantageous industrial scale, speed up the industry chain extension towards deep processing and end-products manufacturing, and promote the construction of 2-3 zero-carbon green aluminium industrial parks.*

2. *Promote the accelerated construction of projects supporting deep processing in Wenshan Green Aluminium Innovation Industrial Park, such as the projects of Shandong Innovation, Jiangsu Kailong, Zouping New Ternary Aluminium, Jiangyin Tianyang Metal Products, etc.; vigorously introduce enterprises with technological advantages in the design, processing, manufacturing, application, and other fields of aluminium alloy lightweight materials and encourage them to actively develop high-end aluminium alloy deep processing; accelerate the development of downstream products such as construction aluminium, packaging aluminium, equipment aluminium, etc., and constantly expand the range of aluminium deep-processing products; focus on the development of high-end new materials such as automotive body panels, rail transit aluminium, building formwork, aluminium alloy fence, new energy power battery foil, forged aluminium wheels, aluminium welding wires, etc., to create the advantages of green aluminium deep processing.*

Moreover, the Yunnan Plan also puts forward measures to lower the operating costs of the aluminium industry by the means of preferential tax policies¹⁹⁴⁴:

Implement preferential tax policies for the development of the western region, and duly conduct investigation and registration of relevant enterprises for the green silicon industry, green aluminium industry and non-ferrous metal deep processing industry listed in the catalogue of encouraged industries in the western region; provide unsolicited advice and services to help enterprises reduce their tax burden.

15.3.2.1.3. Guangxi

In September 2022, the Standing Committee of the People's Congress of Guangxi Zhuang Autonomous Region issued the Decision on Promoting the High-quality Development of the Aluminium Industry (‘*Guangxi Decision*’)¹⁹⁴⁵, which sets out a number of objectives for the aluminium industry development in the province.

¹⁹⁴³ See Section III.2 of the Yunnan Plan,

¹⁹⁴⁴ See Section IV.3(3) of the Yunnan Plan.

¹⁹⁴⁵ Available at: <https://gxrd.gov.cn/html/art175354.html> (accessed on 10 March 2023).

To start with, the Guangxi Decision provides for the following¹⁹⁴⁶:

The people's government of the autonomous region shall, based on the new development stage, scientifically plan the development of Guangxi's aluminium industry, organize regular review of the five-year plan for the development of Guangxi's aluminium industry as a sector-specific priority plan for the whole region, strengthen the clustering and leading functions of the two core areas Baise and Nanning, and give full play to the advantages of Beibu Gulf's coastal location; [...]. Strive to achieve two rounds of 'double increase' in terms of the output value of the aluminium industry by 2030, based on the output value of such in 2021.

Under point 3, the Guangxi Decision addresses the issue of bauxite accessibility, including the following provisions controlling bauxite mining in the province¹⁹⁴⁷:

Implement a new round of prospecting for bauxite. Increase efforts to explore for sedimentary bauxite and other resources with financial support from the autonomous region. [...] Newly discovered bauxite resources will be preferentially allocated to enterprises that extend the industrial chain of high-value-added aluminium deep-processing in the autonomous region. Support local enterprises going out and participating in the exploration of overseas bauxite resources, and increasing the development of bauxite with mining interests. Build a bauxite resource import and trading platform and turn Guangxi Beibu Gulf Port into an important distribution and trading base for bauxite import in the south of China.

Furthermore, the Decision asks government bodies to “accelerate the deployment of alumina projects in the coastal areas of the Beibu Gulf that utilize overseas bauxite resources, reasonably determine the scale of production capacity, and focus on introducing high-quality projects”. The Decision further requires that such alumina projects should “obtain overseas bauxite mining rights, have advanced equipment and technology, reach the advanced value of energy consumption quota per unit product and ultra-low emission value of pollutants, and be planned simultaneously with the supporting aluminium deep processing projects”¹⁹⁴⁸.

Concerning electrolytic aluminium, the Guangxi Decision asks government bodies to “stabilize and optimize the quality and efficiency of existing electrolytic aluminium production capacity, accelerate the construction of electrolytic aluminium supply chains with surrounding provinces and neighboring countries, support enterprises in the autonomous region to strengthen cooperation with electrolytic aluminium enterprises inside and outside the region and the country, use market-oriented methods to increase the local supply of electrolytic aluminium to provide a robust material basis for subsequent deep processing”¹⁹⁴⁹.

The Guangxi Decision further sets out numerical targets and calls for development of specific industries¹⁹⁵⁰:

¹⁹⁴⁶ See Point II of the Guangxi Decision.

¹⁹⁴⁷ See Point III of the Guangxi Decision.

¹⁹⁴⁸ See Point IV of the Guangxi Decision.

¹⁹⁴⁹ See Point V of the Guangxi Decision.

¹⁹⁵⁰ See Point VII of the Guangxi Decision.

By 2030, the ratio of aluminium production to electrolytic aluminium production will exceed 2:1, and the proportion of refined and deep processed aluminium products in aluminium products will exceed 60%. Government bodies shall organize and implement projects to extend and strengthen the industry chain and create a profitable aluminium deep processing industry which has both quantity and quality, and focus on developing and creating advantages in the following sectors: aluminium for lightweight automobiles, aluminium for new energy sources such as photovoltaics and batteries, aluminium used for power, aluminium used for food and medicine packaging, aluminium for electronic appliances, and aluminium for construction and home furnishing. Continued support shall be provided for the development of high-end products such as aluminium for aerospace, ships, and railways [...].

The Guangxi Decision also includes provisions on financial support specially designed for companies in the sector of deep processing of aluminium¹⁹⁵¹:

Support policies such as interest discounts and financial subsidies will be granted to aluminium companies that purchase, introduce, transform and upgrade high-end large-scale rolling, extrusion, forging, and casting equipment.

Moreover, the Guangxi Decision specifies goals regarding cultivating leading enterprises and steering the development path of SOEs in the province¹⁹⁵²:

Cultivate and introduce a group of leading enterprises with core competitiveness. Establish an 'industrial chain leader' system in the aluminium industry, for enterprises leading the alumina and electrolytic aluminium industrial chains, to implement a comprehensive energy efficiency evaluation and incentive mechanism covering the whole industry. If the energy consumption intensity of the whole industrial chain is lower than the controlled value of the energy consumption intensity of new industrial projects in our entire region, then comprehensive support policies will be provided [to the industrial chain leaders], such as to provide priority guarantee in terms of production factors, rewards for industry chain extension and repair, and rewards for investment. Implement specific investment promotion along Guangxi's key aluminium chains and industrial clusters; promote the coordinated development in upstream and downstream chains; and increase the level of local support and anchoring of the aluminium industry. Strengthen efforts to foster small and medium-sized enterprises in the aluminium industry, focus on building up a group of specialized, professional, special and new 'little giant' enterprises in the field of aluminium deep processing, as well as champion enterprises in the field of aluminium manufacturing industry; and further promote the brand of Guangxi Aluminium. Improve the development quality and efficiency of aluminium-related state-owned enterprises, support Guangxi Investment Group and other state-owned enterprises to optimize and integrate their internal aluminium business; take and use capital to deploy the

¹⁹⁵¹ See Point VIII of the Guangxi Decision.

¹⁹⁵² See Point XV of the Guangxi Decision.

aluminium industry chain across provinces and countries via mergers and acquisitions, participating or controlling equity interest or other methods, so as to implement coordinated development of the whole industrial chain and build up leading enterprises in the aluminium industry with national influence and international competitiveness.

In addition, the Guangxi Decision calls for the creation of aluminium production clusters: *“Develop aluminium industry clusters: increase the support of special government bonds to the infrastructure construction of parks, focus on fostering a key aluminium industry park that has specific market positioning, distinctive professional characteristics, industry chains and industry clusters, strong innovation capabilities and good industrial coordination”*¹⁹⁵³.

Finally, the Guangxi Decision provides for various types of financial support to help attain the development goals of the aluminium industry in the region¹⁹⁵⁴:

[E]stablish a special fund for the high-quality development of the aluminium industry and increase support for the transformation and upgrading of the aluminium industry. Give full play to the guiding role of Guangxi Industrial High-quality Development Fund^[1955] as well as of government industry investment funds at all levels; encourage leading enterprises in alumina and electrolytic aluminium industry and social capital to participate in the establishment of aluminium industrial investment funds to focus on supporting aluminium deep processing and high value-added aluminium industry projects. Encourage financial institutions to innovate and develop aluminium supply chain finance, technology finance, and green finance for the aluminium industry, and to implement differentiated credit support policies for alumina and electrolytic aluminium enterprises' projects such as energy conservation and emission reduction, technological transformation, industrial chain extension and repair, and comprehensive utilization of resources. Support qualified aluminium companies to be listed on domestic and foreign stock exchanges, and to be listed on the New Third Board and regional equity trading markets. Guide aluminium enterprises to receive direct financing through the bond market. Support the securitization of the debt assets of aluminium enterprises via financial leasing. Adjust and optimize the fiscal and taxation support policies for the aluminium industry; adjust the focus of support to key areas of the industry chain such as aluminium deep processing, technology research and development, supply chain security, energy conservation and emission reduction, as well as the development of recycled aluminium.

15.3.2.1.4. Henan

The Henan Steel, Aluminium, Coal, Chemical and Cement Industry Upgrade and Development Action Plan 2018-2020 (*‘Henan Plan’*)¹⁹⁵⁶ represents a good example of how the objectives

¹⁹⁵³ See Section XVI of the Guangxi Decision.

¹⁹⁵⁴ See Point XVIII of the Guangxi Decision.

¹⁹⁵⁵ For additional information concerning the Fund, see at: <http://www.sasac.gov.cn/n2588025/n2588129/c15334023/content.html> (accessed on 11 March 2024).

¹⁹⁵⁶ Available at: <https://www.waizi.org.cn/policy/52055.html> (accessed on 13 October 2023).

limiting emissions and reducing the industry's environmental footprint may translate into strict regulation of the aluminium industry which entails not only capacity control but also production targets in terms of product portfolio and production volumes, as well as oversight of the corporate structure of the sector..

At the outset, the Plan states: *“At present, the aluminium industry has entered a period of green transformation, quality improvement and efficiency increase. Accelerating transformation and development is the only option for Henan’s aluminium industry to become better and stronger”*¹⁹⁵⁷.

The concrete measures set out in the Henan Plan include elements by which authorities very closely regulate the aluminium industry. For example, the first principle listed in the plan reads as follows: *“Taking into account market demand and user demand comprehensively, aim for high-end and foster reform, transformation and development, improve the level, take a high-end position, and strive to achieve high-end products, high-end value, and high-end technology”*¹⁹⁵⁸.

The Henan Plan furthermore limits additional capacity build-up: *“It is strictly forbidden to add new electrolytic aluminium production capacity and aluminium carbon production capacity”*. It also envisages intervention into supply and purchase relationships of enterprises, their location and even their corporate structure: *“promote the integration and reorganization of backbone enterprises and support enterprises to join parks, create an environment favourable to industry development, create influential aluminium processing industry clusters”*¹⁹⁵⁹.

In addition, the Henan Plan sets out specific targets in terms of production capacity and industry layout: *“Work objectives. By 2020, the annual production capacity of electrolytic aluminium will be stabilized at about 2.5 million tons, the annual production capacity of aluminium material processing will remain above 12 million tons, and the added value per ton of competitive products will exceed RMB 10,000. [...] Foster 2 - 3 industrial clusters worth RMB 100 billion shall and build an internationally competitive and strong aluminium industry province”*¹⁹⁶⁰.

Furthermore, the provincial authorities even envisage to intervene into the product portfolio and marketing strategies of enterprises: *“Adjust and optimize a number of products and brands. Focusing on specific and specialized development, support key aluminium processing enterprises to scientifically determine product positioning, implement a number of deep processing projects having a driving role, cultivate specific products and competitive products on the basis of the ‘one enterprise, one policy’ principle, and create internationally competitive product brands”*¹⁹⁶¹.

The Henan Plan also lists specific projects and enterprises to be supported by the provincial government:

¹⁹⁵⁷ See Section I.1 of the Henan Plan.
¹⁹⁵⁸ See Section I.3.1 of the Henan Plan.
¹⁹⁵⁹ See Sections I.3.2-3 of the Henan Plan.
¹⁹⁶⁰ See Section I.4 of the Henan Plan.
¹⁹⁶¹ See Section II.1 of the Henan Plan.

Make a number of enterprises and clusters bigger and stronger. Give full play to the advantages of the market, to resources and to industrial bases, accelerate the expansion of leading enterprises and industrial clusters. Support Mingtai Aluminium, Wanda Aluminium, Xingfa Aluminium, Hengmei Aluminium and other enterprises to develop into leading aluminium processing enterprises focussing on high-end products; vigorously introduce well-known domestic and foreign aluminium processing enterprises, integrate resources in order to build high-end aluminium processing projects, Develop and shape leading enterprises with a driving and leading role. Encourage Yulian Group, Yichuan Electric Power, Wanji Holdings, Shenhua Group and other enterprises to give full play to their industrial base advantages to build deep processing projects and ensure an integrated development. Encourage domestic aluminium processing enterprises or electrolytic aluminium enterprises to build new high-end aluminium processing projects and allow them to build electrolytic aluminium supply bases in advantageous areas outside the province through production capacity swaps, and form the industrial integration of high-end processing in the province together with the front-end supply outside the province, both being related through capitalistic links. Relying on the aluminium processing industry clusters such as Luoyang, Gongyi, Changge, etc., to actively promote the experience of attracting investment through business, introduce small and medium-sized aluminium deep processing companies around backbone enterprises, develop recycled aluminium in the areas with a high concentration of waste aluminium resources, build a group of specific and well-known aluminium deep processing specialised parks of worth RMB 10 billion, create influential RMB 100 billion worth aluminium processing industry clusters. Develop provincial demonstrations programmes for the transformation and development of aluminium industry in Gongyi, and build aluminium product brand centres, R&D centres, education centres, new product release centres and ecological aluminium industry demonstration bases with a large international influence.

In the part concerning greening of the aluminium industry, the Henan Plan envisages, among things, the following: “Withdraw production capacities of electrolytic aluminium from the central urban area of the city and eliminate production capacities of plants below 200 000 tons capacity each”¹⁹⁶², thereby again effectively setting production capacity.

The Plan further sets out measures to improve the competitiveness of the aluminium industry¹⁹⁶³:

Enhance the competitiveness of electrolytic aluminium. It is strictly forbidden to increase the production capacity for electrolytic aluminium, the production capacity of electrolytic aluminium shall be stabilised at about 2.5 million tons, the synergy of the whole industry chain shall be strengthened. Explore the win-win operating mode of aluminium and electricity, take the electricity system reform as

¹⁹⁶² See Section II.2-3 of the Henan Plan.

¹⁹⁶³ See Section II.4 of the Henan Plan.

an opportunity and improve the price policy of captive power plants, collect fees on the basis of the minimum amount in accordance with laws and regulations; Explore the shutdown pattern of coal-based captive power plants and encourage electrolytic aluminium enterprises, after shutting down their own generators, to replace them and switch to self-generated and self-consumed electricity produced by large, highly-efficient and clean units, and additionally to participate in direct market transactions and strive not to exceed the previous electricity price level after the shutdown. Improve the bank creditor committee system for backbone electrolytic aluminium enterprises, explore effective ways to extend the loan repayment cycle, and support enterprises to raise funds through debt-to-equity swaps, equity transfers, and overall listing in order to reduce corporate debt ratios.

Another area discussed in the plan is the cooperation between enterprises in the aluminium industry¹⁹⁶⁴:

Promote transformation and upgrading through organizational innovation. While building a modern enterprise organization system based on sharing benefits, sharing risks and integrating the industry chain, strengthen the cooperation between aluminium processing enterprises and electrolytic aluminium production enterprises, promote the joint reorganization between upstream and downstream backbone enterprises, improve the overall business efficiency through energy balance, materials supply and demand balance, and R&D sharing; explore organizational innovation thanks to a reasonable distribution of profits. Enterprises are encouraged to participate in the development and operations of domestic and foreign mines by means of equity participations, acquisitions, and equity swaps”.

Finally, the Plan includes provisions concerning government support, including financial, to the aluminium sector, explicitly linking the government action to the national industrial policies¹⁹⁶⁵:

Comprehensively use market mechanisms, economic tools, legal measures and necessary administrative tools to promote the transformation and upgrading of enterprises. Support eligible provincial cities to set up aluminium industry development funds, [...] provide financial support to key projects and to initiatives to integrate the whole industry chain. Make full use of existing financial funds and governmental investment funds to support eligible key aluminium processing projects, [...], and provide support in terms of land and infrastructure. Strictly implement the national industrial policy, [...], and strictly punish illegal activities such as the increase of electrolytic aluminium and aluminium carbon production capacities, and the unauthorized construction of projects that violate the requirements of industrial policies or industrial layout planning.

15.3.2.2.MUNICIPAL LEVEL MEASURES

¹⁹⁶⁴ See Section III.2 of the Henan Plan.

¹⁹⁶⁵ See Section III.3 of the Henan Plan.

The objectives and corresponding regulatory and support measures laid down at the provincial level, as described in Sections 15.3.2.1.1 - 15.3.2.1.4, are then implemented individually by municipalities in the province through local implementation plans. One example of such a plan is the Sanmenxia Municipality Aluminium Industry Upgrade and Development Implementing Plan ('*Sanmenxia Plan*')¹⁹⁶⁶, which envisages more specific measures to achieve the goals set out in the Henan Plan¹⁹⁶⁷:

Further optimize the construction environment of the first-phase project (300,000 tons) of Baowu Aluminium Technology Co., Ltd. with an annual output of 600,000 tons of aluminium alloy deep processing project and strive to be completed and put into operation in 2020. [...] Provincial-level industrial agglomeration areas with aluminium industry as the leading industry, such as the urban-rural integration demonstration area and the Mianchi county industrial agglomeration area, will expand investment promotion, introduce specific enterprises, rely on large aluminium processing enterprises, and vigorously develop high-end aluminium alloy new materials as raw materials in order to manufacture deep processing aluminium products for the aviation, railways, automobile, shipbuilding, and military sectors, promote the expansion of aluminium deep processing products to high-strength and high-toughness aluminium alloys and high-end deep-processing aluminium alloys. Encourage small and medium-sized enterprises to focus on construction, furniture, packaging, power generation and other application sectors, and develop products such as building forms, building maintenance boards, aluminium furniture, tank materials, packaging aluminium foil, and aluminium guide rods (wires) [...].

Over and above the objective of introducing '*specific enterprises*', the Sanmenxia Plan envisages further measures to attract investment in the area¹⁹⁶⁸:

Allow some electrolytic aluminium enterprises to build electrolytic aluminium supply bases in areas with advantageous resources and environment outside the province through production capacity replacement, create an industrial integration pattern of high-end processing (in the province) and upstream supply outside the province) both related by capitalistic links. By 2020, the production capacity of electrolytic aluminium in the central urban area of the city will be withdrawn. Support the Sanmenxia Urban-rural Integration Demonstration Zone to take advantage of the convenient transportation to build an alumina and electrolytic aluminium logistics, storage and exchange centre; attract electrolytic aluminium production enterprises from Xinjiang and Inner Mongolia to set up electrolytic aluminium storage and delivery warehouses in our city; guarantee the supply of raw materials for aluminium deep processing enterprises in our city. Support Mianchi County's industry cluster to take advantage of resources to build warehousing and

¹⁹⁶⁶ Available at: wjbb.sft.henan.gov.cn/upload/HNMC/2019/10/11/20191011110352523.pdf (accessed on 13 October 2023). Explanations of the Plan available at: <http://www.hubin.gov.cn/content-47-4738-1.html> (accessed on 14 March 2023).

¹⁹⁶⁷ See Explanations of the Plan Section VI.1.

¹⁹⁶⁸ See Explanations of the Plan Section VI.2

logistics centres for alumina etc. Improve the competitiveness of the existing stock of electrolytic aluminium, strive to retain 240,000 tons of electrolytic aluminium production capacity, and enhance the coordination of the entire industry chain. Explore the win-win aspects of the joint production of aluminium and electricity and take the power system reform as an opportunity to effectively reduce the electricity price level of electrolytic aluminium.

Zhengzhou, the provincial capital of Henan, also published a plan paying particular attention to the development of the aluminium industry and echoing the objectives of the Henan Plan which called for creation of backbone enterprises and developing high-end production (see Section 15.3.2.1.4): “Zhengzhou is the largest aluminum plate, strip and foil processing and production base north of the Yangtze River, and has cultivated a number of backbone enterprises in the fields of high-purity, high-strength, high-toughness and corrosion-resistant high-performance aluminum alloys, special alumina, high-end alumina products, high-performance wire rope materials and products, and in 2021, the added value of the city's aluminum and aluminum deep processing industry above designated size increased by 17.1%”. The Implementation Opinions on Speeding Up the Development of New Materials Industry issued by the General Office of Zhengzhou Municipal Government (‘Zhengzhou Opinions’)¹⁹⁶⁹ contain the following objectives¹⁹⁷⁰:

[...] Vigorously develop new aluminium-based materials.

[...] Promote ‘replacing steel with aluminium’ and focus on the development of aluminium materials for transportation, mainly automobiles and rail transit. Promote ‘replacing copper with aluminium’, focus on the development of aluminium materials for high value-added power industries, vigorously develop aluminium conductors for high-voltage transmission lines, aluminium conductors for underground cables and other products, and continue to expand the application of aluminium products in electrical cables and communication cables. Promote ‘replacing plastic with aluminium’, develop aluminium foil for food and drug packaging, and speed up the production of end-products. Focus on key areas such as high-end alumina and high-performance aluminium products, select a batch of products that contain high technical content and added value, meet the requirements of the development of the industry, and are relatively high-end in terms of specifications, performance or technical parameters.

Moreover, in order to support the development of the aluminium industry, the Zhengzhou Opinions propose to establish “Zhengzhou High-end Aluminium Processing Products and High-end Alumina Products Guiding Catalogue, to guide enterprises to increase investment in research and development, expand fields of application, and continuously improve the added value of products”¹⁹⁷¹.

15.3.3. POLICY DOCUMENTS RELEVANT FOR ADVANCED ALUMINIUM PRODUCTS

¹⁹⁶⁹ Available at: <https://www.waizi.org.cn/rule/133152.html> (accessed on 9 August 2023).

¹⁹⁷⁰ See Section III.2 of the Zhengzhou Opinion.

¹⁹⁷¹ See Section III.2 of the Zhengzhou Opinion.

While aluminium as a broad category is not covered by Made in China 2025 (see Section 4.2.3), certain more advanced products, such as aluminium converter foil (‘ACF’) are included. One of the ten strategic sectors which Made in China 2025 identifies is ‘*new materials*’ (Sector 9), for which Made in China 2025 sets the objectives to¹⁹⁷²:

actively develop special new materials for both military and civilian use, speed up two-way transfer and transformation of technologies and promote integrated military and civilian development of new material industry as well as accelerate the upgrading of basic materials.

ACF as part of *New materials* falls under the development priorities of this sector. The new materials thus benefit from the support mechanisms listed in Made in China 2025, including, among others, financial support policies, fiscal and taxation policy, and State Council oversight and support¹⁹⁷³. The Commission investigations into the ACF sector found that funds had been created as part of the Made in China 2025 programme and hence for the benefit of the ACF industry¹⁹⁷⁴. The same investigations confirmed furthermore that both the Guiding Catalogue for Industrial Structure Adjustment Restructuring (see Section 4.2.9), as well as the NDRC Catalogue of Strategic and Emerging Products and Services¹⁹⁷⁵ need to be read together and apply to the ACF sector. The combination of these two sets of rules give to the ACF sector special treatment as an encouraged industry¹⁹⁷⁶.

While aluminium is not covered by the Made in China 2025, it is included in relevant Made in China 2025 Roadmap which specifies the particular goals for each industry, providing concrete numerical targets to be achieved by 2020 and 2025.

15.4. DISTORTIONS IN ALUMINIUM PRODUCING ENTERPRISES

15.4.1. STATE INFLUENCE IN THE MARKET

The largest aluminium producers in China, which are also amongst the top 10 individual aluminium producers worldwide, include two SOEs – Chinalco¹⁹⁷⁷ and SPIC – as well as three privately-owned producers – China Hongqiao, Xinfu, and East Hope – with Chinalco being the single largest primary aluminium producer worldwide in view of its output of 6.7 million metric tonnes in 2021¹⁹⁷⁸. According to some 2017 estimates, SOEs account for more than 50% of the

¹⁹⁷² See Section VI(9) of MIC 2025.

¹⁹⁷³ Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People’s Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People’s Republic of China, OJ L 458, 22.12.2021, p. 344–458, recital 100.

¹⁹⁷⁴ *Ibid.*, recital 99.

¹⁹⁷⁵ See at: https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/t20170204_961174.html?code=&state=123 (accessed on 9 August 2023).

¹⁹⁷⁶ Commission Implementing Regulation (EU) 2021/2287, recitals 101-103.

¹⁹⁷⁷ See also Section 15.3.2.1.4 concerning the Henan Plan and the links between Hengmei Aluminium and Chinalco, see at: <https://www.qcc.com/firm/2a082ab9f4116ea1875d40b16a7838ee.html> (accessed on 11 March 2024).

¹⁹⁷⁸ See at: <https://www.statista.com/statistics/280920/largest-aluminum-companies-worldwide/> (accessed on 9 August 2023).

total primary aluminium output in China¹⁹⁷⁹, but it is not clear what is the exact ratio of SOEs vs privately owned aluminium smelters. This being said, the last years have shown an increase in capacity which is attributed partly to privately-owned companies, driven in particular by the rapid growth of the China Hongqiao Group. The aluminium production capacity amongst the main SOEs has also increased in this period, though to a lesser extent¹⁹⁸⁰. Overall, SOEs have a significant presence in the Chinese aluminium market, especially in the primary aluminium segment.

The strong intervention of the Chinese government in SOEs has been described in detail in Chapter 5. In addition to intervening into the aluminium state-owned producers, the State is also present in the private aluminium enterprises, not least given the ever-tighter Government control over the private sector as described in Section 3.3.2. Moreover, as described above in Sections 15.2 and 15.3, the strict goals concerning production, capacity, modernisation, relocations and reorganisations of individual enterprises etc., mean that all aluminium producers in China are operating under strong State influence.

In addition, a 2019 OECD study confirmed that ownership in China is not the only key factor when assessing government intervention into the aluminium sector, as SOEs are both recipients and providers of support and provide both below market value loans and below-market-cost inputs to downstream producers who can be either SOEs or privately owned companies. This in turn results in a further degree of opacity when it comes to the exact form and scale of government support in the Chinese aluminium industry¹⁹⁸¹.

15.4.2. INDUSTRY ASSOCIATIONS

With respect to implementing the provisions contained in the regulatory documents described above, Chinese industry associations play an important role. These entities are established to guarantee that the aluminium industry implements the policies of the Government. To this end, in their activities, the industry associations liaise closely with State authorities, as is also indicated in their statutes (see Section 2.3.3).

At least two industry associations are active in the aluminium sector, i.e. the China Non-Ferrous Metals Industry Association ('CNIA') and the China Non-Ferrous Metals Fabrication Industry Association ('CNFA'). CNIA's Articles of Association¹⁹⁸² stipulate notably that it aims to¹⁹⁸³:

adhere to the basic line of the Party and various principles and policies, adhere to the purpose of serving the government, the industry, enterprises and business managers, establish and improve the industry self-discipline mechanism, bring into

¹⁹⁷⁹ Australian Anti-Dumping Commission, *Aluminium Extrusions from China*, REP 248, p. 79 (13 July 2015), as well as Taube, M. (2017). *Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry*, Think!Desk, 24 April 2017, p.51.

¹⁹⁸⁰ United States International Trade Commission (USITC); *Aluminium: Competitive conditions affecting the US industry*, p. 222. Regarding the status of private companies in the aluminium sector in China, see Wiley Rein LLP (2017): *China's Broken Promises: Why it is not a Market Economy*, p. 43 and the relevant footnote (fn. 187) referred to therein.

¹⁹⁸¹ OECD (2019), "Measuring distortions in international markets: the aluminium value chain", OECD Trade Policy Papers, No. 218, OECD Publishing, Paris, p.6.

¹⁹⁸² Available at: <https://www.chinania.org.cn/html/xiehuigaikuang/xiehuizhangcheng> (accessed on 9 August 2023).

¹⁹⁸³ See Article 2 of the Statutes of CNIA.

full play its role in giving advice and suggestions to the government, act as a bridge between the government and enterprises [...].

Moreover¹⁹⁸⁴:

The Association adheres to the overall leadership of the Communist Party of China, establishes the organization of the Communist Party of China, carries out party activities, and provides necessary conditions for the activities of the Party organization in accordance with the provisions of the Constitution of the Communist Party of China. The Association adheres to the overall leadership of the Communist Party of China. In accordance with the provisions of the Constitution of the Communist Party of China, it establishes an organization of the Communist Party of China, carries out Party activities and provides necessary conditions for the activities of the Party organization. [...] The Association is registered and managed by the Ministry of Civil Affairs, and the entity in charge of party building work is the Party Committee of the State-owned Assets Supervision and Administration Commission of the State Council. The entity in charge of the registration and management of the Association is the Ministry of Civil Affairs and the entity in charge of its Party building is the Party Committee of the State Council's State-owned Assets Supervision and Administration Commission (SASAC).

The Association accepts the business guidance, supervision and management by the entities in charge of registration and management, by entities in charge of party building, as well as by the relevant administrative departments in charge of industry management.

The Association accepts the business is guided, supervised and managed by the entity in charge of its registration management, of the entity in charge of its Party building work, and of the industry administrative departments in charge of industry management.

The business activities of the CNIA are described as follows¹⁹⁸⁵:

Conduct feasibility study for infrastructure, technological transformation, technology import, investment and development projects in accordance with authorization and entrustment of relevant government departments; [...] In accordance with authorizations and delegations of the relevant government departments, participate in the quality management and supervision work, qualification reviews, carry out sector inspections and evaluations, proceed to the review of production and business licenses, and carry out industry injury investigation.

The AoA further elaborate on the requirements for CNIA membership, which include, among others, to “[c]omply with the requirements of the national industrial policy”¹⁹⁸⁶. The AoA also

¹⁹⁸⁴ See Article 3 of the Statutes of CNIA.

¹⁹⁸⁵ See Articles 6.5 and 6.6 of the Statutes of CNIA.

¹⁹⁸⁶ See Article 8 of the Statutes of CNIA.

specify the eligibility criteria for the directors of the association, including to “[a]dhere to the leadership of the Communist Party of China, uphold socialism with Chinese characteristics, resolutely implement the Party’s line, principles and policies, and have good political quality”¹⁹⁸⁷.

CNFA’s aim as stated in its AoA¹⁹⁸⁸ is exactly the same as that in the AoA of CNIA. “The purpose of this Association is to adhere to the Party’s basic line and every principles and policies, adhere to the purpose of serving the government, the industry, enterprises and business managers, establish and improve the industry self-discipline mechanism, and give full play to the government’s advising and supporting function, play the role of bridge [...]. The Association abides by the Constitution, laws, regulations and national policies, practices the core socialist values, promotes the spirit of patriotism, abides by social morality, and consciously strengthens the construction of integrity and self-discipline”¹⁹⁸⁹.

The AoA of CNFA also contain the same language regarding the role of the CCP and State authorities in its operation as the AoA of CNIA¹⁹⁹⁰:

The Association adheres to the overall leadership of the Communist Party of China, establishes the organization of the Communist Party of China, carries out party activities, and provides necessary conditions for the activities of the party organization in accordance with the provisions of the Constitution of the Communist Party of China.

As to the business scope of the organisation, the AoA include the following:

*Actively put forward suggestions and opinions on industry development, industrial policies, laws and regulations in accordance with the general principles and tasks of establishing a socialist market economic system proposed by the party and the state, and in light of the actual situation of the industry*¹⁹⁹¹.

The CNIA AoA also define a set of conditions concerning the necessary qualifications of the chairman, vice chairman and secretary general of the association, including: “Adhere to the party’s line, principles and policies, and have good political quality”¹⁹⁹².

The above AoA clearly illustrate that the two industry associations representing the aluminium industry in China are closely interlinked with the CCP and with the Government. In addition to representing the interests of the aluminium industry participants, they are actively contributing to fulfilling the industry policy objectives set by the Government and the CCP.

15.4.3. PARTY PRESENCE IN THE ALUMINIUM PRODUCING ENTERPRISES

As described in Section 3.3.2, the Company Law stipulates that a CCP organisation is to be established in every company with at least three CCP members. Not surprisingly, these rules are also followed in the aluminium sector. As already explained in the 2017 version of this

¹⁹⁸⁷ See Article 21.1 of the Statutes of CNIA.

¹⁹⁸⁸ Available at: <http://www.cnfa.net.cn/about/1546.aspx> (accessed on 9 August 2023).

¹⁹⁸⁹ See Article 2 of the Statutes of CNFA.

¹⁹⁹⁰ See Article 3 of the Statutes of CNFA.

¹⁹⁹¹ See Articles 6 of the Statutes of CNFA.

¹⁹⁹² See Article 33 of the Statutes of CNFA.

Report¹⁹⁹³, in 2017 a Chinese state-owned aluminium producer, China Aluminium International Engineering Corporation Limited (*‘Chalieco’*), amended its Articles of Association giving more prominence to the role of Party cells within the company.

Subsequent Commission investigations into the aluminium industry in China have shown that other aluminium producers too have Party committees which are actively involved in the decision making of companies. In the ACF investigation, the Commission found that according to the 2017 Annual Report of the Aluminium Corporation of China (*‘Chalco’*)¹⁹⁹⁴, a number of directors, supervisors, and senior management – including the Chairman and Executive Director, and the Chairman of the Supervisory Committee – are members of the CCP¹⁹⁹⁵. Another producer active in the production of ACF, Xiamen Xiashun, a private enterprise, presents the Party building exercises in the following way:

*Xiashun actively promotes Party building and labour union work and remains committed to the system of joint meetings between Party, government and workers over the years, providing an important platform for employees to participate in decision-making, protect their rights and interests, and build a harmonious atmosphere*¹⁹⁹⁶.

The presence of CCP representatives among the management of the companies was also confirmed in the anti-dumping investigation into aluminium extrusions, where the Commission found evidence of such presence in the case of Chalieco, Chalco, the Xinfu Group, the Hongqiao Group, as well as the Liaoning Zhongwang Group¹⁹⁹⁷.

Moreover, the Commission’s anti-dumping investigation into aluminium flat-rolled products¹⁹⁹⁸ established that the management of three aluminium flat-rolled manufacturers – Southwest Aluminium, Jiangsu Alcha Group and Chalco Ruimin – included CCP members. Furthermore, it was found that a number of aluminium flat rolled product manufacturers organised Party building activities for their employees, for example Southwest Aluminium: “*in order to implement the requirements of General Secretary Xi Jinping, following the political building efforts, the Southwest Aluminium (Group) Co., Ltd’s Party Committee shall vigorously promote the building of Party study branches, ensure effective full coverage of Party organizations and Party work, foster the ‘double promotion’ of Party members, and better involve Party members as pioneers and models*”. Other companies for which Party building

¹⁹⁹³ See Section 15.2. of the 2017 version of this Report.

¹⁹⁹⁴ Part of the Chinalco Group.

¹⁹⁹⁵ See Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People’s Republic of China, *OJ L 216*, 18.6.2021, p. 142–201, recital 96; Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People’s Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, *OJ L 146*, 5.6.2019, p. 63–97, recital 69.

¹⁹⁹⁶ See Commission Implementing Regulation (EU) 2021/983, recital 97.

¹⁹⁹⁷ Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People’s Republic of China, *OJ L 336*, 13.10.2020, recitals 107–111.

¹⁹⁹⁸ Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People’s Republic of China, *OJ L 124*, 12.4.2021, p. 40–115.

activities were documented included Tianjin Zhongwang Aluminium Industry, Jiangsu Alcha Group, Xiamen Xiashun and Chalco Ruimin¹⁹⁹⁹ (for further information on Party building activities, see in particular Sections 2.3.3, 3.3.1 and 3.3.2).

15.5. DISTORTIONS IN THE ALUMINIUM MARKET

As outlined in Sections 15.2 and 15.3, the Government has continuously intervened in the market by applying a broad variety of different instruments. Evidence of these interventions has been found in the trade defence investigations carried out by various jurisdictions, showing the Government's determination to strictly control and influence the Chinese aluminium sector. Concrete examples of how the Government's intervention has affected and continues to affect the Chinese aluminium sector are described below.

15.5.1. RAW MATERIALS

15.5.1.1. BAUXITE

Bauxite is the core raw material for aluminium production—producing one tonne of aluminium requires around 1.9 tonnes of bauxite. According to available statistics, in 2021, the global bauxite reserves amounted to 32 billion dry metric tons. China, with bauxite reserves estimated at between 1 billion tonnes and 5 billion tonnes²⁰⁰⁰, had around 3% of global bauxite reserves and ranked seventh in 2021 in the world in bauxite reserves after Guinea, Vietnam, Australia, Brazil, Jamaica and Indonesia. In 2018, China's bauxite output reached 70 million tonnes while it imported 80 million tons of bauxite ore and concentrates²⁰⁰¹. In 2021, China produced some 86 million metric tonnes of bauxite while it imported approximately 107 million metric tonnes²⁰⁰².

Given that China's domestic bauxite production does not meet the country's needs in terms of aluminium production, before 2011, China had in place a set of export-related measures to prevent bauxite exports, including export duties, export quotas, export performance requirements and minimum export price requirements on bauxite. The WTO Dispute Settlement Body found that these measures were inconsistent with WTO rules²⁰⁰³. While China has since removed these measures, they influenced the Chinese aluminium sector over a considerable period of time and contributed to the current configuration of this industry. China also has in place other export restrictive measures on bauxite, such as a non-automatic export licensing requirement²⁰⁰⁴.

¹⁹⁹⁹ Commission Implementing Regulation (EU) 2021/582, recital 142.

²⁰⁰⁰ See at: <https://www.statista.com/statistics/264964/production-of-bauxite/> (accessed on 9 August 2023), as well as at <https://pmarketresearch.com/chinas-bauxite-consumption-exceeded-150-million-tons/> (accessed on 9 August 2023).

²⁰⁰¹ *Ibid.*

²⁰⁰² See at: <https://www.statista.com/statistics/1126259/china-bauxite-import-volume/> (accessed on 9 August 2023), as well as at: <https://www.alcircle.com/news/top-ten-countries-with-the-highest-bauxite-production-in-2021-79380> (accessed on 9 August 2023).

²⁰⁰³ WT/DS398: Report of the Panel: China – Measures related to the exportation of various raw materials; 5 July 2011.

²⁰⁰⁴ OECD, *Trade in raw materials*, available at: <http://www.compareyourcountry.org/trade-in-raw-materials/en/0/BAUXI/all/default> (accessed on 9 August 2023).

As for bauxite imports, the main sources for Chinese imports in 2021 were Australia, Guinea and Indonesia²⁰⁰⁵. Since around 2010, China has also been intensively investing in bauxite mines abroad to ensure availability of this raw material for its smelters. Those investment include:

- Guinea: In 2011, China Power Investment Corp, a SASAC-managed SOE²⁰⁰⁶, invested an estimated USD 6 billion in Guinea to develop bauxite and alumina refineries, together with a port to export those raw materials from Guinea²⁰⁰⁷. In 2015, SMB, a consortium that consists of Singapore's Winning Shipping and two Chinese companies (Shandong Weiqiao Group and Yantai Port Group) also launched bauxite mining activities in Guinea after their bauxite supply chain got cut by an export ban from Indonesia in 2014²⁰⁰⁸. In 2017, Guinea concluded a USD 20 billion bauxite barter deal with China, according to which the consortium of Chinese companies (China Henan International Cooperation Group, Chalco, SPIC) obtained bauxite mining licenses and agreements in exchange for multi-sector infrastructure, road networks, sanitation, and a university building financed by China²⁰⁰⁹. In 2020, China, imported an estimated 52.7 million tons of bauxite from Guinea, with 14 Chinese state-owned and private companies involved in the aluminium business in the country²⁰¹⁰.
- Ghana: In 2018, the Master Project Support Agreement, signed between the Ghanaian government and Chinese SOE Sinohydro Corp Limited, delivered USD 2 billion worth of infrastructure projects across the country, which Ghana would pay back by, first, allowing China access to 5% of its bauxite reserves, including by granting mining licenses to Chinese companies and a right for Sinohydro to build a refinery for bauxite production and, second, using the revenues from bauxite exports for loan repayment²⁰¹¹. In 2021, a new project in Ghana was announced, including development of an integrated bauxite-aluminium mine through a Chinese resource-backed loan. In June 2022, the government of Ghana unveiled that the Chinese government had committed an amount of USD 15

²⁰⁰⁵ China Bauxite Imports Hit Historical High in May with International Dynamics Turning More Complicated, available at: <https://news.metal.com/newscontent/101868451/china-bauxite-imports-hit-historical-high-in-may-with-international-dynamics-turning-more-complicated> (accessed on 9 August 2023).

²⁰⁰⁶ In 2015 it was merged with the State Nuclear Power Technology Corporation to form the SPIC.

²⁰⁰⁷ China Power Investment Aims to Spend \$6 Billion on Guinea Bauxite Refinery, available at: [https://news.metal.com/newscontent/100022834/china-power-investment-aims-to-spend-\\$6-billion-on-guinea-bauxite-refinery/](https://news.metal.com/newscontent/100022834/china-power-investment-aims-to-spend-$6-billion-on-guinea-bauxite-refinery/) (accessed on 9 August 2023).

²⁰⁰⁸ How does 2020 bode for China's overseas investment? A Chinese lawyer's take, available at: <https://chinadialogue.net/en/business/11792-how-does-2-2-bode-for-china-s-overseas-investment-a-chinese-lawyer-s-take/> (accessed on 9 August 2023).

²⁰⁰⁹ The China-Guinea \$20 billion bauxite deal might be a risky loan for Guinea: NRG, available at: <https://www.alcicle.com/news/the-china-guinea-20-billion-bauxite-deal-might-be-a-risky-loan-for-guinea-nrgi-52212> (accessed on 9 August 2023).

²⁰¹⁰ GT Exclusive: Chinese mining projects in Guinea lawful, but firms still face risks: embassy, available at: <https://www.globaltimes.cn/page/202111/1238672.shtml> (accessed on 9 August 2023).

²⁰¹¹ Benefo A. and Addaney, M. Georgetown Journal of International Affairs. Promises and Pitfalls: China's Financing of the Atewa Bauxite Mining Project in Ghana, available at: <https://gjia.georgetown.edu/2021/07/11/promises-and-pitfalls-chinas-financing-of-the-atewa-bauxite-mining-project-in-ghana/> (accessed on 9 August 2023).

billion to aid developmental projects in Ghana and that China is expected to invest USD 10 billion into Ghana's bauxite industry through the deal²⁰¹².

- Australia: Chinalco attempted to increase its share in the international mining group Rio Tinto, to get minority stakes in various mining projects, including the Australian Weipa aluminium and Yarwun Aluminium. In 2008, Chinalco joined the U.S. aluminium company Alcoa in buying about 9 % of Rio Tinto for US 14 billion. The purchase was financed by the CDB²⁰¹³ (see Chapter 6). In 2009, Chinalco planned to increase the investment to at least 14.99% by investing another USD 19.5 billion, with financing from CDB, EXIM and ABC²⁰¹⁴. The deal was eventually cancelled.

15.5.1.2. COAL

Historically, aluminium plants in China were very dependent on coal-fired energy. The trend is gradually being reversed with support for clean energy sources, but large amounts of aluminium production capacity are still dependent on coal. The very low coal prices (and even the provision of coal specifically to support aluminium production) were one of the reasons a lot of aluminium smelters relocated to Xinjiang, a province with great abundance of coal. A few examples of preferential coal supply to the aluminium producers include:

- Xinfu Group decided to move to Xinjiang in 2012 because of cheap or even free coal. According to a press release concerning Xinfu's decision: *"Xinjiang's advantage lies in low coal prices. It is understood that the local government implements the policy of 'matching resources with projects', the government will allocate as much coal as the investment project needs. According to industry insiders, the price of coal is very low, and in many cases even free"*. A vice-president of the Xinfu Group went on record to say that even though the Group had purchased its own coal mines in Xinjiang, it temporarily purchased coal from the market because the cost of coal was minimal²⁰¹⁵.
- Shenhua decided to install new capacity in Xinjiang starting from 2010 because the local government was willing to support Shenhua with 1 billion tonnes of coal resources²⁰¹⁶.

In addition to the government providing cheap coal to the aluminium enterprises, there are other examples of the government intervening to keep coal prices low. For example, in 2018, Qinhuangdao Port announced that, following NDRC's directives, coal priced at more than RMB

²⁰¹² Ghana's bauxite industry foresees \$10 billion Chinese investment, available at: <https://www.alcircle.com/news/ghana-s-bauxite-industry-foresees-10-billion-chinese-investment-80869> (accessed on 9 August 2023).

²⁰¹³ Cimilluca, D.; Oster, S.; Or, A. - Rio Tinto Scuttles Its Deal With Chinalco, 2009, (Wall Street Journal), available at: <https://www.wsj.com/articles/SB124411140142684779> (accessed on 9 August 2023).

²⁰¹⁴ 4 Banks' \$21 billion loan to support Chinalco's stake in Rio Tinto, available at: <http://finance.sina.com.cn/chanjing/gsnews/20090328/17336037815.shtml> (accessed on 9 August 2023).

²⁰¹⁵ Sina Finance: Xinfu Bet on Xinjiang: A Trial Examination of the Great Circulation Model, available at: <http://finance.sina.com.cn/chanjing/gsnews/20120806/113012768139.shtml> (accessed on 9 August 2023).

²⁰¹⁶ Xinjiang Shenhua Company achieves substantial profit, available at: <https://www.henandaily.cn/content/zhengwu/mlsq/rdhy/2016/1130/24370.html> (accessed on 9 August 2023).

750 per tonne would be denied port entry²⁰¹⁷. Further governmental interventions into the price of coal are described in the Chapter 10.

15.5.1.3. PRIMARY ALUMINIUM FOR PROCESSING

In its past investigations²⁰¹⁸, the Commission found that raw material prices in the aluminium sector are the result of various types of government intervention allowing the Chinese aluminium processing enterprises to purchase not alloyed unwrought aluminium, and alloyed unwrought aluminium, at distorted prices. These interventions comprise the numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, which clearly show the high degree of intervention of the Chinese government in the aluminium sector. Beyond the plans, the government's intervention in the sector has taken the form, inter alia, of export-related measures, including export duties, export quotas, export performance requirements and minimum export price requirements on different raw materials for aluminium. The GOC further discourages exports of primary aluminium and its inputs, aiming at promoting higher added-value aluminium products. This objective is pursued by granting full or partial VAT rebates on downstream aluminium products in combination with incomplete VAT rebates and export taxes on primary aluminium. Other types of government intervention leading to market distortions include the stockpiling policy through the State Reserve Bureau and the role of the Shanghai Futures Exchange (SHFE). In addition, several trade defence investigations have established that the Chinese government has consistently granted different types of State support measures to aluminium producers. The extensive intervention of the GOC in the aluminium sector has led to overcapacity, which is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions²⁰¹⁹.

15.5.2. TAXATION POLICIES

15.5.2.1. ENTERPRISE INCOME TAX

Preferential Enterprise Income Tax ('EIT') is applicable to a number of enterprises in China and offers a reduced tax rate instead of the standard EIT of 25%. Enterprises in the aluminium sector can benefit from a reduced EIT rate of 15% as high-tech enterprises²⁰²⁰ which covers companies active, among others, in the new materials, aviation and aerospace, and advanced manufacturing and automation. Moreover, a reduced EIT rate applies to companies making investments in encouraged industries in China's Western Regions from 1 January 2021 to 31

²⁰¹⁷ *Jiemian*: Coal priced at more than C¥750/tonne will be denied port entry at Qinhuangdao Port; available at: <https://www.jiemian.com/article/1928110.html> (accessed on 9 August 2023).

²⁰¹⁸ See: Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China, 18.6.2021, OJ L 216, Recitals 115-120; Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China, 13.10.2020, OJ L 336/8, Recitals 125, 130-135; Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China, 12.4.2021, OJ L 124, Recitals 156, 161-166.

²⁰¹⁹ *Ibid.*

²⁰²⁰ See Article 28 of the Law on Enterprise Income Tax (amended on 29 December 2018), available at: <http://www.npc.gov.cn/npc/c30834/201901/0c846c25aa80405fafc6f99247d0fe08.shtml> (accessed on 9 August 2023).

December 2030, based on the Announcement of the Ministry of Finance and the State Taxation Administration about Continuing to Implement Preferential Corporate Income Tax Policies for Western Development²⁰²¹. The list of eligible industries includes certain aluminium businesses. To provide some examples, development and production of high-performance aluminium alloy products in the Guizhou province, as well as technology development for and production of high-performance aluminium alloy deep processing products in the Guangxi Zhuang Autonomous Region are eligible for the lower EIT rate²⁰²². Local authorities may also use preferential EIT as a policy tool to promote the development of the aluminium industry. A prime example is the Notice on Several Policies for Expanding the Aluminium Deep Processing Industry in Nanning issued by Nanning Municipal People's Government in September 2022²⁰²³, according to which qualified aluminium enterprises can enjoy an even lower EIT rate of 9%.

15.5.2.2. VAT REBATES

The Government implements VAT policies that discourage exports of primary aluminium, which results in a depression of prices of primary aluminium in the Chinese domestic market that in turn provides a significant cost advantage for Chinese producers of processed aluminium products²⁰²⁴.

This policy has been confirmed by the Commission in several investigations into aluminium products from China, as well as by other investigating authorities²⁰²⁵.

Moreover, a 2019 OECD study on aluminium has found:

Incomplete rebates of VAT for exporters are a specific tool used by China to favour exports of certain products. China's VAT policy differs from the standard destination-based VAT system of many countries in that it does not fully refund the VAT on exports. Instead, China-based exporters may be eligible for VAT rebates that range from zero to a full refund of the typical 17% VAT rate, depending on the product they export. China's system of VAT rebates can be considered a trade-policy tool since the Government often modifies rebate rates selectively, restricting exports of certain products while encouraging others. Estimated VAT costs for different aluminium products in China show exports of

²⁰²¹ Available at: <https://www.waizi.org.cn/tax/84348.html> (accessed on 9 August 2023).

²⁰²² Full list (in Chinese and English) available at: <http://lawinfochina.com/display.aspx?id=36809&lib=law> (accessed on 9 August 2023).

²⁰²³ See Article 3 of Several Policies for Expanding the Aluminium Deep Processing Industry in Nanning, available at: <https://www.nanning.gov.cn/zwgk/fdzdgknr/zcwj/zfwj/t5340212.html> (accessed on 30 March 2023).

²⁰²⁴ Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in China, 9.11.2012; OJ L 310, p.1, para. 21.

²⁰²⁵ Commission Regulation (EU) No 404/2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in China; 11.5.2010, OJ L 117, p.64; Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in China, 18.9.2012, OJ L 251, p.29; *Australia*: REP 181, p.34, REP 248, pp.77-78, REP 263, pp.81-83; *Canada*: CBSA: Statement of Reasons concerning the final determination with respect to the dumping and subsidizing of Certain Aluminium Extrusions originating in or exported from China, 3 March 2009., pp. 89-92; *USA*: Office of the United States Trade Representative (2017), National Trade Estimate Report on Foreign Trade Barriers, p. 83,

*bauxite, alumina, and primary aluminium to have all borne the full extent of the VAT – and thus to have been penalised – over the past 8 to 15 years. In other words, they had zero or near-zero rebates in the period. On the contrary, exports of semis and articles of aluminium had higher VAT rebates over the same years and were thus promoted relative to upstream products*²⁰²⁶.

Indeed, promoting exports of higher added value aluminium products goes hand in hand with the policies to discourage exports of primary aluminium, aluminium scrap or other low added value products²⁰²⁷. To provide some examples, a full VAT rebate is in place on exports of aluminium foil²⁰²⁸, on aluminium plates²⁰²⁹, but not on aluminium wire²⁰³⁰.

15.5.2.3. EXPORT TAXES ON UNWROUGHT ALUMINIUM

China has also had in place an export tax of 15% on alloyed unwrought aluminium (30% for non-alloyed) and aluminium scrap²⁰³¹. It has been argued that the reason for this export tax is to shift exports towards high-added value products. Environmental concerns have also been invoked as a reason for adopting these policies²⁰³² although this does not seem to be convincing given the overall context, i.e., that there is no such constraint on the downstream industry.

By reducing the volume exported and increasing artificially the level of domestic supply, the domestic price of primary aluminium, which represents a key cost-driver for aluminium processed products, is kept artificially lower than would otherwise be the case in the absence of these policies.

According to OECD's 2019 Report, China's export taxes combined with the VAT rebates have important effects on world aluminium markets. According to the study: "*The combination of*

²⁰²⁶ OECD (2019), Measuring distortions in international markets: the aluminium value chain, p. 25.

²⁰²⁷ USITC. *Aluminium: Competitive conditions affecting the US industry*, pp 254-256 (2017); Zou, S. (2016) 2017 PREVIEW: *Will China's aluminium imports, exports see a repeat of the surges of 2016?* Metal Bulletin, available at: <https://www.metalbulletin.com/Article/3646560/2017-PREVIEW-Will-Chinas-aluminium-imports-exports-see-a-repeat-of-the-surges-of-2016.html> (accessed on 9 August 2023); Platts. (2014). *China unlikely to cut 15% export tax on primary aluminium: sources*, available at: <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/metals/120914-china-unlikely-to-cut-15-export-tax-on-primary-aluminum-sources#:~:text=Aluminum%20smelting%20is%20power%20intensive%20and%20adds%20little,and%20importing%20pollution%2C%20analyst%20and%20smelter%20sources%20said>. (accessed on 9 August 2023).

²⁰²⁸ See at: https://www.transcustoms.com/China_HS_Code/China_Tariff.asp?HS_Code=7607112000 (accessed on 10 August 2023).

²⁰²⁹ See at: https://www.transcustoms.com/China_HS_Code/China_Tariff.asp?HS_Code=7606122000 (accessed on 10 August 2023).

²⁰³⁰ See at: https://www.transcustoms.com/China_HS_Code/China_Tariff.asp?HS_Code=7605190000 (accessed on 16 August 2023).

²⁰³¹ See The Customs Tariff Commission of the State Council's 2023 Tariff Adjustment Plan, available at: [a3d59cbc7ee044feb7c45c848476dad1.pdf \(www.gov.cn/\)](https://www.gov.cn/jiaozhi/2023/08/09/content_5714141.htm) (accessed on 9 August 2023); See also: WTO. (2021). *China's Trade Policy Review*, p. 68-69; available at: https://www.wto.org/english/tratop_e/tpr_e/s415_e.pdf (accessed on 9 August 2023); See also the OECD database on export restrictions at: <https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictionsIndustrialRawMaterials> (accessed on 14 March 2023). An alternative source of data is in place at: <https://data-explorer.oecd.org/>.

²⁰³² CBSA: *Statement of Reasons concerning the final determination with respect to the dumping and subsidizing of Certain Aluminium Extrusions originating in or exported from China*, 3 March 2009, p.91; Platts. (2014) *China unlikely to cut 15% export tax on primary aluminium: sources*.

*incomplete VAT rebates and export taxes implies a de facto export tax on primary aluminium well in excess of 15% (around 30%). This is in contrast with more processed aluminium products (e.g. semis), for which VAT costs and export taxes are generally both lower*²⁰³³.

15.5.3. ENERGY AND ELECTRICITY

Electricity is one of the main cost drivers in aluminium production. Therefore, low electricity prices provide a significant advantage to aluminium producers and downstream users of primary aluminium. The distortions in the energy market, including in the aluminium sector, are described in detail in Chapter 10. They include in particular three problems:

- differentiated electricity prices for aluminium producers, either in the form of preferential pricing or punitive pricing, clearly singling out the enterprises active in the aluminium industry (see Section 10.2.1.2),
- distorted energy costs through the use of captive power plants (see Section 10.2.3),
- direct electricity supply benefitting certain categories of enterprises (see Section 10.2.2.2).

15.5.4. STOCKPILING POLICY

The government purchases and resells primary aluminium via the NFSRA (see Section 12.5.1), with the purpose of stabilizing the price of aluminium products and mitigating excess capacity²⁰³⁴. The following transactions were made in the recent years, in most cases having a direct impact on the market prices of aluminium:

- in March 2013, the government purchased 300 000 tonnes of aluminium in a move to support the struggling metal industry²⁰³⁵,
- in 2016, there were unofficial accounts of the State Reserve Bureau planning to buy 2 million tonnes of aluminium from 14 Chinese smelters and hold the metal for at least three years in order to shore up prices²⁰³⁶,
- in 2021, the NFSRA announced that it would release storage three times in June, July and August 2021, and put a total of 80 000 tons of copper, 210 000 tons of aluminium, and 130 000 tons of zinc into the market to curb the rise in non-ferrous metal prices in the hope to curb inflation²⁰³⁷.

²⁰³³ OECD (2019), *Measuring distortions in international markets: the aluminium value chain*, p. 25.

²⁰³⁴ Australia Anti-Dumping Commission, *Certain Aluminium Extrusions from China*; REP 148, 15 April 2010; Commission Regulation (EU) No 404/2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in China; 11.5.2010, OJ L 117, p.64; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in China, 9.11.2012; OJ L 310, p.1, rec. 22; Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in China, 18.9.2012, OJ L 251, p.29, para. 37.

²⁰³⁵ Farchy, J. Beijing acts to stockpile aluminium. *Financial Times*, available at: <https://www.ft.com/content/a2e98e9e-8be0-11e2-b001-00144feabdc0> (accessed on 24 October 2022).

²⁰³⁶ Djukanovic, B., A way of optimism lifts metal prices. *Aluminium Insider*, available at: <https://aluminiuminsider.com/a-way-of-optimism-lifts-metal-prices/> (accessed on 10 August 2023).

²⁰³⁷ The uncertainty of external factors has increased, and it is time to build commodity reserves, available at: <https://new.qq.com/rain/a/20210907A0C5BN00> (accessed on 10 August 2023).

In addition to these purchases, there are indications that the CNIA proposed that the NDRC purchase 900 000 tonnes of aluminium in late 2015²⁰³⁸. Some reports also suggested the involvement of various SOEs and provincial governments in stockpiling practices in 2016 and in 2020²⁰³⁹. However, due to lack of transparency, those purchases could not be verified, as there is no evidence of the state actually carrying the two purchases through. Note that China does not publish the date, the prices or the quantities of aluminium it has stockpiled. Hence the above list is likely to be incomplete.

15.5.5. SHFE

Several EU investigations have analysed the role of SHFE (see Section 12.6) and its influence on the domestic market for aluminium. In anti-dumping investigations, the Commission consistently concluded that the Government interferes with the price setting mechanisms in the SHFE, and thus creates a distortion in the primary aluminium and downstream markets by depressing prices²⁰⁴⁰. In the same vein, the Australian anti-dumping investigating authority has determined that the aluminium prices paid in the SHFE did not “*reasonably reflect competitive market costs*” and that, aluminium being a globally traded commodity product, the nature and correlation of prices identified between the SFHE and the LME “*was not consistent with the forces of supply and demand*”²⁰⁴¹.

Going beyond the price formation mechanisms, it should be noted that Article 6 of SHFE’s Articles of Association stipulates “*that the Exchange shall establish an organization of the Communist Party of China [...] and provide necessary conditions for the activities of the party organization to ensure that the party committee plays the core role of political leadership [...]*”²⁰⁴². This language mirrors similar provisions in the corresponding documents of corporate entities and industry associations (see Sections 2.3.3, 3.3.1 and 3.3.2), confirming the observations concerning the growing intervention of the CCP in all aspects of the Chinese economy in recent years, as described in Chapter 3.

²⁰³⁸ CNStock. (2015); available at: <http://news.cnstock.com/industry.rdj-201511-3634843.htm> (accessed 10 August 2023).

²⁰³⁹ See Home, A. - China’s aluminium stockpiling plan is repeating the mistakes of the past; (2015) Reuters; available at: <https://www.reuters.com/article/us-china-aluminium-ahome-idUSKBN0U410220151221> (accessed on 10 August 2023); see further Yam, P.; Stanway, D. - Aluminium stockpiling fund gives glimpse of China metals reforms; (2016) Reuters; available at: <https://www.reuters.com/article/china-metals-stockpiling-idUKL3N1542ZV> (accessed on 10 August 2023); see also Nguyen M. - China aluminium dances to its own beat as LME price stumbles; (2020) Reuters; available at: <https://www.reuters.com/article/us-china-metals-aluminium-idUSKBN22I20K> (accessed on 10 August 2023).

²⁰⁴⁰ Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the People’s Republic of China, OJ L 251, 18.9.2012, p.29; Council Implementing Regulation (EU) No 1039/2012 of 29 October 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of aluminium radiators originating in the People’s Republic of China, OJ L 310, 9.11.2012, p.1; Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People’s Republic of China; OJ L 117, 11.5.2010, p. 64; Commission Implementing Regulation (EU) 2021/983, recital 118.

²⁰⁴¹ Australian Customs and Border Protection Service: *Certain aluminium extrusions exported to Australia from the People’s Republic of China*, REP 148; 15.4.2010, p. 35.

²⁰⁴² See at: <https://www.shfe.com.cn/regulation/regulation/rules/> (accessed on 10 August 2023).

15.5.6. USE OF FORCED LABOUR IN ALUMINIUM PRODUCTION

A significant proportion - around 10% - of China's aluminium industry is located in Xinjiang, which is attractive for investors in terms of the abundance of cheap coal (see Section 15.5.1.2). However, there are indications of the use of forced labour in all of the eight main aluminium smelters located in the province, as established for instance by the 2022 report by Horizon Advisory. The investigated forced labour indicators included, among others, transfer of labour, ties to the Xinjiang Production and Construction Corps, presence of “*ethnic policy*” leaders, job fairs and vocational education explicitly tied to transfer of labour and coordination of labour transfer subprogramme²⁰⁴³ (see Chapter 13 for further details).

15.6. PAST FINDINGS ON GOVERNMENT SUPPORT IN THE ALUMINIUM SECTOR

It is not possible to provide a concise overall picture of the cumulated financial and non-financial support measures from which the Chinese aluminium industry benefits. However, it is clear that the level of support is very substantial. According to the 2019 OECD study, while some sort of subsidisation of the aluminium industry is also present in other jurisdictions, what differentiates China from other jurisdictions is the fact that, first, the subsidies in China mostly take the form of financial subsidies and some energy and input subsidies, as opposed to mostly non-financial support in other jurisdictions, and secondly, the scale of those subsidies is much larger than elsewhere²⁰⁴⁴. The OECD study reported that Chinese firms received State support in the form of below market-value loans ranging from 4% to 7% of annual revenues (data covering years 2008-2019) as compared to similar loans representing 0.2% of annual revenues of companies located in other countries²⁰⁴⁵. This corresponds to a 35-fold higher subsidisation in the form of loans in China as compared to other jurisdictions.

The main beneficiaries of China's financial support for the aluminium industry were the Chinese aluminium SOEs. However, as evidenced in the aforementioned OECD study, two large private firms also benefitted from support from state-owned banks: the China Hongqiao Group and China Zhongwang, China's largest producer of extrusion products²⁰⁴⁶.

In terms of non-financial government support (for example R&D or energy subsidies), the OECD study examined 17 companies in various jurisdictions and found that the largest beneficiary was the China Hongqiao Group, benefitting from roughly 30% of all non-financial support considered by the study. Two other Chinese enterprises also ranked among the top five recipients of non-financial government support in the study, including SPIC (15%) and Qinghai Provincial Investment Group (‘*QPIG*’) (6%). It seems that the support measures were mostly focused on primary aluminium producers, while the three investigated producers of semis - China Zhongwang, Xingfa Aluminium and Henan Mingtai - received comparatively lower support²⁰⁴⁷.

²⁰⁴³ Horizon Advisory. Base Problem: Forced labour risks in China's aluminium sector. April 2022, available at: <https://www.horizonadvisory.org/backtobasics> (accessed on 16 August 2023).

²⁰⁴⁴ OECD (2019), Measuring distortions in international markets: the aluminium value chain, p.6.

²⁰⁴⁵ *Ibid.*, p. 50

²⁰⁴⁶ *Ibid.*, p. 6.

²⁰⁴⁷ *Ibid.*, p. 13-14.

The study further identified cheap loans with “*interest rate below benchmark*”, for example in the case of the state-owned SPIC and QPIG²⁰⁴⁸, noting that the financing institutions included largely state-owned commercial banks and policy banks (see Section 6.3). Moreover, certain SOEs in China seemed not to be subject to the same market discipline as other firms in the industry; for example, Chalco, QPIG, and Yunnan Aluminium obtained average returns on equity that were far lower than the industry benchmark²⁰⁴⁹. The study furthermore pointed out that while some part of financing in China came from shadow banking (see Section 6.3.1.5), loans arising therefrom - which could be a subsidy equivalent - were difficult to identify in a systematic manner due to the lack of transparency, and they therefore could not be quantified.

Past Commission anti-dumping investigations confirmed that a number of aluminium producers received important governmental subsidies, including the producers of aluminium extrusions²⁰⁵⁰. Moreover, the Commission ACF anti-subsidy investigation²⁰⁵¹ established the following list of subsidies which benefitted the industry:

Preferential financing²⁰⁵²

- Preferential loans;
- Free credit lines;
- Acceptance drafts: investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost;
- Banks investing into convertible bonds at very low rates of return, then converting them into shares at a price much higher than their market value;
- Preferential financing in the form of corporate bonds;
- Export credit insurance at rates below the minimum fee needed for the lending bank – Sinosure – to cover its operational costs;
- Grants related to technology, innovation and development with eligibility criteria depending on national industrial policy goals;
- Grants, including asset-related grants, patent funds, science and technology funds and awards, business development funds, export promotion funds, grants for industry quality increase and efficiency enhancement, municipal commerce support funds, foreign economic and trade development funds and production safety awards.

Revenue foregone through tax exemptions and reduction programmes²⁰⁵³

- Direct tax exemptions and reductions (reduced EIT rate of 15%);
- EIT offset for research and development expenses;
- Dividends exemption between qualified resident enterprises (income tax preferences to enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State, in particular tax discounts/exemptions from

²⁰⁴⁸ *Ibid.*, p. 21.

²⁰⁴⁹ *Ibid.*, p. 24.

²⁰⁵⁰ Commission Implementing Regulation (EU) 2020/1428, recitals 102-103.

²⁰⁵¹ Commission Implementing Regulation (EU) 2021/2287.

²⁰⁵² *Ibid.*, Sections 3.4. to 3.7.

²⁰⁵³ *Ibid.*, Section 3.8.

income and equity investment tax, such as dividends and bonuses, between eligible resident enterprises);

- Land use tax exemption;
- Indirect tax and tariff exemption programmes: VAT exemptions and import tariff rebates for the use of imported equipment and technology.

Government provision of goods and services for less than adequate remuneration²⁰⁵⁴

- Provision of land for less than adequate remuneration (for example LUR obtained through allocation by local authorities and not through a bidding procedure; bidding procedures with only one bidder; refunds of LUR fees);
- Provision of electricity at reduced rates (reductions or refunds/adjustments of part of electricity cost; direct purchasing agreements at prices lower than official provincial electricity prices for large industrial users).

Investigations into the Chinese aluminium industry conducted by other jurisdictions also confirmed the existence of subsidies in the sector. For example, the Canadian authorities established in 2009 that Chinese producers of certain aluminium extrusions had benefitted from numerous subsidies²⁰⁵⁵. Following a review investigation, the Canadian authorities continued the measures as recently as 2020²⁰⁵⁶. Similarly, the Australian authorities established in 2010 that Chinese producers of aluminium extrusions had received various subsidies²⁰⁵⁷. This finding has been subject to partial reviews throughout the years and was confirmed consistently, most recently in August 2023²⁰⁵⁸. Moreover, the US authorities concluded in 2018 that Chinese aluminium foil producers had benefitted from a wide range of subsidies²⁰⁵⁹. The US authorities have also countervailed support measures available to Chinese producers of aluminium wire and cables²⁰⁶⁰. In addition, a report by the United States International Trade Commission referring to US investigations and market intelligence indicates that subsidies, such as provision of inputs at LTAR, have been provided by SOEs in the aluminium sector²⁰⁶¹.

15.7. CHAPTER SUMMARY

China is the largest aluminium producer in the world. Its domestic market is served significantly by large SOEs, which account for a dominant share of Chinese aluminium production and production capacity. These SOEs are a primary vehicle for implementing government policies

²⁰⁵⁴ *Ibid.*, Section 3.9.

²⁰⁵⁵ See Section 15.4. of the 2017 version of this Report.

²⁰⁵⁶ See at: <https://trade-remedies.wto.org/en/countervailing/investigations/measures/can-cv124cn> and <https://www.cbsa-asfc.gc.ca/sima-lmsi/er-rre/ae2019/ae2019-de-eng.html> (accessed on 10 August 2023).

²⁰⁵⁷ See Section 15.4. of the 2017 version of this Report.

²⁰⁵⁸ See at: https://www.industry.gov.au/sites/default/files/adc/public-record/2023-09/609_-_041_-_report_-_final_report_-_rep_609.pdf (accessed on 12 October 2023).

²⁰⁵⁹ See Section 15.4. of the 2017 version of this Report, as well as the final affirmative determinations by the US authorities, available at: <https://www.federalregister.gov/documents/2018/04/19/2018-08116/certain-aluminum-foil-from-the-peoples-republic-of-china-amended-final-affirmative-countervailing> (accessed on 10 August 2023).

²⁰⁶⁰ See at: <https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-23611.pdf> (accessed on 10 August 2023).

²⁰⁶¹ USITC. *Aluminium: Competitive conditions affecting the US industry*, p. 262-263; available at: <https://www.usitc.gov/publications/332/pub4703.pdf> (accessed on 10 August 2023).

(see Section 15.4.1). There are numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, clearly showing the high degree of intervention of the Chinese government in the aluminium sector. Through these and other instruments, the Government directs and controls the development and functioning of the sector to a great extent (see Section 15.3).

Beyond the plans, the Government's intervention in the sector has taken the form, *inter alia*, of export-related measures, including VAT rebate policies and export taxes on aluminium products (e.g. primary aluminium and scrap). Moreover, key inputs such as energy and electricity are found to be influenced by different types of government intervention. Other types of government intervention leading to market distortions include the stockpiling policy through the NFSRA and the role of the SHFE (see Sections 15.5.4 and 15.5.5). In addition, several trade defence investigations have established that the Government has consistently granted different types of State support measures to aluminium producers (Section 15.6).

The extensive intervention of the government in the aluminium sector has also led to overcapacity (see Section 15.2.3). While the Chinese authorities have taken various formal measures aimed at curbing overcapacity, the issue of structural overcapacity has not been resolved as of writing of this Report.

16. CHEMICAL INDUSTRY SECTOR

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16.1. INTRODUCTION

This chapter focuses on the Chinese chemical sector, covering a broad range of chemicals, falling into the general categories of basic chemicals (for example, inorganic chemicals, petrochemicals and fertilisers), speciality chemicals²⁰⁶² (for example, dyes, paints, pesticides, additives, electronic chemicals), polymers (for example, plastics, man-made fibres, synthetic rubber), consumer chemicals (for example, detergents, cosmetics, fragrances), as well as new chemical materials (for example, advanced composites). Expressed in terms of the Harmonised System ('HS') nomenclature,²⁰⁶³ this chapter broadly covers Section VI of the HS, except

²⁰⁶² Another overlapping category referred to in various regulatory documents is Fine chemical, comprising products such as amino-acids, flavors and fragrances, vitamins, D-ethyl esters, hydroxymethoxyethylbenzene, biphenylnitrile, phthalate diallyl ester, butylsulfonyl chloride, p-toluenesulfonyl chloride, trimethylsilylchloride, potassium iodide, potassium iodate, anti-corrosion coatings including nano marine anti-corrosion and graphene marine anti-corrosion coatings, dispersed polyacrylamide, dispersed polyacrylic acid copolymer, maleic acid copolymer, scale inhibition corrosion inhibitor, polycarboxylic acid scale inhibitor dispersant, quaternary ammonium salt sterilization and algae killing agents, other water treatment aids.

²⁰⁶³ See at: <https://www.wcotradetools.org/en/harmonized-system> (accessed on 22 August 2023).

pharmaceutical products but parts of Section V, in particular Chapter 27, certain parts of Section XI and others.

The Chapter will first provide a general overview of the Chinese chemical sector, including a summary of recent data on production, geographical distribution, main market players, etc. Subsequently, the Chapter will describe the relevant legal and administrative framework, in particular the planning documents for the chemical sector, at various levels of government. Finally, the Chapter will further recount the distortions detected in the Chinese chemical sector by the Commission and the US authorities.

16.2. THE CHINESE CHEMICALS MARKET

16.2.1. CHINA'S GLOBAL POSITION

As of the writing of this Report, China ranks first among the countries producing chemicals. In 2020, China's sales of chemicals totalled EUR 1 547 billion, thereby representing 44.6% of global chemical sales. China was followed by the EU with 14.4% and the US with 12.3% of global sales, respectively²⁰⁶⁴. This reflects a long-term trend of China's growing share of global chemicals sales (amounting to 25.8% a decade earlier), with the share of other players decreasing correspondingly (in the case of the EU from 19.3% in 2010 and in the case of the US from 16.5% in 2010)²⁰⁶⁵. Even when set into the context of a continuously growing global market in chemicals (+6.1% in 2021), the chemical production was growing fastest in China with 7.7% growth in 2021 (6.0% in the EU and 1.8% in the US, respectively)²⁰⁶⁶.

In its trade with the rest of the world, China has become a net exporter of chemicals, although it is close to a balanced trade position. In 2021, China exported USD 214 billion (USD 137 billion in 2020, USD 130 billion in 2019, USD 137 billion in 2018, USD 114 billion in 2017, USD 141 billion in 2016) and imported USD 190 billion (USD 150 billion in 2020, USD 155 billion in 2019, USD 156 billion in 2018, 133 billion in 2017, USD 152 billion in 2016) worth of chemicals²⁰⁶⁷.

16.2.2. MAIN INDUSTRY SEGMENTS

According to Chinese official statistics, manufacturing of raw chemical materials and chemical products represented the largest subsector in 2020, with more than 22 000 enterprises employing 3 400 000, and with revenue of approximately RMB 6 400 billion (approximately USD 980 billion). The second largest subsector was manufacturing of rubber and plastic products, with approximately 20 781 enterprises generating RMB 2 558 billion in revenue (approximately USD 391 billion) and employing 2 800 000. The processing of petroleum, coal and other fuels was the third largest sector, with 2 116 enterprises, RMB 4 198 billion in revenue

²⁰⁶⁴ See at: <https://cefic.org/a-pillar-of-the-european-economy/facts-and-figures-of-the-european-chemical-industry/profile/#h-eu27-market-share-dropped-significantly> (accessed on 29 August 2022).

²⁰⁶⁵ *Ibid.*

²⁰⁶⁶ See at: <https://report.basf.com/2021/en/managements-report/basf-group-business-year/economic-environment/chemical-industry.html> (accessed on 22 August 2023).

²⁰⁶⁷ See China Statistical Yearbook 2022, Section 11-4, available at: www.stats.gov.cn/sj/ndsj/2022/indexeh.htm (accessed on 22 August 2023). See the corresponding Section 11-4 also in the previous annual editions of the China Statistical Yearbook.

(approximately USD 643 billion), and employment of 804 000 followed by the manufacturing of chemical fibres with 1 937 enterprises, RMB 800 billion in revenue (approximately USD 123 billion), and employment of 422 000²⁰⁶⁸.

On a more granular basis, the China Petroleum and Chemical Industry 2020 Economic Operations report²⁰⁶⁹ noted a rapid growth in the overall production of key chemicals, combined with a slight decline in the production of agrochemicals as follows:

Product	Output (million tons)	YoY change (%)
Key Chemicals		
Ethylene	21.6	+5.2
Benzene	10.42	+8.6
Methanol	49.84	+4.7
Paints	25.49	+2.6
Chemical reagents	28.24	+4.5
Sulfuric acid	92.38	-1.3
Caustic soda	36.74	+6.2
Soda ash	28.12	-2.9
Synthetic resin	104	+7.0
Polymers	74.19	+8.2
Tires	818	+1.7
Agrochemicals		
Nitrogen fertilizers	36.79	+2.7
Phosphate fertilizers	10.05	-6.9
Potash fertilizers	7.11	-7
Raw pesticide agents	2.15	-1.1

The corresponding 2021 report²⁰⁷⁰ observes a continued overall growth trend: “in terms of main categories [...] the total quantity of basic chemicals increased by about 6.7%. The output of ethylene was 28.257 million tons, up 30.8% compared to the previous year; the output of chemical fertilizers remained basically the same with an aggregate output (converted into pure substances) was 55.436 million tons, up 0.9%, after last year’s decrease by 4.1%; raw materials for phyto-sanitary products increased by 7.8%; tire casings increased by 10.8%.”

16.2.3. GEOGRAPHICAL DISTRIBUTION OF THE CHEMICAL INDUSTRY

Chinese chemical plants are found predominantly in the Central and Eastern provinces, with the main production areas and their production focus distributed as follows²⁰⁷¹:

²⁰⁶⁸ See China Statistical Yearbook 2021, Section 13-2.

²⁰⁶⁹ See at: <http://lwzb.stats.gov.cn/pub/lwzb/tzgg/202107/W020210723348607291201.pdf> (accessed on 5 July 2023).

²⁰⁷⁰ Available at: <http://lwzb.stats.gov.cn/pub/lwzb/tzgg/202205/W020220511400435319593.pdf> (accessed on 22 August 2023).

²⁰⁷¹ See at: <https://baijiahao.baidu.com/s?id=1740107774960498729&wfr=spider&for=pc> (accessed on 22 August 2023).

Province / Location	Manufacturing focus
Shandong	petrochemicals, basic chemical raw materials, fluorine chemicals, titanium dioxide, pesticides, plastics, silicones and other fine chemicals
Jiangsu	petrochemicals, basic chemical raw materials, fluorine chemicals, pesticides, dyes, plastics, titanium dioxide, silicones and other fine chemicals
Zhejiang	petrochemicals, basic chemical raw materials, fluorine chemicals, pesticides, dyes, plastics, titanium dioxide, silicones and other fine chemicals
Hebei	pesticides, plastics, petrochemicals and silicones
Sichuan	pesticides, titanium dioxide and basic chemical raw materials
Guangdong	plasticizers, petrochemicals, fluorine chemicals
Tianjin	petrochemicals
Henan	dyes, pesticides, silicones
Liaoning	petrochemicals
Hubei	titanium dioxide, petrochemicals and basic chemical raw materials

As will be described below in Section 16.3, Chinese authorities encourage the creation of industrial clusters in the chemical sectors, not least to take advantage of the interdependencies of various chemical manufacturing processes and to reap the benefits of economies of scale. By 2018, China had 676 chemical industrial parks, of which 351 were provincial-level industrial parks and 224 were prefectural-level industrial parks. They are mainly distributed in the provinces of Jiangsu, Shandong and Hubei (see also Table 16.1 below listing China's top ten chemical parks in 2021), each of them featuring specific characteristics conducive to the development of the chemical industry, such as the existence of oilfields for the petrochemical subsector, convenient transportation options along the shoreline of major rivers, or integration of the chemical industry into other industrial production chains²⁰⁷².

Table 16.1: Top 10 Chemical Parks in China (2021)²⁰⁷³

Chemical Park	Location
Shanghai Chemical Industry Park (SCIP)	Shanghai
Daya Bay Economic-Technological Development Area	Huizhou, Guangdong
Nanjing Jiangbei New Materials Science and Technology Park	Nanjing, Jiangsu

²⁰⁷² See Chen C., Reniers, G. (2020). Chemical industry in China: The current status, safety problems, and pathways for future sustainable development; Safety Science (Volume 128, August 2020).

²⁰⁷³ See at: https://www.sohu.com/a/470474460_121118717 (accessed on 22 August 2023).

Ningbo Petrochemical Economic-Technological Development Area	Ningbo, Zhejiang
Ningbo Daxie Chemical Industry Park	Ningbo, Zhejiang
Taixing Economic Development Area	Taixing, Jiangsu
Yangzi River Int'l Chemical Industry Park	Zhangjiagang, Jiangsu
Qilu Chemical Industry Park	Zibo, Shandong
Dongying Harbor Economic Development Area	Dongying, Shandong
Ningdong Energy and Chemical Industry Base	Ningxia Hui Autonomous Region
China Chemical New Material (Jiaxing) Park	Jiaxing, Zhejiang
Yangzhou Chemical Industry Park	Yangzhou, Jiangsu

At the same time, with the combined output of chemical plants in Shandong, Jiangsu, Henan and Hebei exceeding 50% of China's overall chemical production, the State's push for enforcement of new, stricter (local) environmental regulations is likely to result in greater geographical concentration and corporate restructuring of the sector within the country²⁰⁷⁴. The impact of such redistribution on the number of actors in the sector may not be straightforward, typically when closure of smaller, outdated production sites can lead to a lower number of companies in an area, whereas the changes in industrial output do not necessarily show the same trend, for instance due to parallel increase of production in larger industrial facilities²⁰⁷⁵. In any event, the State is using environmental regulations as industrial policy to help achieve its industrial policy goals, such as creating industrial clusters, promoting economies of scale etc. (see Section 16.3.1).

16.2.4. STATE-OWNED ENTERPRISES

SOEs, in particular large central ones, have traditionally played a dominant role in China's petrochemical industry due to their oligopoly position in upstream/feedstock, easy access to government-allocated resources (funds, loans, land, etc.) and strong influence in government decision-making²⁰⁷⁶. However, the important role of SOEs extends to the entire chemical sector, with SOEs accounting for almost a quarter of total assets²⁰⁷⁷ and for more than 40% of the total market value of listed chemical companies in 2021²⁰⁷⁸. Indeed, it has been reported that where central SOEs oftentimes continue to comply with its mandate to provide reliable supply of basic chemicals, as well as stable employment, some of the provincial level SOEs have recently

²⁰⁷⁴ See Hong, S., Yifan, J., Xiaosong, L., Liu, N. (2019). *China's chemical industry: New strategies for a new era*; available at: <https://www.mckinsey.com/industries/chemicals/our-insights/chinas-chemical-industry-new-strategies-for-a-new-era> (accessed on 22 August 2023).

²⁰⁷⁵ *Ibid.*

²⁰⁷⁶ AT Kearney (2012). *China's Chemical Industry: Flying Blind?*, available at : <https://www.kenney.com/documents/291362523/291364877/Chinas-Chemical-Industry---Flying-Blind.pdf/a3bb9398-fb58-1096-46c1-d518e0b19665?t=1687792095000> (accessed on 5 July 2023).

²⁰⁷⁷ See China Statistical Yearbook 2021, Sections 13-2 and 13-4.

²⁰⁷⁸ See Everbright Securities (2021). *Dynamic report on state-owned listed companies in the chemical industry*, available at: https://pdf.dfcfw.com/pdf/H3_AP202105141491681949_1.pdf (accessed on 5 July 2023).

pursued fresh business strategies, such as consolidating major sectors of the chemical industry²⁰⁷⁹.

Table 16.2 below presents the top ten chemical companies in China. The three largest chemical companies (by sales revenue) in China in 2021 were central SOEs, with another two local SOEs appearing lower on the list.

Table 16.2: The 10 largest Chinese chemical companies²⁰⁸⁰

No.	Company name	Ownership	Estimated sales (USD bln)
1.	Sinochem Holding	SOE	144
2.	Sinopec	SOE	61.3
3.	PetroChina	SOE	22
4.	Hengli Petrochemical Co.	Private	15
5.	Rongsheng Petrochemical Co.	Private	13.4
6.	Hengyi Petrochemical Co.	Private	11.5
7.	Syngenta	SOE ²⁰⁸¹	10.5
8.	Wanhua Chemical Group Co.	Private ²⁰⁸²	9.8
9.	Yunnan Yuntianhua	SOE	8.3
10.	Tongkun Group Co.	Private	7.7

Following a merger between Sinochem Group Co., Ltd. and ChemChina in 2021 (see also Section 5.5.1.), Sinochem Holding Co., Ltd. features as the top-level entity in the corporate structure of the reorganized group. While the Sinochem group, already before the merger a prime example of a large-scale diversified enterprise, maintains a vast range of activities well beyond chemicals, in the chemical sector its operations now cover products ranging from petrochemicals, fertilizers and pesticides, rubber tires and rubber additives, and fluorosilicons to engineering plastics and others²⁰⁸³. With revenues of USD 172 billion in 2021, the reorganized group ranked as number 31 on the Fortune Global 500, being China's ninth largest company by revenue²⁰⁸⁴.

²⁰⁷⁹ See Hong, S.; Yifan, J.; Xiaosong, L.; Liu, N., cited.

²⁰⁸⁰ See at: <https://www.process-worldwide.com/the-top-10-chemical-companies-in-china-a-1028433/> (accessed on 22 August 2023).

²⁰⁸¹ Syngenta was founded in 2000 by the merger of the agrochemical businesses of Novartis and AstraZeneca and was acquired by China National Chemical Corporation in 2017.

²⁰⁸² With a 22% shareholding by the local government.

²⁰⁸³ See Everbright Securities (2021). Dynamic report on state-owned listed companies in the chemical industry; See further: ^{KPMG} (2013). China's chemical industry: The emergence of local champions, available at: <https://assets.kpmg.com/content/dam/kpmg/pdf/2013/10/China-Chemical-Industry-201310.pdf> (accessed on 5 July 2023).

²⁰⁸⁴ See at: <https://fortune.com/company/sinochem-holdings/global500/> (accessed on 22 August 2023).

16.2.5. OVERCAPACITY

For many years overcapacity has been particularly pronounced in the Chinese chemical sector²⁰⁸⁵. The official capacity utilisation rate statistics reported a rate of 77.2%, in the last quarter of 2020²⁰⁸⁶ aggregated at the level of chemical raw materials and chemical products manufacturing. For the second quarter of 2022, the same statistics reported a capacity utilisation rate of 77.7%²⁰⁸⁷. These figures would suggest that China has made some progress in its goals of capacity reduction (see Section 16.3.1 below), even though Covid-related economic factors may have also had impact on available capacity and its utilisation. At the same time, the Government has been open since many years about the fact that even if, seen from the cyclical perspective, the country may be in the stage of capacity contraction, China's overcapacity is of a long-term nature, with the overcapacity concentrated in traditional heavy industries, such as iron, steel, coal, cement and chemicals²⁰⁸⁸.

16.3. REGULATORY FRAMEWORK

16.3.1. 14TH FYPS RELEVANT TO THE CHEMICAL INDUSTRY

The recent developments of the chemical sector in China have been characterized by a strong regulatory drive-in pursuit of a number of policy objectives, two of which are particularly consequential, even if not entirely new²⁰⁸⁹:

- industry upgrading, both in terms of upgrading technical capabilities, as well as moving towards more specialty products,
- tightening of environmental requirements.

These higher-level objectives are supported by related policy measures, such as relocating chemical production sites or making available financing for chemical projects²⁰⁹⁰.

The policy goals for the chemical sector are listed in relevant regulatory and planning documents, including the 14th FYP (see Section 4.2.5). Article VIII of the 14th FYP, titled '*Deepen the implementation of the manufacturing powerhouse strategy*', consists of four sections, among which Section 3 '*Promote the optimization and upgrading of the manufacturing industry*' states:

[...] We shall transform and upgrade traditional industries, promote the optimization and structural adjustment of raw material industries such as petrochemicals, steel, nonferrous metals, and building materials, expand the supply of high-quality products in sectors such as light industry and textiles, speed up the transformation and upgrading of enterprises in key industries such as the chemical

²⁰⁸⁵ See Section 16.2.6. of the 2017 version of this Report.

²⁰⁸⁶ See at: www.gov.cn/xinwen/2021-01/18/content_5580654.htm (accessed on 22 August 2023).

²⁰⁸⁷ See at: <https://m.yicai.com/news/101402248.html> (accessed on 22 August 2023).

²⁰⁸⁸ See Ministry of Economic Forecasting (2018). Analysis of the reasons for the rise in the price of industrial products in the case of overcapacity, available at: <http://www.sic.gov.cn/News/455/8807.htm> (accessed on 22 August 2023).

²⁰⁸⁹ They featured already in the policies during the 13th planning cycle and formed part of dedicated cross-cutting industrial strategies, such as Made in China 2025, with the explicit focus on technological upgrading.

²⁰⁹⁰ See Hong, S.; Yifan, J.; Xiaosong, L.; Liu, N., cited.

industry and papermaking, and improve the green manufacturing system. We shall deepen the implementation of special projects to enhance the core competitiveness and technological transformation of the manufacturing industry, encourage enterprises to apply advanced and applicable technologies, and strengthen equipment updating and the large-scale application of new products. [...]

In other words, the Government undertakes not only the explicit commitment to strive for the optimization and structural adjustment of selected industrial (sub)sectors as such, but it is also intent on accelerating the transformation and upgrading of individual enterprises.

With respect to the environmental objectives, Article XXVIII ‘Continue to improve environmental quality’ stipulates in its Section 3 ‘Strictly prevent and control environmental risk’:

[...] We shall improve the environmental risk management system for toxic and hazardous chemical substances and complete the relocation and transformation of hazardous chemical production enterprises in key areas. [...]

Similarly, according to Section 3 ‘Vigorously develop the green economy’ of Article XXXIX ‘Accelerate the green transformation of the development model’:

[...] We shall promote the clean and efficient use of fossil fuels such as coal, promote the green transformation of steel, petrochemical, building materials, and other industries [...].

This is complemented by the following pledge²⁰⁹¹:

We shall [...] carry out governance and transformation for volatile organic compounds in key industries such as petrochemicals, chemicals, coatings, medicine, and packaging and printing [...].

Although the above 14th FYP objectives seem unobjectionable, they cannot be read out of the context of the 14th FYP, i.e. a document which specifically confers unconditional leadership over the country and its economy to the CCP (see Sections 3.2 and 4.2.5 for details). Equally importantly, while goals in the 14th FYP may be worded rather generally and resemble the political commitments commonly taken by governments in other countries, the regulatory documents implementing the 14th FYP demonstrate a continuity in China of an economic model in which the State, rather than setting the regulatory limits within which market forces are at play, expressly instructs and create incentives for regulators, policymakers and governments at all levels to develop and implement industrial policies in order to achieve the goals laid out in the planning documents.

In that respect, the planning documents one level below the national 14th FYP reveal the constitutive role which the State intends to play in shaping the chemical sector in China during the 14th FYP period. The 14th FYP on Developing the Raw Materials Industry (see also Section 12.2.1.1) defines the raw materials industry as consisting of the petrochemical, chemical, steel, non-ferrous metals, building materials and other sectors it describes as the bedrock of the real

²⁰⁹¹ Table 15 of the 14th FYP.

economy²⁰⁹². After recounting the achievements of the 13th FYP period and the general principles of development, the plan lists the main objectives for the entire raw material industry, such as bolstering high-end supply, increasing the industry concentration and pursuing the green development and digital transformation (see Chapter 12). Moreover, when setting out how these objectives should be achieved, the Plan contains measures specifically targeting the chemical sector. In particular, with respect to technological innovation, the Plan stipulates²⁰⁹³:

Foster technologies such as highly selective catalysts, highly efficient membrane separation, as well as essential safety features of hazardous processes, and foster R&D of new products such as special-purpose metallocene-based polyolefin, high-end lubricants, high-purity/ultra-high-purity chemicals, special-purpose industrial gas, methane coupling based olefins. Promote engineering technologies such as the clean and efficient use of coal, short processes for coal-based chemicals production, the organization of the whole industrial chain for bio-based materials, the low-cost, harmless treatment and use of phosphogypsum, and carbon dioxide capture and storage (CCS) and comprehensive use.

And concerning the industrial structure²⁰⁹⁴:

Production capacity increase in urea, ammonium phosphate, calcium carbide, caustic soda and yellow phosphorus sectors shall be strictly controlled. New projects shall follow the principle of replacing the same amount of existing production capacity or replacing more production capacity. [...]

The layout plan for the petrochemical industry shall be implemented and new p-xylene and ethylene projects other than those laid down in the plan shall be strictly prohibited. The production layout of hazardous chemicals shall be improved. It is not allowed to initiate new projects or expand existing projects that produce hazardous chemicals outside chemical industrial parks. The external safety distance of projects that produce hazardous chemicals shall meet relevant requirements. We shall go ahead with the relocation and transformation of chemical enterprises located in key drainage areas and move them into qualified chemical industrial parks. [...]

Requirements for the accreditation of chemical industrial park shall be formulated to guide localities to accredit a group of chemical industrial parks and guide the agglomeration and standardized development of chemical enterprises. [...]

Measures shall be taken to make leading enterprises bigger and stronger. Led by the market and supported by the government, we shall [...] help such enterprises accelerate trans-regional and cross-ownership mergers and reorganization, so as to make the industry more concentrated and facilitate international operations. In sectors including petrochemicals and chemicals [...] we shall foster a number of pioneering enterprises that could lead the ecosystem of the industrial chain with core competitiveness [...]. The guiding role of leading enterprises in chemical and

²⁰⁹² See 14th FYP on Developing the Raw Materials Industry, Introduction and Sections I and II.

²⁰⁹³ *Ibid.*, Feature 1.

²⁰⁹⁴ *Ibid.*, Sections IV.I.; IV.II.; IV.III.

building materials sectors shall be leveraged to promote corporate reform and restructuring.

Moreover, the Plan contains a dedicated section on implementation, according to which²⁰⁹⁵:

All localities shall strengthen their compliance with this Plan and include the main contents and major projects herein in their primary local tasks. Petrochemical and chemical, steel and other key sectors shall formulate specific implementation opinions based on the objectives and tasks of this Plan and the actual conditions in the aforesaid sectors. Measures shall be taken to establish mid-term assessment mechanisms to follow through the implementation of the Plan as well as keep an eye on the new problems and situations arising out of the process in a dynamic manner, and, where necessary, adjust the contents of the Plan in accordance with relevant procedures. Sectoral organizations shall give full play to their role as a bridge between enterprises and the government through providing timely feedback on problems and suggestions on the implementation of the Plan.

The Plan therefore represents a classic example of how the overall planning system, as described in Chapter 4, functions, namely that each lower-level planning document reflects the objectives set by the higher-level plans and articulates them in a more specific manner, adding more detailed industrial policy goals. At the same time, the lower-level administrative entities are required to incorporate the Plan's objectives into their own, including establishing mechanisms to assess the implementation.

The following examples of planning documents show how the higher-level planning objectives eventually trickle down the administrative system, resulting in the government authorities setting detailed parameters of the industry, like production and capacity targets, product selection, R&D expenditure, plant location, etc.

In March 2022, six ministries²⁰⁹⁶ issued the Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five Years Plan Period (*'the Guiding Opinion'*)²⁰⁹⁷. According to the text, the Guiding Opinion was “*formulated in order to implement the [14th FYP], implement the 14th Five Years Plan for the Development of Raw Material Industry, and promote the high-quality development of the petrochemical and chemical industry*” and it emphasizes the need to “[...] *accelerate the transformation and upgrading of traditional industries, and vigorously develop new chemical materials and fine chemicals. Accelerate the digital transformation of the industry [...] and promote China's progress from a large petrochemical and chemical country to a strong petrochemical and chemical country*”²⁰⁹⁸.

²⁰⁹⁵ *Ibid.*, Section VIII.I.

²⁰⁹⁶ MIIT, NDRC, MOST, MEE, Ministry of Emergency Management, and NEA.

²⁰⁹⁷ Available at:

https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html
(accessed on 22 August 2023).

²⁰⁹⁸ See First section, General Requirements.

The above-mentioned overriding goals of technological upgrade, digital transformation and green development are reflected in the Main Objectives of the Guiding Opinion²⁰⁹⁹:

By 2025, the petrochemical industry shall basically follow a high-quality development pattern with strong independent innovation capability, reasonable structure and layout, green, safe and low-carbon, with significant improvements in the ability to guarantee high-end products, a significant increase in core competitiveness, and a solid step of high-level self-reliance and self-improvement.

- *Innovative development. The original innovation and integrated innovation capabilities shall continue to increase, and by 2025, R&D investment of enterprises above a designated size shall account for more than 1.5% of the main business income; develop more than 20 key common technologies and more than 40 key new products.*
- *Industry structure. The concentration of bulk chemical production shall be further increased, and the capacity utilization rate shall exceed 80%; the level of security of supplies of ethylene equivalent shall be greatly improved, and the level of security of supplies of new chemical materials shall exceed 75%.*
- *Industrial layout. The relocation and transformation of hazardous chemical production enterprises in densely populated urban areas shall be completed, forming about 70 chemical parks with competitive advantages. By 2025, the output value of chemical parks shall account for more than 70% of the total output value of the chemical industry. [...]*
- *Green and safe. The energy consumption and carbon emissions per unit of bulk products shall have decreased significantly, the total emission of volatile organic compounds shall have been reduced by more than 10% compared with the "13th Five Years Plan" period [...].*

Each of these objectives is then further specified in the subsequent sections of the Guiding Opinion. Concerning the technological upgrade, the issuing authorities intend, among others, to “support enterprises to take the lead in forming collaborative innovation organizations such as industrial technology innovation alliances and upstream and downstream cooperation mechanisms, and support the rational layout of local governments to build regional innovation centers and pilot bases”, to “conquer core technologies and enhance the momentum of innovation and development, [...] accelerate breakthroughs in key technologies such as new catalysis, green synthesis, functional-structural integration polymer material manufacturing, and large-scale application of “green hydrogen” [...]”²¹⁰⁰. In this connection, the language of the Guiding Opinion also shows how this type of narrowly-focused regulatory documents is embedded in the wider framework of industrial policies, such as by emphasizing the focus on SEIs which the development of the chemical sector needs to respect: “focusing on strategic emerging industries such as new generation information technology, biotechnology, new energy, and high-end equipment, we shall increase the specifications of material varieties such as organofluorine silicon, polyurethane, and polyamide, and accelerate the development of

²⁰⁹⁹ See First section, Main Objectives.

²¹⁰⁰ See Second section, Improve the level of innovation and development.

*high-end polyolefins, electronic chemicals, industrial special gases, high-performance rubber and plastic materials, high-performance fibres, bio-based materials, special lubricants and greases and other products*²¹⁰¹.

Similarly, the industry structure is clearly meant to be the result of regulatory intervention rather than business decisions of market operators, given the language of the Guiding Opinion²¹⁰²:

Strengthen policy implementation per categories and scientifically regulate the scale of the industry. Orderly reduce petroleum products and increase chemical products in refining projects and extend the petrochemical industry chain. Enhance the supply capacity of high-end polymers, specialty chemicals and other products. Strictly control the new production capacity of refining, ammonium phosphate, calcium carbide, yellow phosphorus and other industries, prohibit the construction of new mercury (poly)vinyl chloride production capacity, and accelerate the withdrawal of inefficient and backward production capacity. Promote the high-end, diversified and low-carbon development of the coal chemical industry and develop modern coal chemical industry in a sound and orderly manner in accordance with the requirements of ecological priority, production determined by water availability, total quantity control, and agglomeration development [...].

Coordinate the layout of projects and promote coordinated regional development. [...] [C]oordinate the layout of major projects and promote the concentration of new petrochemical and chemical projects in chemical parks [...].

As in the case of the 14th Raw Materials FYP, the objectives and imperatives forming the substance of the Guiding Opinion are complemented by a concluding section on implementation which addresses relevant administrative bodies, as well as business operators and industry associations²¹⁰³:

Relevant departments in all localities shall integrate key tasks into their key work, strengthen supervision during projects and ex post, as well as coordinate and promote the implementation of tasks in accordance with their actual conditions. Relevant enterprises shall, according to the main objectives and key tasks, pragmatically promote relevant work based on their own actual situation and disclose environmental information in accordance with the law. Relevant industry organizations shall play a bridging role, actively serve and guide [the industry] and strengthen industry self-discipline.

Moreover, the final section of the Guiding Opinion also reveals the range of support tools and policies which the Chinese authorities typically use to pursue their industrial policy objectives, including the close link to the financial sectors with banks being expected to provide the necessary monetary backing²¹⁰⁴:

²¹⁰¹ *Ibid.*

²¹⁰² See Third section, Promote the adjustment of industrial structure and Fourth section, Optimize and adjust the industrial layout.

²¹⁰³ See Eighth section, Strengthen organizational safeguards.

²¹⁰⁴ *Ibid.*

Improve supporting policies. Strengthen the coordination between fiscal, financial, regional, investment, import and export, energy, ecological environment, price and other policies and industrial policies. Involve national industry-finance cooperation platforms and promote bank-enterprise connections and industry-finance cooperation. [...].

Moving one level down the planning system (see Chapter 4), provincial plans demonstrate again how the policy objectives and corresponding support tools become more specific and targeted. Two provincial 14th FYPs, namely those for Shandong and Jiangsu, i.e. provinces with traditionally the strongest presence of the chemical industry, illustrate this particularly well²¹⁰⁵.

The Shandong 14th FYP on the development of the chemical industry²¹⁰⁶ ('Shandong Chemical Plan') describes the overall situation of the chemical industry as follows²¹⁰⁷:

The "14th Five Years Plan" is a key period for Shandong's chemical industry to achieve reform, reshaping and power conversion. The chemical industry as a fundamental industry for the national economy shall become still more important [...].

[T]he industry's level is still low. Products are still mainly low-end and bulk basic varieties, the degree of refinement is not high, high-tech chemical new materials and high-end special chemicals are not developed enough, the industrial chain is short, and key links of the industry chain are weak. [...] [T]he driving force for innovative development is insufficient. The enterprises' R & D investment is scarce, the primary innovation capacity is weak, the key common technology research capacity of the industry is not strong [...].

Against this background the Shandong Chemical Plan sets the following main objectives:

By 2025, the operating income of enterprises above a designated size of the chemical industry in the province shall reach about RMB 2.65 trillion, with an average annual growth rate of about 7% [...].

Strive to build 8 "pilot" enterprises worth more than RMB 50 billion, including 1-2 over RMB 100 billion and more than 10 high-end chemical industry clusters worth more than RMB 100 billion [...].

More specifically, the Shandong authorities intend to focus on building six major chemical industry bases and on expanding industrial clusters. The third section of the Shandong Chemical Plan goes into detail, setting specific development priorities for each of the designated bases,

²¹⁰⁵ Other provincial 14th FYP are not significantly different in their language and structure. See for example the Jilin 14th FYP on the development of petrochemical industry, available at: http://gxt.jl.gov.cn/xxgk/zcwj/sgxtwj/202109/t20210914_8217060.html (accessed on 22 August 2023) or the Jiangxi 14th FYP on high quality development of petrochemical industry, available at: <https://huanbao.bjx.com.cn/news/20211115/1187880.shtml> (accessed on 22 August 2023). Concerning Shandong and Jiangsu, see also at: www.chinalubricant.com/news/show-103647.html (accessed on 22 August 2023).

²¹⁰⁶ Available at: <http://gxt.shandong.gov.cn/module/download/downloadfile.jsp?classid=0&filename=17e54531cb74483596b5cca1a40ec8d8.pdf> (accessed on 22 August 2023).

²¹⁰⁷ See Preface and First Section of the Plan.

namely the Lubei high-end petrochemical base, the Eastern chemical new material industry agglomeration area, the Luzhong high-end special chemical industry agglomeration area, the Lunan modern coal chemical industry agglomeration area, the Demonstration Zone for the Transformation of Chemical Enterprises in Northwest Luxi and the Huanghai Lingang Petrochemical Industrial Zone²¹⁰⁸. The geographical listing of priorities is complemented by priorities according to subsectors²¹⁰⁹, namely those for petrochemicals, coal-based fine chemical industry, salt chemical industry, tyre industry, new chemical materials, marine chemical industry, fine chemicals and biochemicals. In addition, the Shandong Chemical Plan foresees certain so-called special actions, such as for technological innovation²¹¹⁰ or for industrial chain upgrading²¹¹¹. The concluding section of the Shandong Chemical Plan focuses on implementation modalities, both in term of management oversight, as well as support measures²¹¹²:

Strengthen organizational leadership and overall planning. Improve the linkage mechanism of the chemical industry special action system in provinces, cities and counties, further improve the long-term supervision mechanism for safety and environmental protection, clarify work responsibilities, increase staff, strengthen overall coordination, and solidly promote the implementation of work. Optimize the management model of chemical parks, and clarify the management responsibilities, rights and limits of park management agencies and local governments. [...]

Increase financial support. Strengthen fiscal policy incentives, give full play to the role of special funds, support chemical enterprises to accelerate technological transformation, intelligent transformation, industrial transfer, relocation into parks, eliminate outdated equipment, etc., and implement policies such as tax exemption for imported equipment related to key technologies and equipment, VAT credit refund, additional deduction of research and development expenses, and insurance compensation for the first (set) of technical equipment. Actively guide all kinds of financial institutions and social capital to invest in the chemical industry, give full play to the advantages of policy finance, development finance and commercial finance, and increase financial support for key areas of chemical technology [...].

With national level industrial policies being often effectively carried out at sub-national levels and with the higher-level policy objectives and targets correspondingly becoming more and more specific on lower planning levels, the 14th FYP on high-end development of chemical

²¹⁰⁸ See Third section, subsection (1).

²¹⁰⁹ See Third section, subsection (2).

²¹¹⁰ [G]uide enterprises to increase investment in research and development, cultivate a number of innovation platforms such as state key laboratories and provincial and ministerial laboratories, and encourage enterprises to set up joint platforms such as research institutes. [...]

²¹¹¹ [G]ive play to the agglomeration effect of pilot enterprises, establish an industrial chain cooperation mechanism led by enterprises being "heads of industry chains", supporting upstream and downstream enterprises, financing large and small enterprises, and ensuring joint participation of associations, universities, research institutes, financial institutions, etc., to build an excellent industrial ecology. [...] Support pilot enterprises to become bigger and stronger and enhance the leading role in the development of the industrial chain.

²¹¹² See the Seventh section.

industry of Jiangsu²¹¹³ (*'Jiangsu Chemical Plan'*) provides one of the most telling examples of the entire planning system functions. The structure of the Jiangsu Chemical Plan does not differ too much from similar planning documents: the Jiangsu Chemical Plan presents the overall situation of the industry²¹¹⁴, it identifies the main issues²¹¹⁵, sets overall²¹¹⁶ and specific

²¹¹³ Available at: http://gxt.jiangsu.gov.cn/art/2021/8/25/art_83673_10000511.html (accessed on 22 August 2023).

²¹¹⁴ See Preface, Section 1.1.5. and Section 2.2. of the Jiangsu Chemical Plan: [...] *The chemical industry is one of the pillar industries of Jiangsu Province, is an important and fundamental industry in our province, has formed from oil refining, ethylene production to basic chemical raw materials, synthetic materials, special chemical manufacturing and other industrial systems [...]. Overall analysis: the province has formed a chemical industry system dominated by fine chemicals, widely distributed petrochemical, organic raw materials and synthetic materials, and accelerated the layout of new chemical materials, with distinct industrial characteristics in various cities and the proportion of downstream products in the industrial chain gradually increasing. However, the problematic aspects of scattered layout, low industrial concentration, and insufficient high-end application categories still need to be improved during the "14th Five-Year Plan" period.*

[...]. The overall requirement for the high-quality development of China's petrochemical industry is to take "reducing production capacity and making up for shortcomings" as the core, and "adjusting the structure and promoting upgrading" as the main line, promoting supply-side structural reform, vigorously implementing innovation-driven and green sustainable development strategies, and actively cultivating strategic emerging industries. Promote the continuous optimization of industrial structure, product structure, organizational structure and layout structure, and strive to enhance the international competitiveness and sustainable development ability of the industry [...].

During the "14th Five-Year Plan" period, we shall continue to control the new production capacity of excess industries such as oil refining, urea, ammonium phosphate, caustic soda, polyvinyl chloride, soda ash, calcium carbide, and yellow phosphorus, and implement the policy of "equal or reduced replacement". [...]

Through the integration of resources, accelerate the construction of a number of large-scale enterprises and enterprise groups with a leading role, improve industrial concentration, and form a number of world-class enterprises and "single champion" enterprises. [...]

Focusing on meeting the main needs of major national projects, the national economy and people's livelihood, accelerate the cultivation of petrochemical and chemical strategic emerging industries [...]. Focus on the development of high-performance, high-value-added fine chemical products, and move towards the middle and high end of the industrial chain. [...]

Actively encourage domestic enterprises to carry out overseas mergers and acquisitions, equity participation and the establishment of experimental bases and marketing service systems to strengthen the scale and competitiveness of enterprises. Actively participate in the activities of international industry organizations, participate in the formulation of international rules [...].

²¹¹⁵ See Section 1.2.1. of the Jiangsu Chemical Plan: [T]he overall products are still dominated by general synthetic materials, traditional fine chemicals, etc., and the proportion of differentiated products and high-end products is relatively low [...]. *Engineering plastics, high-end polyolefin plastics, special rubber, electronic chemicals and other new chemical material products are still in the initial stage of development, and there is still a certain gap with foreign high-end products, which cannot fully meet the requirements of the downstream related industries' transformation and upgrading. [...]*

The layout of the chemical industry in the province lacks overall planning, and the positioning of the park is not clear. The improvement of each chemical park clearly focuses on the development of 1-2 leading industrial chains [...]. Some chemical parks are characterized by the simple agglomeration of enterprises, and there is no intensive and integrated function, and the management level is not high. [...]

²¹¹⁶ Concerning industry layout (Sections 3.3.1. and 4.1.1. of the Jiangsu Chemical Plan): [...] *By the end of the "14th Five-Year Plan", we shall strive to increase the output value contribution rate of chemical parks and concentration areas in the province to more than 70% and the rate of chemical enterprises entering chemical parks shall increase from the current 42.7% to more than 50%. [...]*

The layout of the chemical industry in the province follows the requirements of the national and provincial industrial planning and layout plan, with the chemical park as an important development carrier and as the core leading the development of the chemical industry in the districted cities. The positioning of

objectives and foresees corresponding implementation and support tools. However, while the emphasis put on “*major needs of major national projects*”, on industrial concentration, on overseas acquisitions or on forming “*a number of world-class enterprises and single champion enterprises*” shows how national level policies are incorporated and implemented through the entire administrative apparatus. The level of detail in the specific objectives established for Jiangsu’s chemical industry demonstrates the influence of government authorities in shaping the development of the industry. Given that level of detail, those priorities - set out in plain text in the plan - are presented below in a table form for reasons of presentational economy.

Objectives for individual locations in Jiangsu²¹¹⁷:

<u>Locality</u>	<u>Objectives</u>	<u>Examples of chemicals listed in the Plan</u>
Coastal Industrial Zones		
Lianyungang	Promote the integration of refining and chemicals Development of high-end polyolefins Promote the deep processing of raw materials	Ethylene, propylene and carbon tetrapolymers, long-chain α -olefin comonomer monomers, ethylene oxide, α -olefins, benzyl chloride, acid chloride, hydrogen, chloroacetic acid, acrylonitrile, ethylene oxide, phenol acetone, benzene, vinyl acetate, polyester, fatty acids, fatty alcohols, fatty amines PET/PBT, phenol/keto, bisphenol A, 1,3-propanediol-PTT, biological nylon materials, aramid fibres, polyimides and halogenated polyolefins
Yancheng	Development of new medicines Development of new chemical materials	Polyamide engineering plastics, nylon filaments, high-performance rubber materials, new material additives, hydrochloric acid, sulfuric acid, liquid crystal orientation agent, electronic special gas
Nantong	Development of new chemical materials Development of fine chemicals	Special polyesters, special polyurethanes and their additives, polyamides, water treatment agents, dimeric acids and derivative products
Industrial zones along the river/along the lake		
Nanjing	Petrochemical structure optimization C1 chemical engineering transformation and developments	Metallocene polyolefin, ethylene-vinyl acetate copolymer, ultra-high molecular weight polyethylene, polyolefin elastomer, cycloolefin copolymer, ethylene-vinyl alcohol copolymer, polybicyclopentadiene, nitrile rubber, halogenated butyl rubber,

industrial development follows the relevant industrial policy requirements of the state and our province [...].

Concerning industry structure (Section 3.3.2. of the Jiangsu Chemical Plan): *By the end of the "14th Five-Year Plan", according to the product output value, the proportion of high-end products (new chemical materials, fine chemicals in new fields) has increased from about 15% to 23%. [...]*

²¹¹⁷ Section 4.2. of the Jiangsu Chemical Plan.

		food additives, high-performance surfactants, high-performance coatings, new adhesives
Suzhou	Fine chemical optimization and upgrading Development of new material industry	High-purity reagents for semiconductors, silicone resin, special silicone rubber, electrode materials, lithium battery diaphragms and electrolytes, fourth generation of blowing agents and advanced refrigerants
Wuxi	Reinforce the industry level of materials Improve the quality of fine chemicals Serve the electronic information industry	Special polyesters, special nylon engineering plastics, high-end coatings, rubber and plastic additives for special rubber and engineering plastics, automotive coatings, industrial protective coatings, UV curing coatings, high-purity reagents, new polyurethanes, cyclic olefin polymers
Changzhou	Enrich the downstream industry of salt chemical Development of new materials	Heavy anti-corrosion coatings, automotive coatings, powder coatings and other new coatings, high-end chlorine derivatives, toluene chloride, carbon fibre-based high-performance fibres, photoinitiators, electronic grade high-purity reagents
Zhenjiang	Development of fine chemicals at high level	High-end electronic chemicals, advanced polymer materials, environmentally friendly fine chemicals, new energy power battery materials, silicone new materials
Yangzhou	Upgrading and developing high-performance polyester Promoting special chemicals	PTA, PBT, PBST, phenol, bottle flakes, staple fibre, aramid, degradable plastics, epoxy resins
Taizhou	High-quality development of fine chemicals	Acrylic acid and esters, styrene, chlor-alkali, ethylene, propylene, high-end polyolefins, α -olefins, wet electronic chemicals, semiconductor high-purity reagents, lithium battery key materials, special rubber and elastomers, styrene-butadiene, acrylate rubber, EPDM rubber
Northern Jiangsu Industrial Zone		
Xuzhou	Efficient development of fine chemicals Upgrading coal-based materials	Water treatment chemicals, lithium battery anode materials, fertilizers, green pesticides, biochemicals
Suqian	Optimize the life sciences industry Develop the new materials industry	New rubber and plastic materials, electronic chemicals

Huai'an	Development of salt chemical new materials Constriction of life sciences industry chain	New fluorine and silicon materials, green pesticides, chlorinated hydrocarbons, refrigerants, rubber and plastic new materials

Selected objectives for subsectors of the chemical industry in Jiangsu (table format used to provide a better visual over, the Jiangsu Chemical Plan uses ²¹¹⁸:

<u>Subsector</u>	<u>Objectives</u>	<u>Examples of how the objectives are specified/measured</u>
Petrochemicals	Accelerate the upgrading of the oil refining industry and promote the integrated development of oil refining and chemical industry Optimize the industrial structure and promote the rational layout of the petrochemical industry Promote the diversification of raw materials and accelerate the construction of large-scale petrochemical apparatus	[...] In 2025, the annual processing capacity of crude oil in our province shall be controlled below 60 million tons / year, and the proportion of refined oil products and olefin raw materials shall be reasonably optimized. [...] [W]e shall promote the construction of the 1 million tons/year ethylene project in Nanjing in a timely manner to provide more sufficient raw materials for the long-term development of Nanjing Jiangbei New Material Science and Technology Park. In terms of the selection of downstream olefin products, we shall give full play to the technical advantages of Sinopec and BASF, focus on the development of high-end and differentiated products, and avoid cost competition with other new petrochemical projects in China; promote the construction of a 600,000 tons/year propane dehydrogenation plant in Yangzhou to provide sufficient olefin resources for Yangzhou chemical park. [...] At the end of the "14 th Five Years Plan", 16 million tons of oil refining / year, 4.05 million tons of ethylene / year, 2.8 million tons of paraxylene / year, 3.08 million tons of propylene and 4.96 million tons of refined oil products shall be made available, forming a refining and chemical integrated petrochemical industry agglomeration, providing resource guarantee for the development of downstream industries.
Organic raw materials	Accelerate the construction of leading enterprises and	[...] Promote the construction of key supporting raw material supply systems, actively develop the weak

²¹¹⁸ Section 5.2. of the Jiangsu Chemical Plan.

	increase the depth of processing Develop organic raw materials to meet downstream demands Encourage green processes and optimize production systems	domestic industrial base, directly restrict the development of high-end polyolefins, special polyesters, engineering plastics, high-end special chemicals and other high-end petrochemical products such as key raw materials and chemical intermediates, focus on promoting the construction of PETG key raw materials CHDM, nylon 66 key raw materials, adiponitrile, high-end polarizer key raw materials PVA and other projects. [...]
Synthetic materials		
High-end polyolefins	Promote integrated construction and increase industrial concentration	[F]ocusing on the development of polyethylene, polypropylene special materials and modified products, with EVA, ultra-high molecular weight polyethylene, POE elastomers, cyclic olefin polymers / copolymers (COC/COP) and other special polyolefin products, to achieve high-end development of the polyolefin industry.
Styrene-based synthetic resins	[E]nhance the level of integrated development and maintain cost competitiveness	
Thermoset resins	[I]mprove the production level and application level of thermosetting resin	[...] Accelerate supply-side structural reform, reduce the proportion of low-competitive enterprises through mergers and acquisitions, market-oriented elimination, and other means, and promote the healthy development of the industry. Strengthen the regional concentration of production capacity [...].
New chemical materials		
Silicon materials	[I]ncrease the development of silicon downstream products	[E]nhance the supply level of high-end silicone downstream products in our province and meet the downstream industry's demand for high-end silicon material products.
Fluorine materials	[A]chieve the high-quality development of the fluorine material industry itself and help the transformation and upgrading of the real economy	Focus on the development of domestic blank or foreign-funded enterprises monopoly products to achieve industrialization or industrial upgrading, and greatly improve the self-sufficiency rate of high-end fluorine material products. Support the industrialization of high-performance fluorine material varieties and grades.

Engineering plastics	[I]ntegrate into the East China regional market [...] and vigorously promote the construction of the engineering plastics production system	[...] Give full play to the advantages of the integration of petrochemical bases, accelerate the construction of projects such as phenol and bisphenol A, and extend the development of bulk engineering plastic products such as polycarbonate. Accelerate the construction of engineering plastics with a low degree of industrialization or still non-existent in the province and encourage the development of special engineering plastics such as polyphenylene sulfides, polyimides, polyetheretherketones, and polynaphthalate ethylene glycol esters.
Polyurethanes and their raw materials		[...] Strengthen the supply system of polyurethane raw materials and encourage the development and project construction of modified isocyanate varieties.
Special rubber and elastomers		Closely follow the development trend of the special rubber and elastomer industry, combined with the domestic and provincial market conditions, raw material conditions and industrial base, focus on the development of varieties with large growth space and convenient raw material supply in the domestic market [...].
High performance fibres		Encourage existing high-performance fibre enterprises to expand production scale, increase market share, and improve product quality through improved process technology. [...]
Fine Chemicals ²¹¹⁹		
Pesticides	Accelerate the research and development of innovative drugs [...]. Moderately reduce the overall scale of the province's pesticide industry [...].	[F]orm a gradient, hierarchical and complementary industrial chain and product group in the province.

²¹¹⁹ The Jiangsu Chemical Plan sets the following target for this subsector: „By the end of the "14th Five-Year Plan", the development structure and layout structure of fine chemical industry shall be optimized, the output value of fine chemicals in new fields shall account for more than 30% of the total fine chemicals, and the output value of fine chemical enterprises in the chemical park (concentration) area shall account for more than 75% of the total fine chemicals.”

Paints	Orderly develop the environmentally friendly, functional, decorative, high-performance architectural, decorative and automotive coatings Consolidate and strengthen the development of paint raw materials such as synthetic resin Optimize and improve the process level of the coating industry	At the end of the "14th Five Years Plan", the layout of the paint industry shall be optimized, and the output value produced in the chemicals parks (concentration areas) shall increase to about RMB 40 billion, the output value outside the chemical park (concentration area) shall drop to about RMB 15 billion, and the output in the chemical park (concentration area) shall account for more than 70%.
Synthetic material additives	Guide the synthetic material additives industry to develop in the direction of environmental protection, efficiency and high-technology Develop high value-added synthetic material additives in key chemical new material supporting fields	During the "14th Five Years Plan" period, we shall further optimize the layout of the synthetic material additives industry, strive to increase the total output value to RMB 35 billion, concentrate the industrial in chemical parks (concentration areas), increase the output value in chemical parks (concentrated areas) to RMB 30 billion, and increase the proportion of output value produced in chemical parks (concentration areas) area shall exceed 70%.
Multifunctional intermediates	Integrate the production capacity of multi-functional intermediates with large and dispersed production capacity [...] increase the elimination and integration efforts, and enhance the concentration of the industry.	By the end of the "14th Five Years Plan", we shall strive to maintain the total output value of the multi-functional intermediate industry at about RMB 20 billion. The output value of multi-functional intermediates in chemical parks (concentration areas) shall increase to RMB 15 billion, while the share of output value produced by enterprises outside the chemical parks (concentration areas) area shall shrink to about RMB 5 billion.
Dye pigments	Eliminate low-output enterprises [...], support the industry's leading enterprises to consolidate production capacity through mergers and acquisitions	By the end of the "14th Five Years Plan", the industrial structure of dye pigments and their intermediates shall be significantly optimized, the output value in chemical parks (concentration areas) shall rise to RMB 14 billion, the output value outside the chemical park (concentrated) area shall drop to RMB 5 billion, and the output value produced in chemical parks (concentrated areas) area shall account for 75%.

Specialty chemicals in other fields	Gradually eliminate enterprises with small scale and low production [...], enhance industry concentration, cultivate [...] enterprises [...] with international competitiveness and make the average output value of enterprises reach more than RMB 100 million	At the end of the "14 th Five Years Plan", we shall strive to maintain the total output value of the special chemical industry in other fields of RMB 16 billion, the layout structure shall be significantly improved, the share of the output value produced in chemical parks (concentration areas) shall rise to RMB 11 billion, the output value produced outside chemical parks (concentration areas) shall drop to RMB 5 billion, and the share of output value produced in the chemical park (concentrated) area shall rise to about 70%.
Chemical APIs ²¹²⁰	[E]nrich product lines and product clusters, and promote the upgrading of the pharmaceutical and intermediate industry base and the modernization of the industrial chain	
Oleochemicals	Accelerate the construction process of new projects in the existing chemical park (concentration) area, encourage leading enterprises to increase production capacity, enhance competitiveness and market share, and promote the improvement of production concentration in the industry	By the end of the "14 th Five Years Plan", we shall strive to achieve a total output value of RMB 15 billion in oleochemical industry, and the output value of oleochemical industry in chemical parks (concentration area) shall reach about RMB 10 billion.
Adhesives	Focus on the development of high-quality, high-performance, high added value and environment-friendly products. Focus on the development of adhesive products in the fields of electronic and electrical appliances, rail transit, aerospace, new	At the end of the "14 th Five Years Plan", the total output value of the adhesive industry shall remain at about RMB 10 billion, the superior production capacity shall be included into the development and integration of chemical parks (concentration areas), the output value in chemical parks (concentration areas) shall increase to about RMB 8 billion, the output value outside chemical parks (concentration area) shall fall to about RMB 2 billion, and the

²¹²⁰ Active Pharmaceutical Ingredients.

	energy, intelligent manufacturing, and green packaging materials.	proportion of the output value of enterprises located in parks shall increase from the current 60% to about 80%.
Inks	Further enhance the industry concentration [...], encourage enterprises with scale and product advantages to further improve product performance and added value	At the end of the "14 th Five Years Plan", we shall strive to increase the total output value of the ink industry to RMB 8 billion, the superior production capacity shall be included into the development and integration of chemical parks (concentration areas), the output value in chemical parks (concentration area) shall rise to about RMB 5 billion, the output value outside chemical parks (concentration areas) shall rise to about RMB 3 billion, and the share of the output value of enterprises in chemical parks (concentration areas) shall rise to more than 60%.
Electronic chemicals	Take advantage of the solid industrial foundation and market conditions of Jiangsu Province, vigorously develop electronic chemicals that support integrated circuits, flat panel displays, new energy batteries and other fields Expand the scale of the industry, improve product quality, fill the technical gap, improve the independent production capacity [...], and create an internationally competitive electronic chemical industry cluster.	At the end of the "14 th Five Years Plan", we shall strive to achieve a total output value of RMB 34 billion in the electronic chemical industry, an output value of about RMB 28.5 billion in chemical parks (concentration areas), and an output value of about RMB 5.5 billion outside chemical parks (concentration areas).
Environmental protection chemicals		At the end of the "14 th Five Years Plan", the environmental protection chemical industry shall strive to achieve a total output value of RMB 15 billion, the output value in chemical parks (concentration areas) shall rise to about RMB 9 billion, the output value outside the chemical park (concentrated) area shall rise to about RMB 6 billion, and the share of output value of enterprises located in chemical parks shall rise to 60%.

Surfactants		At the end of the "14 th Five Years Plan", the surfactant industry shall strive to achieve a total output value of RMB 14 billion, the output value in chemical parks (concentration areas) shall rise to about RMB 9 billion, the output value outside chemical parks (concentration areas) shall drop to about RMB 5 billion, and the output value of enterprises located in chemical parks shall account for more than 60%.
Textile chemicals		At the end of the "14 th Five Years Plan", the number of textile chemical production enterprises [...] shall be reduced to less than 40, and enterprises with strong competitive advantages shall be cultivated in three major fields [...]. The textile chemical industry shall strive to achieve a total output value of RMB 10 billion, the output value produced in chemical parks (concentration areas) shall rise to about RMB 5 billion, the output value produced outside chemical parks (concentration areas) shall be compressed to less than RMB 5 billion, and the output value of enterprises located in chemical parks (concentration areas) shall account for more than 50%.
Concrete admixtures and their raw materials		At the end of the "14 th Five Years Plan", the total output value of the concrete admixture and its raw materials industry shall strive to reach RMB 10 billion, the output value produced in chemical parks (concentration areas) shall rise to about RMB 9.5 billion, the output value produced outside chemical parks (concentration areas) shall drop to about RMB 500 million, and the output value of enterprises located in chemical parks (concentration areas) shall account for about 95%.
Food and feed additives		At the end of the "14 th Five Years Plan", strive to achieve a total output value of RMB 7 billion of food additives, the output value produced in chemical parks (concentration areas) to about RMB 6.5 billion, the output value produced outside chemical parks (concentration areas) shall reach about RMB 500 million, and the output value produced by

		enterprises located in the park shall account for more than 90%.
Catalysts	Improve the development quality of the catalyst industry [...], and develop catalysts with diversification, high selectivity, high stability and long life. Develop catalyst varieties that meet the needs of chemical manufacturing enterprises.	At the end of the "14 th Five Years Plan", the catalyst industry shall strive to achieve a total output value of RMB 6 billion, the output value produced in chemical parks (concentration areas) shall rise to about RMB 5.5 billion, the output value outside the chemical park (concentrated) area shall remain at about RMB 500 million, and the share of output value produced by enterprises located in chemical parks (concentration areas) shall account for 90%.
Paper chemicals	[...] Strengthen the attraction of leading papermaking chemical companies in the world and build internationally competitive manufacturing equipment.	At the end of the "14 th Five Years Plan", the province's papermaking chemical industry shall strive to achieve a total output value of RMB 6 billion.
Lubricant additives	[...] The development goal [...] is to provide a comprehensive solution for all kinds of machinery and applications.	At the end of the "14 th Five Years Plan", the province's lubricant additive industry shall strive to achieve a total output value of RMB 5 billion, and the output value of enterprises in chemical parks (concentration areas) shall rise to more than 80%.
Chemical reagents		At the end of the "14 th Five Years Plan", 5-10 chemical reagent production enterprises with an annual output value of RMB 1 billion shall be cultivated, and the chemical reagent industry in the province shall strive to achieve a total output value of RMB 5 billion, and the output value of enterprises located in chemical parks (concentration areas) shall rise to 75%.
Inorganic chemical industry		
Chlor-alkali	Total quantity control, quality and efficiency improvement, optimization of configuration [...] Adopt advanced energy-saving and emission-reduction technologies to	Through mergers and acquisitions, elimination of outdated equipment, capacity replacement and horizontal alliance, implementation of government guidance, enterprise voluntary actions, investment attraction and market-oriented use of capacity replacement indicators trading, [we shall] guide production capacity, resources and market

	transform and upgrade industries and enterprises [P]romote the downstream industries of chlorine and hydrogen to develop towards high-end, functional and refined direction Extend and expand the regional chlorine industry chain [...]	towards taking into account the strengths of enterprises so as to concentrate and integrate the chlor-alkali industry, foster leading backbone enterprises, optimize the industrial structure and resource allocation, improve the degree of intensification.
Soda ash		Promote the integration of one million tons of underground circulation alkali production. [...] Strive to set up a project to build national petroleum strategic reserves and commercial reserves and use the advantages of salt caverns for oil storage to provide raw material supply security for the development of the chemical industry [...]. [C]reate the core competitiveness of the industry, increase the share of green-process based soda ash production capacity, like for instance alkali underground circulation [...].
Inorganic salts		During the "14th Five Years Plan" period, we shall no longer develop basic inorganic salt products, focus on the development of inorganic powder new materials, we shall create an inorganic new material industry cluster, and promote the optimization and upgrading of the entire industrial chain of inorganic salts. Focusing on the needs of high-end new materials, new energy industry, national defense and military industry, nuclear industry, electronic information, energy conservation and environmental protection, building materials, food and medicine [...]
Fertilizers	No more expansion of the production of basic fertilizers [...] Encourage enterprises to develop coal gasification polygeneration projects without expanding the	

	scale of existing coal gasification plants.	

The extensive setting of objectives for individual localities/industrial zones, as well as for subsectors of the chemical industry, in combination with the implementation requirements specified in the Jiangsu Chemical Plan²¹²¹ shows that the practices of the Chinese authorities, which entail setting specific targets in terms of industrial structure, product range and output and which were documented for the 13th FYP period²¹²² continue to be the norm. The more detailed policies effectively shaping how the industry chains operate may be more firmly nested at the lower level of the planning matrix during the 14th FYP period. However, the structure and the level of specificity has not changed significantly when comparing – at the national sectoral level – the 13th FYP for the Petrochemical and Chemical Industry (2016-2020)²¹²³ with the above-mentioned Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five Years Plan Period or – at the provincial level – the Jiangsu 13th²¹²⁴ and 14th FYPs for the chemical sector. Indeed, similar to the Jiangsu 13th FYP for the chemical sector²¹²⁵, the Jiangsu government summarizes the growth and output targets in its 14th FYPs for the chemical sector as follows²¹²⁶:

It is estimated that by the end of the "14th Five Years Plan" period, the total output value of the chemical industry in Jiangsu Province shall reach more than RMB 1.4 trillion, with an average annual growth rate of more than 6.0%. Among them, the output value of the petrochemical industry shall have increased by 10.8%, with an average annual growth rate of 1.7%; the output value of the organic raw material industry shall have increased by 49.2%, with an average annual growth rate of 6.9%; the output value of the synthetic materials industry shall have increased by 86.8%, with an average annual growth rate of 11.0%; the output value of the fine chemical industry shall have increased by 36.0%, with an average annual growth rate of 5.3%; the output value of the new chemical material industry shall have increased by 137.8%, with an average annual growth rate of 15.5%; the output value of inorganic chemicals and fertilizers and other industries shall have increased by 3.9%, with an average annual growth rate of 0.6%.

In the same vein, the list of support instruments to implement the objectives of the Plan resembles the tools enumerated in the 13th FYP²¹²⁷ of the province. The same applies with respect to the emphasis on “going global”, i.e. seizing opportunities by local chemical enterprises abroad, as well as attracting investors to Jiangsu²¹²⁸:

²¹²¹ See Section VIII of the Jiangsu Chemical Plan.

²¹²² See Chapter 16 of the 2017 version of this Report.

²¹²³ See the 2017 version of this Report, p. 406-412.

²¹²⁴ *Ibid.*, p. 415-423.

²¹²⁵ *Ibid.*, p. 418-419.

²¹²⁶ See Section 5.3. of the Jiangsu 14th FYP for Green Industrial Development.

²¹²⁷ Including for example funding support, taxation policies, support for investment in the sector etc., see the 2017 version of this Report, p. 422-423.

²¹²⁸ See Sections 8.5 and 8.7 of the Jiangsu Chemical Plan.

Pay close attention to the trend of national industrial restructuring, firmly seize any excellent opportunity of industrial transfer domestically and abroad, and promote the docking of fundamental industries, leading industries, strategic industries and supporting industrial projects with developed countries as comprehensive, wide-ranging, multi-level and high starting points; actively highlight the carrier role of major projects in opening up to the outside world, while encouraging enterprises to go global, actively introduce foreign strategic investors [...].

Give full play to the guiding role of government investment funds^[2129], flexibly expand financing channels, and guide social capital investment. Adopt a variety of investment methods such as equity, debt, combination of equity and debt, and investment and loan package, focusing on new materials, new energy, energy conservation and environmental protection, new medicine and biochemical industry, and supporting the construction and development of transformation and upgrading projects such as industrial mergers and reorganizations, industrial chain integration, transfer into parks, and optimization of existing industries. [...].

In sum, the Shandong and Jiangsu provincial 14th FYPs for the chemical sector provide good examples of how lower-level plans implement the objectives of the national planning documents and transpose them into specific industrial policy tasks, often broken down to detailed turnover targets for narrowly defined subsectors of the chemical industry.

A further example of provincial level plans, the 14th FYP for the Development of the Chemical Industry Zone in Shanghai (*'Shanghai Plan'*)²¹³⁰ shows another important aspect of the planning system, namely how – beside the implementation of the higher-level plans' objectives – the lower-level plans serve as guidelines on CCP leadership in enterprises (see Chapter 3).

First of all, the Shanghai Plan puts the situation of the local industry into the context of the national industrial policies and international developments²¹³¹, following which it recalls the basic principles, including to adhere to “*taking the Party's leadership as the fundamental principle*”, “*taking green development as a predominant direction*” and “*taking development towards high-end direction as the main target*”²¹³². These basic principles are then specified further, such as, concerning development towards high-end direction²¹³³:

[...] During the "14th Five Years Plan", the Shanghai Chemical Industry Zone shall meet the strategic needs of the State and the Municipality, focus on the goal of building "two bases" with an international benchmark, and further extensions towards the "fine, green, high-tech, high efficiency and high added value" [...]

Do a good job of joint cooperation with other petrochemical bases in Shanghai to ensure the supply of raw materials and synthesis gas. Support the main enterprises in the park, make good use of existing resources such as ethylene and propylene,

²¹²⁹ See Section 6.5.1.

²¹³⁰ Available at: <https://huanbao.bjx.com.cn/news/20211202/1191423.shtml> and <http://seatone.net.cn/uploads/tan/055.pdf> (accessed on 22 August 2023).

²¹³¹ See Section 1 – Basic Development.

²¹³² See Section 2.1.2. – Basic Principles.

²¹³³ See Section 3.1.1. - Develop core industries towards high-end.

adjust the product structure, and further develop high value-added products. Explore and strengthen the guarantee of raw materials, study the key chains in the industrial chain such as polyurethane, promote key projects such as adiponitrile, make full use of raw material resources such as MDI and nylon in the park, strengthen cooperation with key enterprises, introduce downstream applied material enterprises, extend core industrial chains such as polyurethane and nylon, and create polyurethane and nylon bases with international influence.

Or, concerning the green development²¹³⁴:

Establish the concept of green and low-carbon development, strive to protect environment and control pollution, carry out the third round of work for comprehensive environmental improvement in the Jinshan District, strengthen the concept of cleaner production and the construction of green factories and green [industrial] parks, and make the ecological environment of the industrial parks more pleasant.

As in the case of the Shandong and Jiangsu plans described above, the Shanghai plan also contains a dedicated section on support measures and implementation²¹³⁵. According to this section, the local authorities should, among others,

[c]omprehensively consider the organisation of expenditure funds for major projects, and effectively implement the key development projects of the park. Duly keep up with the new round of special development fund policies for chemical zones, amend the management measures for special development funds in due time, improve the orientations of special fund support, examine the establishment of industrial investment funds, and attract social capital to participate. Strive for the support of the national and municipal industrial special policies and promote the implementation of district-level enterprise support policies in the park. [...]

Strengthen the leading role of planning and translate the main goals and tasks into the plans. Duly ensure plans' convergence and coordination, strengthen planning as an important basis for formulating annual plans and relevant policies, and decompose the target tasks into financial budget plans, various action plans and work plans of responsible departments. Implement supervision and evaluation, and strengthen continuous follow up, evaluation and assessment of the completion of indicators.

Importantly, the Shanghai Plan contains instructions on how the Party work should be integrated into the functions of the local chemical industry, including detailed provisions on strengthening the Party building and improving the structure of grass-roots Party organizations²¹³⁶:

Comprehensively implement the general requirements of Party Building and the Party's organizational lines in the new era, adhere to and strengthen the Party's overall leadership, improve the construction of the Party's organizational system,

²¹³⁴ See Section 3.2.2. - Improve green and ecological construction capabilities.

²¹³⁵ See Section 4 – Implementation measures.

²¹³⁶ See Section 3.7. - Strengthen Party building in the park and create a better structure for grass-roots organizations.

firmly establish a clear orientation of paying great attention to the grass-roots level, take the Party's political construction as the guide, focus on improving organizational strength, and comprehensively improve the quality and level of Party building in the chemical industry park.

Build a strictly organized system. Give full play to the leading and core role of the Party in overseeing the overall situation and coordinating all parties, build an organization structure and working mechanism for Party building in the park under the leadership of the Party organisation of the management committee, strengthen the centralized and unified leadership over the core work of the park and Party building in the park [...].

Promote the comprehensive and strict governance of the Party. Strictly implement the regulations on the comprehensive and strict governance of the Party, taking good care of Party building as the greatest political achievement, [...].

In view of the above examples of 14th FYPs at different levels of the planning matrix, a number of observations can be made about the totality of planning documents for the chemical sector during the 14th FYP period:

- the plans do not significantly differ from the corresponding planning documents of the 13th FYP period²¹³⁷;
- the plans are firmly rooted in the ideology set by the CCP and they explicitly acknowledge the Party's leadership;
- the plans reflect wider national industrial policy objectives, such as “dual circulation” (see Chapter 2), technological upgrade or emphasis on SEIs;
- the cascade of plans in which subsequent, lower-level plans refer to and seek to implement higher level plans remains in place;
- the plans contain certain standard elements which ensure seamless transmission between planning periods and various levels of planning documents; those standard elements are in particular (i) the review of previous planning period achievements, (ii) the objectives for the upcoming planning period, (iii) the targets to achieve the objectives set, (iv) the government support measures, and (v) the implementation requirements/measures.

The planning documents for the chemical sector therefore has a direct bearing on the allocation of resources within the industry (see also Chapter 4), thereby directly affecting the business conduct of individual economic operators.

16.3.2. EXAMPLES OF THE REGULATORY FRAMEWORK FOR SPECIFIC SUB-SECTORS

As shown in the previous section, the 14th FYPs, in particular at the sub-national level, outline the development policies and industrial targets at a fairly granular level of subsectors – as narrowly defined as, for example, dye pigments or inks. These targets and policies designed to implement and give shape to the goals established in the higher-level policy documents. In practice, the relevant sub-sectors will be provided with a favourable business environment in which the industrial policy objectives can be achieved while the government authorities will be,

²¹³⁷ See Chapter 4 of the 2017 version of this Report.

on the other hand, intervening on an ad-hoc basis where the long-term industry goals may be at risk due to unforeseen disruptions.

A good case in point is the fertilizers subsector and the 2021 NDRC Notice on ensuring the future domestic supply and price stability of fertilizers (*'Notice'*)²¹³⁸. The Notice, issued in response to rising fertilizers prices, illustrates not only nature of the Government policies but, importantly, also the transmission mechanisms under which policies devised by the Party Central Committee are articulated by the central government authorities in consultation with relevant SOEs, explicitly addressed to a range of further authorities and market operators, with subordinate authorities being given precise instructions on implementation and reporting back to the issuing authorities. A key feature of the system remains the role that SOEs play in implementing Government policy, where they would for example enter into contracts not because they are commercially advantageous, but because it supports a different government policy objective. Consequently, the Notice also implies that local governments should ensure that private companies and cooperatives follow suit as well.

In more detail, the Notice first clarifies its context and overall purpose by declaring that “[c]hemical fertilizer is a special commodity related to national food security, and ensuring the basic stability of fertilizers’ supply and prices is of great significance to [...] safeguarding the overall situation of national food security” and that “[s]ince the beginning of this year, [...] domestic fertilizer prices have risen significantly, and the prices of major product types such as nitrogen, phosphorus and potassium have increased significantly”. In view of this, “[i]n accordance with the decision-making and deployment of the Party Central Committee and the State Council, in order to stabilize the supply and price of the fertilizer market in the coming period” the Notice was issued, addressing to the following particular recipients:

The competent departments of the Development and Reform Commission, the Department of Industry and Information Technology, the Department of Finance (Bureau), the Department of Ecology and Environment (Bureau), the Department of Transportation (Bureau), the Department of Agriculture and Rural Affairs (Bureau), the Department of Commerce (Committee), the State-owned Assets Supervision and Administration Commission, the Customs, the Market Supervision Bureau (Committee, Department), the Energy Bureau, and the Supply and Marketing Cooperative in all provinces, autonomous regions, municipalities directly under the Central Government and the Xinjiang Production and Construction Corps, the Railway Bureau Group Corporation, the State Grid Corporation; the China National Petroleum Corporation, the China Petroleum and Chemical Corporation, China National Offshore Oil Group Co., Ltd., COSCO Shipping Group, National Energy Group, China Coal Energy Group Co., Ltd., China Sinochem Group Corporation, China Supply and Marketing Group Corporation, China Agricultural Development Group Co., Ltd.

²¹³⁸ Notice of the National Development and Reform Commission and other departments on ensuring the future domestic supply and price stability of fertilizers, issued on 22 September 2021, available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202109/t20210924_1297367.html?code=&state=123 (accessed on 22 August 2023).

What follows is an elaborate set of instructions on how the addressees are expected to ensure the stability of the fertilizers supply:

The National Energy Group and China Coal Group shall urge their affiliated coal enterprises to sign long-term contracts with backbone fertilizer production enterprises, and the Energy Administration Departments and Industry and Information Technology Administration Departments in Inner Mongolia, Shanxi, Shaanxi, Xinjiang, Sichuan, Guizhou, Yunnan and other places shall actively guide the key raw material supply enterprises within their jurisdiction [...] to do the same so as to ensure the sufficient supply of raw materials to fertilizer production enterprises and price stability. PetroChina, Sinopec, CNOOC and other enterprises shall strictly implement the natural gas supply contracts signed with fertilizer production enterprises [...]. Power grid companies in Inner Mongolia, Henan, Shandong, Yunnan and other large fertilizer-producing provinces should give priority to ensuring the supply of electricity used for fertilizer production. Yunnan, Guizhou, Hubei and other provinces that ship phosphate ore to other provinces shall allow enterprises that meet environmental protection and safety production requirements to increase phosphate ore production [...]. PetroChina, Sinopec and CNOOC shall give priority to ensuring supply of sulphur used by fertilizer production enterprises for production and keep sulphur's price reasonable and stable. [...]

All local Administration Departments of Development and Reform, Industry and Information Technology, and Energy shall give priority to key fertilizer plants with a production capacity of 600,000 tons/year (physical quantity) or more as regards consumption indicators and supply of energy used for the production of fertilizers for the domestic market [...].

All local Administration Departments of Transportation shall ensure the smooth transportation of agricultural materials such as chemical fertilizers etc by waterways or by road and accessibility of transportation and distribution vehicles and ships in accordance with epidemic prevention and control regulations. Shipping enterprises shall actively ensure the transportation of imported fertilizers. [...]

All State-owned Asset Supervision and Administration Commissions and supply and marketing cooperatives at all levels shall encourage their affiliated fertilizer enterprises to maintain reasonable price difference between produced and imported product sales [...] and to maximize the benefits to farmers.

The concluding section of the Notice contains the instructions on division of tasks, implementation and reporting:

The Provincial Development and Reform Commissions shall take the lead in carrying out the work to ensure supply and price stability on the fertilizer market of their constituency[...] and shall work together with the Administration Departments of Industry and Information Technology, Finance, Ecological Environment, Transportation, Agriculture, Commerce, State-owned Assets, Customs, Market Supervision, Energy, Supply and Marketing, and Railways to hold regular or one-off consultations [...] and actively coordinate to solve the difficulties and problems

encountered in the production, transportation, sales and use of chemical fertilizers in accordance with the division of duties and responsibilities [...]. The Provincial Development and Reform Commissions shall report on the situation of the fertilizer market in their constituency and on any relevant work carried out in the previous quarter to the National Development and Reform Commission within 10 working days after the start of the new quarter.

In November 2021, the Notice was supplemented by an additional set of NDRC instructions issued by means of a notice issued by the General Office of NDRC²¹³⁹. The NDRC instructs relevant authorities, as well as energy enterprises²¹⁴⁰ to “[...] incorporate the guarantee of energy supply for fertilizer production into the coordination mechanism for the guarantee of coal, electricity, oil and gas transportation, and duly ensure unified planning and overall arrangements, so as to effectively meet the needs for coal, electricity and gas used for fertilizer production, and ensure food and energy security.” Accordingly, “[c]oal enterprises shall increase the supply of coal for fertilizer production, strictly honour the already signed contracts, and actively sign additional coal contracts for chemical fertilizers”, “[r]elevant Economic and Transport Administration Departments as well as power grid enterprises shall [...] support fertilizer production enterprises to sign medium- and long-term electricity supply contracts, and effectively ensure the electricity supply to meet the demand of fertilizer production enterprises” and “[n]atural gas supply enterprises shall strictly implement the gas supply contracts signed with fertilizer production enterprises, strive to increase the supply of natural gas to chemical fertilizer production enterprises so as to ensure the people's livelihood [...]” (see also Chapter 12).

While the above measures concerning fertilizers could be called crisis intervention, the synthetic fibres subsector provides an example of targeted central-level policy measures which further develop the existing regulatory framework for the chemical sector, focusing on one of its segments considered by the government to be of particular importance. In April 2022, MIIT and NDRC issued a Guiding Opinion on the high-quality development of the chemical fibre industry (*‘Guiding Opinion’*)²¹⁴¹ which seamlessly fit into the overall planning structures described above in Chapter 4 and in Section 16.3.1. The Guiding Opinion – after recalling that the chemical fibre industry represents a core industrial sector for the “*stable development and continuous innovation of the textile industry chain*” which is also “*an industry with global*

²¹³⁹ Notice of the General Office of the National Development and Reform Commission on guaranteeing coal, electricity and gas for the production of fertilizer, issued on 17 November 2021, available at: www.ndrc.gov.cn/xxgk/zcfb/tz/202112/t20211202_1306704.html?code=&state=123 (accessed on 22 August 2023).

²¹⁴⁰ The following entities are listed as direct addressees of the notice: the Development and Reform Commissions, the Economic and Information Commission (Economic and Information Bureau, the Department of Industry and Information Technology), and the Energy Bureau in all provinces, autonomous regions and municipalities directly under the Central Government; the Beijing Municipal Urban Management Commission, China National Railway Group Co., Ltd., China National Petroleum Group Co., Ltd., China Petroleum and Chemical Group Co., Ltd., China National Offshore Oil Group Co., Ltd., National Petroleum Pipeline Network Group Co., Ltd., State Grid Co., Ltd., China Southern Power Grid Co., Ltd., National Energy Investment Group Co., Ltd., and China Coal Energy Group Co., Ltd.

²¹⁴¹ Issued on 12 April 2022, available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_a01b7532a39a41e891d2540da6981d72.html (accessed on 22 August 2023).

competitive advantage and an important component of the new material industry” – instructs all relevant authorities to “promote the high-quality development of the chemical fibre industry, form an industrial chain with stronger innovation capacity, higher added value, more security and reliability, consolidate and enhance the competitiveness of the textile industry, meet the consumption demand for better products, and serve the development of strategic emerging industries” in order to implement the goals of the national 14th FYP, as well as those of the 14th FYP for the High-quality Development of the Manufacturing Industry (see Chapter 4). The specific goals are indeed aligned with those of the national 14th FYP and the 14th FYP on Developing the Raw Materials Industry (see Section 12.2.1.1), that is (i) development of new fibre materials towards high-end²¹⁴², (ii) digital and intelligent transformation²¹⁴³ and (iii) green and low-carbon transformation²¹⁴⁴. Equally, the toolbox to pursue these goals comprises the standard ideas of shaping the corporate structure and regional presence of the industry, combined with providing financial support, in particular to prospective leading enterprises²¹⁴⁵:

Optimize the regional layout. Implement the regional development strategy, [...] encourage leading enterprises to build integrated bases for the whole industrial chain of chemical fibre textile in Guangxi, Guizhou, Xinjiang and other central and western regions and form an efficient and coordinated supply chain system with neighbouring countries and regions. Guide chemical fibre enterprises to participate in the construction of transnational industry chains and supply chains, encourage enterprises to improve the global layout of industry chains. [...]

Cultivate high-quality enterprises. Encourage enterprises to optimize the allocation of production factors through mergers and reorganizations and accelerate business process reengineering and technological upgrading. Support leading enterprises to pool high-quality resources such as technology, brands, channels and talents, enhance their driving force on the supply chain and provide technology and overall solutions for common use for the apparel, home and industrial textile industries. Support large and medium-sized enterprises to pursue development through collaboration with each other and cultivate specialized new "small giant"²¹⁴⁶ enterprises and “single champion” enterprises.

Strengthen policy support and guidance. Accurately define the encouraged and restricted sectors of the chemical fibre industry, and increase support for high-

²¹⁴² See Third Section of the Guiding Opinion. Specific technologies and products include, among others, high performance carbon fibres, aramid fibres and other high performance fibres, such as high performance fibres heat-resistant, creep-resistant, high-strength, high-cutting-resistant, corrosion-resistant, radiation-resistant ultra-high molecular weight polyethylene fibre, special-shaped cross-sectional polyphenylene sulphide fibre, fire prevention and nuclear polyimide fibres, aromatic polyester fibres, bio-based chemical fibre raw materials and bio-based chemical fibres, as well as degradable fibre materials.

²¹⁴³ See Fourth Section of the Guiding Opinion. Specific products include polyester, nylon, spandex, recycled cellulose fibre and recycled polyester.

²¹⁴⁴ See Fifth Section of the Guiding Opinion, which puts emphasis on cleaner production technology and equipment, on recycling technology and on green manufacturing system.

²¹⁴⁵ See Second Section, Subsection (2) and (3) of the Guidance.

²¹⁴⁶ Concerning the “little giants” policy, see Section 2.3.2.

performance fibres, bio-based chemical fibres, recycled chemical fibres and degradable fibre materials. [...]

Increase financial support. Coordinate existing channels and increase support for chemical fibre technology innovation, green development, digital transformation and public services. Guide financial institutions to increase loan support for chemical fibre enterprises in accordance with the principles of controllable risks and business sustainability. [...] Promote the stock market listing of high-tech chemical fibre enterprises and support qualified chemical fibre enterprises to issue bonds. [...]

Involve industry associations. Support industry associations to coordinate and promote the implementation of the Guiding Opinion, carry out implementation impact assessments and provide support to government departments. Encourage industry associations to further publish information, guide enterprises' investments and promote the industry's regulated development.²¹⁴⁷ [...]

If implemented as planned by the issuing authorities, the Guiding Opinion would contribute to achieving, by 2025, significant industrial targets in terms of annual added-value growth rate, research and development expenditure, digitalisation and green manufacturing:

By 2025, the industrial added value of chemical fibre enterprises above a designated size shall increase by an average annual rate of 5% and the share of chemical fibre production in the world shall remain basically stable. The innovation capability shall be continuously enhanced, the industry's R&D intensity shall reach 2% and the R&D and manufacturing capacity of high-performance fibres shall meet the national strategic needs. Notable progress shall be made regarding digital transformation [...]. The green manufacturing system shall be continuously improved [...]. A number of leading enterprises with strong competitiveness shall be formed, a high-end, smart and green modern industry system shall be established, and China shall become a chemical fibre powerhouse.

It has been pointed out, along these lines, that the importance of the synthetic fibres subsector originates in the fact that advanced fibres can be applied in a wide range of areas, including aerospace, high-speed railways, renewable power generation and military equipment. At the same time, China's domestic production accounts for a much lower share of the market than desired by policymakers, with continued challenges to close the technology gap²¹⁴⁸. These policy considerations help explain not only while synthetic fibres qualify for such specific attention by Chinese authorities but also why they have featured since many years in more general industrial strategy documents, such as in the Decision 40 (see Section 4.2.9), in the National Medium- and Long-Term Program for Science and Technology Development (2006-2020)²¹⁴⁹, in Made in China 2025 (see Section 4.2.3) or in the 13th FYP on the Development of Strategic Emerging Industries²¹⁵⁰.

²¹⁴⁷ See Seventh Section of the Guidance.

²¹⁴⁸ See MERICS China Industries, May 2022, available at: <https://www.merics.org/sites/default/files/2022-05/MERICS%20China%20Industries%20April%202022.pdf> (accessed on 22 August 2023).

²¹⁴⁹ See p. 173 ff. of the 2017 version of this Report.

²¹⁵⁰ See p. 42 ff. of the 2017 version of this Report.

16.3.3. FURTHER REGULATORY MEASURES

The plans and guidelines described above provide for a broad array of interventions including production targets, relocation of industries, development of certain industry segments, various forms of support measures, etc. However, as also apparent from the above reference to longer-term and/or horizontal industrial policy instruments, the regulatory documents aimed specifically at the chemical sector are embedded in a context of wider policies and support instruments which continue to shape the chemical sector in China. Among those, the Made in China 2025 strategy²¹⁵¹, the use of dedicated GGFs (see Section 6.5.1) and supply of cheap electricity for certain groups of industrial consumers (see Section 10.2.1.2.2) keep playing their role in the development and upgrading of the Chinese chemical sector²¹⁵².

16.4. FINDINGS IN PREVIOUS TRADE DEFENCE INVESTIGATIONS

Concrete market distortions can also be identified in the results of anti-dumping and countervailing proceedings conducted by several jurisdictions in the chemical sector.

In its *Acesulfam* investigation, the Commission pointed out the overlap between the managerial and Party functions of selected individuals, which in turn suggested an increasing level of intervention by Chinese authorities in the sector²¹⁵³. In that investigation, the Commission also identified a number of policy documents and tools illustrating the government's interference with market forces²¹⁵⁴.

In its *Citric Acid* investigation²¹⁵⁵, the Commission found that the Government is actively shaping the corporate structure of the sector, in addition to being present in the market through ownership of a number of SOEs²¹⁵⁶, as well as having significant control over raw materials supply in the sector²¹⁵⁷. The Commission also identified links to the CCP of individuals in managerial position in a number of companies in the sector, as well as to Party building activities in those companies²¹⁵⁸.

In its *Monosodium Glutamate* investigation²¹⁵⁹, the Commission found that one company had the support of CCP members and local public authorities which coordinated matters of interest

²¹⁵¹ See also: Hong, S.; Yifan, J.; Xiaosong, L.; Liu, N., cited.

²¹⁵² See also Section 16.4. of the 2017 version of this Report.

²¹⁵³ See Commission Implementing Regulation (EU) 2022/116 of 27 January 2022 imposing a definitive anti-dumping duty on imports of acesulfame potassium originating in the People's Republic of China, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council; OJ L19, 28.1.2022, p.1, recitals 95-96.

²¹⁵⁴ *Ibid.*, recitals 98-99.

²¹⁵⁵ Commission Implementing Regulation (EU) 2021/607 of 14 April 2021 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council; OJ L173, 15.4.2021, p.73.

²¹⁵⁶ *Ibid.*, recital 94.

²¹⁵⁷ *Ibid.*, recital 101.

²¹⁵⁸ *Ibid.*, recital 97.

²¹⁵⁹ See Commission Implementing Regulation (EU) 2021/633 of 14 April 2021 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China and in Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council; OJ L 132, 19.4.2021, p. 63–107.

for the company²¹⁶⁰, while another company in the sector explicitly declared to be implementing State policies and CCP ideology in its activities²¹⁶¹. The Commission also established significant overlaps between managerial positions and CCP membership/functions among individuals in a number of major players in the sector²¹⁶². Moreover, public policies with respect to key raw materials were shown to be in place and influencing free market forces²¹⁶³. In addition, a number of companies in the sector were receiving financial support, including in the form of government subsidies²¹⁶⁴.

In the *Sulphanilic Acid* investigation²¹⁶⁵, the Commission found that while one producer had close ties to the CCP, another's production was located in a national chemical park under direct CCP influence²¹⁶⁶. The Commission further established significant state influence, via state-owned entities, over sulphanilic acid export channels, as well as over raw material inputs²¹⁶⁷. Moreover, the Commission found personnel overlaps between management bodies of producing and exporting companies and between Party structures²¹⁶⁸. The Commission also identified concrete public policies, such as individual projects and/or taxation mechanisms, interfering with market forces in the sector²¹⁶⁹.

In their *Sodium Gluconate, Gluconic Acid and Derivative Products* investigation, the US authorities showed²¹⁷⁰ that producers in China benefitted from a range of policies instituted by the Chinese authorities, in particular a reduction in payable taxes, as well as from access to inputs – such as land, water and electricity – at preferential rates. In addition, producers received direct financial support from national and provincial authorities.

Similarly, in the *Glycine* investigation, the US authorities found²¹⁷¹ a wide range of benefits which the Chinese producers had enjoyed, including preferential loans on a national and provincial level, reductions in income and other taxes, access to land and electricity for less than adequate remuneration.

²¹⁶⁰ *Ibid.*, recital 62.

²¹⁶¹ *Ibid.*, recital 63.

²¹⁶² *Ibid.*, recitals 69-71.

²¹⁶³ *Ibid.*, recitals 75-80.

²¹⁶⁴ *Ibid.*, recitals 83-84.

²¹⁶⁵ See Commission Implementing Regulation (EU) 2021/441 of 11 March 2021 imposing a definitive anti-dumping duty on imports of sulphanilic acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council; *OJ L* 85, 12.3.2021.

²¹⁶⁶ *Ibid.*, recital 60.

²¹⁶⁷ *Ibid.*, recitals 61-62.

²¹⁶⁸ *Ibid.*, recital 67.

²¹⁶⁹ *Ibid.*, recitals 73-77.

²¹⁷⁰ See Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid and Derivative Products from the People's Republic of China, 17 September 2021, DoC ITA, C-570-072.

²¹⁷¹ See Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Glycine from the People's Republic of China, 5 January 2019, DoC ITA, C-570-081.

Furthermore, in their investigation concerning *Corrosion Inhibitors*, the US authorities found²¹⁷² that the Chinese producers had access to finance at discounted rates due to existing preferential lending policies, as well as export-related credit, insurance and guarantee programs. Moreover, goods and services were provided to the Chinese producers for less than adequate remuneration, in particular land, electricity, as well as a number of raw material inputs used in the manufacturing process of corrosion inhibitors. The producers further received direct financial support from a number of programs at the national, provincial and/or municipal government level.

Lastly, in their *Pentafluorethane* investigation, the US authorities determined²¹⁷³ that Chinese producers had access to a number of government support measures, such as provision of certain raw material inputs, as well as of land and electricity for less than adequate remuneration. The Chinese producers further benefitted from tax rebates, export buyers credits, as well as a number of measures entailing direct financial support received from authorities at various levels of government.

16.5. CHAPTER SUMMARY

The Chinese chemical sector remains one of the building blocks of China's industry, supplying essential inputs for many other key sectors, as well as providing consumer products for individuals.

Due to the sector's importance for both the upstream and downstream ends of value chains, the Chinese authorities have paid particular attention to it. This is apparent from the corporate layout of the sector where significant SOE presence persists, subject also to the ongoing consolidation of central level SOEs (see Chapter 5), exemplified by the Sinochem merger in 2021 (see Section 16.2.4). Moreover, State control is exercised through numerous planning and regulatory documents targeting the chemical sector (see Section 16.3). Some of those policies have been in place for an extended period of time (see Section 16.3.3.) but have been supplemented and updated in the more recent national and sub-national 14th FYPs (see Section 16.3.1). These plans demonstrate the State's influence over the sector. These planning documents, in combination with the ad hoc policy interventions of the Government (see Section 16.3.2), demonstrate that the State not only pursues a certain vision of the chemical sector but that it will step in to make necessary course corrections.

Most importantly, the authorities put an ever-greater emphasis on moving up the value chain, as well on the sector's environmental impact (see Section 16.3.1). The language of the relevant policy documents reflects these priorities by frequent references to “*optimization and structural adjustment*”, to “*enhancing technological transformation*” or to “*making leading enterprises bigger and stronger*” on the one hand, as well as to “*improvement of the environmental risk management*” or “*relocation and transformation of hazardous chemical production*” on the

²¹⁷² See Issues and Decision Memorandum for the Final Affirmative Determination of the Countervailing Duty Investigation of Corrosion Inhibitors from the People's Republic of China, 25 January 2021, DoC ITA, C-570-123.

²¹⁷³ See Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Pentafluoroethane (R-125) from the People's Republic of China, 30 December 2021, DoC ITA, C-570-138.

other hand. Irrespective of the nature of the overall priorities, the specific steps plotted to achieve them show that the Chinese authorities continue aiming at comprehensive management of the industry's development, often orchestrated in great detail, down to the level of individual localities, individual products and individual enterprises in terms of output targets, growth levels, etc. (see Section 16.3.2).

Consequently, the industrial policies in the chemical sector remain highly interventionist, with the State ready to deploy a wide range of regulatory tools, including fiscal, financial, investment or pricing measures (see Section 16.3.1). The regulatory documents explicitly request the relevant authorities and other actors – such as banks or industrial associations – to provide the necessary support for the national, regional, etc. industrial policies concerning the chemical sector, most notably by means of increased financial support (see Section 16.3.2). Along these lines, investigation practice of trade defence authorities in recent years has shown that a wide range of support measures for the chemical sector in general or for individual businesses introduced by the Chinese authorities at various levels exist (see Section 16.4), significantly impeding the free functioning of the market as well as company decisions which are therefore not genuinely market driven.

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17.1. INTRODUCTION

The ceramic sector covers two basic types of products. First, a large variety of traditional products that are made from clay and its natural minerals by crushing, mixing, moulding, roasting and other processes. The traditional ceramic products are, for example, wall and floor tiles, bricks and roof tiles, refractories, and daily-use ceramics such as sanitary ware, table and ornamental ware, abrasives, clay pipes, expanded clay and porcelain enamel.

Second, modern advanced applications of ceramics that are of growing importance in different products such as electronics, telecommunications, transportation, optical communication, wireless communication and space exploration. Advanced ceramics can be sub-divided according to their chemical characteristics (oxide ceramics, nitride ceramics, carbide ceramics, boride ceramics, silicide ceramics, fluoride ceramics or sulphide ceramics) or type of use (structural ceramics, tool ceramics, functional ceramics etc.). Since ceramic materials are characterised by high thermal conductivity (crucial in functional ceramics) and are resistant materials (important in structural ceramics), many components of high-tech products include ceramic elements such as circuit carriers, core materials, sensors etc. Multilayer ceramic capacitors ('*MLCC*') and ceramic capacitors are materials used, for example, in chip production and in military products.

Following a brief description of the essential parameters characterising the Chinese ceramic industry, this chapter will look into the relevant regulatory framework and the existing State support measures, and it will further provide an overview of distortions found in previous trade defence investigations.

17.2. THE CHINESE CERAMICS INDUSTRY

17.2.1. PRODUCTION VOLUME AND COST

The 1986-1992 period was marked by significant development of state-owned ceramic enterprises. However, from 1996 onwards, private enterprises became the leading force in the sector and the industry developed overcapacity²¹⁷⁴, not least because the production process utilized ubiquitous raw materials, relatively inexpensive equipment and a relatively simple technological process. In light of these comparatively low barriers to entry to the traditional ceramics industry, the market was easy to enter even for SMEs. This enabled the rapid expansion of the sector, characterized also by a significant presence of SMEs²¹⁷⁵.

Between 1995 and 2014, Chinese ceramic wall and floor tile annual production increased more than six times from 1.6 billion square meters in 1995 to 10.2 billion square meters in 2014 (i.e. 10 times more than the EU's total ceramic tile production)²¹⁷⁶. China has been the world's largest producer of ceramic tiles since 2015 and home to more than 45% of the world's total production on average²¹⁷⁷. After 2016, the Chinese production began to contract²¹⁷⁸. Nevertheless, China's production continued to account for 58% of global ceramic tile

²¹⁷⁴ See at: <https://www.chinabaogao.com/detail/600125.html> (accessed on 4 September 2023).

²¹⁷⁵ See at: <https://m.huaon.com/detail/800221.html> (accessed on 4 September 2023).

²¹⁷⁶ Aegis Europe. (2016). *Press release: European manufacturing industries call on G20 leaders to tackle widespread Chinese overproduction and overcapacities*; available at: <https://aegiseurope.squarespace.com/news/press-release-european-manufacturing-industries-call-on-g20-leaders-to-tackle-widespread-chinese-overproduction-and-overcapacities> (accessed on 4 September 2023).

²¹⁷⁷ Analysis of the current situation of the global and Chinese architectural ceramics industry in 2022: China's production and sales ranked first in the world (Figure) - China Business Intelligence Network; available at: <https://m.askci.com/news/chanye/20220808/1510141948117.shtml> (accessed on 4 September 2023).

²¹⁷⁸ According to an Analysis of the Current Situation and Competition of the Architectural Ceramics Industry: "from 2017 to 2019, the [...] production of building ceramics decreased year by year; in 2018, the output fell below 10 billion m², in 2019 it fell below 9 billion m² and in 2020 it fell again by 8.8%", available at: <https://www.chinabaogao.com/detail/600125.html> (accessed on 4 September 2023).

production as of the writing of this Report²¹⁷⁹. By individual categories of traditional ceramic products, China's production of daily-use ceramics accounts for 70% of the global production, furnishing art ceramics 65%, sanitary ceramics 50% and construction ceramics accounts for 64%²¹⁸⁰. As to likely future market dynamics, according to the China Construction and Sanitary Ceramics Association's forecast of market demand during the 14th FYP period, the production of construction ceramics would rise to 9 billion square meters by 2025, of which the domestic demand will account for 8.5 billion and exports for the remaining 500 million square meters²¹⁸¹.

As of the writing of this Report, the sector's decrease in production²¹⁸² appeared to be driven mainly by a shrinking market combined with rising prices for inputs such as natural gas and other raw materials, which resulted in declining profitability²¹⁸³. The Government's push for low carbon development (see for instance Section 4.1, as well as by macro-control of real estate policies²¹⁸⁴ (see also Chapter 6) significantly affected the industry. Coinciding with the publication of the 14th FYP (see Section 4.2.5), various Government policies were introduced to promote energy conservation and support the transformation towards a green ceramic industry²¹⁸⁵.

Unlike traditional ceramic products, the production of advanced ceramics rose steadily and significantly in China in recent years. From 2016 to 2020, the market size of China's electronic ceramics industry grew from RMB 44.9 billion to RMB 76.3 billion²¹⁸⁶. According to estimates by China Business Industry Research Institute, the industry was to reach RMB 87.6 billion of worth by 2021 and RMB 99.8 by 2022²¹⁸⁷.

17.2.2. GEOGRAPHICAL DISTRIBUTION

In terms of regional distribution, the main production provinces of traditional ceramics are Guandong, Jiangxi, Fujian, Sichuan, Henan, Shandong, Guangxi and Hebei²¹⁸⁸. Together, they

²¹⁷⁹ See at: https://www.ceramicschina.com/PG_ViewNews_125324.html and at: <https://www.indexbox.io/store/world-ceramic-tile-market-analysis-forecast-size-trends-and-insights/> (accessed on 4 September 2023).

²¹⁸⁰ See at: https://www.sohu.com/a/300062722_99986028 (accessed on 4 September 2023).

²¹⁸¹ See at: <https://www.ceramicschina.net/zhdt/1338670518625747060> (accessed on 4 September 2023).

²¹⁸² The decrease concerns different sectors of ceramic production. For example, the total number of construction ceramics production lines decreased from more than 3 400 to 2 760 during the 13th FYP period, with the largest decline in polished tiles of almost two thirds, with 330 fewer production lines. The production lines of interior wall bricks decreased as well, with 188 enterprises leaving the market and production capacity dropping by 19%. Concerning exterior wall bricks, the production capacity decreased by nearly 30%. Moreover, antique brick production lines decreased by 30%. See *Ibid.*

²¹⁸³ See at: <https://www.chinabaogao.com/detail/600125.html> (accessed on 4 September 2023), <http://www.leadingir.com/datacenter/view/7273.html> (accessed on 4 September 2023) and <https://www.cccmc.org.cn/spfh/hyzz/ff8080817fd5e25d017fdeae7c7010b.html> (accessed on 4 September 2023).

²¹⁸⁴ *Ibid.*

²¹⁸⁵ See at: <https://www.chinabaogao.com/detail/600125.html> (accessed on 4 September 2023).

²¹⁸⁶ See at: <https://zhuanlan.zhihu.com/p/577366637> (accessed on 4 September 2023), as well as at: <http://www.seccw.com/Document/detail/id/8286.html> (accessed on 4 September 2023).

²¹⁸⁷ *Ibid.*

²¹⁸⁸ “10th National Ceramics Conference and 2020 China Ceramics Brand Conference”, President of the China Building and Sanitary Ceramics Association speech on overall situation of the industry over the past five years of the 13th FYP; available at: https://www.ceramicschina.com/PG_ViewNews_125324.html

account for 80% of the total production capacity in China²¹⁸⁹, with the highest production capacity in Guangdong, followed by, respectively, Jiangxi and Fujian²¹⁹⁰. In terms of types of construction ceramics manufactured, Fujian ranks first for exterior wall tiles, with Jiangxi, Sichuan and Anhui accounting for a significant part of the roof tiles production²¹⁹¹.

China's advanced ceramic industry is mainly concentrated in Guangdong, Jiangsu, Shandong and Hunan, Zhejiang, Jiangxi, Henan, Liaoning, with the production centres of structural ceramics concentrated in Guangdong, Jiangsu, Jiangxi, Hunan and Shandong²¹⁹².

17.2.3. OVERCAPACITY

At the outset of the 13th planning period, the sector of construction ceramics was characterised by significant overcapacity, which was also explicitly recognised by the Chinese authorities²¹⁹³. However, during the 13th FYP period, due in large part to China's industrial (see Chapter 12) and investment policies (see Chapter 8), a number of sanitary ceramics, construction ceramics and ceramic brick production facilities²¹⁹⁴ was eliminated from the market. Still, in sanitary and construction ceramics, 14.52% of enterprises of a certain size were loss-making in 2019, up 1.2 percentage point compared to 2018, with 16.47% of loss-making enterprises in construction ceramics only²¹⁹⁵. Even though the process of transformation, upgrading and consolidation continued throughout the 13th planning period - the number of enterprises above a designated size declined to 1410 in 2015 and to 1048 in 2021 and to 1026 in 2022²¹⁹⁶ - the problem of overcapacity still persists.

In fact, while in 2021-2022 the number of enterprises declined, the actual production capacity increased and 130 new ceramic tile factories have started production in 2021, the largest increase in history²¹⁹⁷. In 2023, the problem of overcapacity in the Chinese traditional ceramics industry was pointed out by the Ceramics Information Network: “*The overcapacity of the*

(accessed on 4 September 2023). See also: <http://www.leadingir.com/datacenter/view/7273.html> (accessed on 4 September 2023) and <https://www.cccmc.org.cn/spfh/hyxx/ff8080817fd5e25d017fdeae7c7010b.html> (accessed on 4 September 2023).

²¹⁸⁹ See at: <https://www.cccmc.org.cn/spfh/hyxx/ff8080817fd5e25d017fdeae7c7010b.html> (accessed on 4 September 2023).

²¹⁹⁰ Largest production is located as follows: a) Jiangxi: Jingdezhen City, Gao'an City, Fengcheng City, Pingxiang City; b) Guangdong: Foshan City, Chaozhou City, Qingyuan City, Lianjiang City, Heyuan City; c) Fujian: Dehua County, Jinjiang City, Mingqing County, Dapu County; d) Jiangsu: Yixing City; e) Hebei: Handan City, Tangshan City, Gaoyi County, Yichang City; f) Shandong: Zibo City, Linyi City; g) Guanxi: Beiliu City; h) Shaanxi: Pingding County, Huairan County, Yangcheng County, Yaozhou County. Data available at: <http://taocich.com/?p=209187> (accessed on 4 September 2023).

²¹⁹¹ “10th National Ceramics Conference and 2020 China Ceramics Brand Conference”. See footnote 13.

²¹⁹² See at: <https://zhuanlan.zhihu.com/p/267296856> (accessed on 4 September 2023).

²¹⁹³ See the 2017 version of this Report, p. 439.

²¹⁹⁴ In 2018-2019 the number of ceramic production lines in the country decreased by nearly 35% and “since 2021 there have been more than 200 ceramics production lines that have completely withdrawn [...] across the country”, see at: <https://www.taocixinxi.cn/news-3-15425-0.html> and <https://www.taocixinxi.cn/news-4-32953-0.html> (accessed on 4 September 2023).

²¹⁹⁵ See at: <https://www.taocixinxi.cn/news-3-15425-0.html> (accessed on 4 September 2023).

²¹⁹⁶ See at: https://www.sohu.com/a/678476846_121717382 (accessed on 4 September 2023).

²¹⁹⁷ Available at: <https://baijiahao.baidu.com/s?id=1752828849056583887&wfr=spider&for=pc> (accessed on 4 September 2023).

*ceramics industry is all-round, and the entire industrial chain is in extreme saturation*²¹⁹⁸. For example, in the ceramic tile sector, the production capacity in 2022 amounted to 12.5 billion square meters, while the actual output was about 7.3 billion square meters, hence the capacity utilization rate was of around 70%, with the market seriously oversupplied²¹⁹⁹.

Hence, also in the 14th FYP period, the Chinese authorities strive to reduce capacity in sector while pursuing also other goals, such as focusing on more high-end building materials, also with a view to compete internationally. Concerning the 14th planning period, including on the planning and other regulatory tools, see more in Section 17.3.1 below.

17.3. REGULATORY FRAMEWORK

As ceramic products have various consumer and industrial uses, the sector is managed by several different state policy instruments. Important subsets of ceramic goods, in particular ceramic tiles and pipes, are considered construction materials and are therefore covered by the rules pertaining to the raw materials sector in the 14th planning cycle. Another group of ceramic products – namely tableware - falls under the category of light industries. Light industries include also electronics, energy industry, consumer durables, etc. The relevant measures pertaining to these sectors are described below, in particular in Section 17.6.1 concerning the construction ceramics and in Section 17.6.2 for the ceramics falling into the category of light industries. As there is no indication to the contrary, it can be safely assumed that the regulatory provisions which apply to the construction sector or the light industries sector cover also the ceramic sector.

Modern ceramics fall into the category of new materials, and are partially covered by the raw materials regulatory instruments, partially by other instruments, for example by the Zhejiang Province's 14th FYP on the development of the new materials industry²²⁰⁰, the Jiangxi Province 14th FYP on the high quality development of the new materials industry²²⁰¹, the Shaanxi Province 14th FYP on the development of the new materials industry²²⁰², the Guangdong Province's Several Opinions on the development of the semi-conductors and integrated circuits industry²²⁰³.

17.3.1. THE CENTRAL LEVEL 14th PLANNING CYCLE POLICIES

17.3.1.1. TRADITIONAL CERAMICS PERTAINING TO THE RAW MATERIALS SECTOR

²¹⁹⁸ Ceramics Information Network; available at: <https://baijiahao.baidu.com/s?id=1765017418798778015&wfr=spider&for=pc> (accessed on 4 September 2023).

²¹⁹⁹ *Ibid.*

²²⁰⁰ Available at: https://jx.jiaxing.gov.cn/art/2021/12/29/art_1229399353_4851032.html (accessed on 4 September 2023).

²²⁰¹ Available at: <http://gxw.nc.gov.cn/ncgxw/ghxx/202302/ce5ed04c948d4109aae5b8962c36dcd7.shtml> (accessed on 4 September 2023).

²²⁰² See:

http://www.shaanxi.gov.cn/zfxgk/zcwjk/szfbm_14999/ghwb_15010/202208/t20220812_2244723.html (accessed on 4 September 2023).

²²⁰³ Available at: http://drc.gd.gov.cn/gfxwj5633/content/post_2903095.html (accessed on 4 September 2023).

In December 2021, the MIIT, MOST, and the Ministry of Natural Resources issued the 14th Raw Materials FYP (see Section 12.2.1.1)²²⁰⁴. In order to ensure a proper implementation of this plan, specifically as regards the construction materials sector, in September 2022, the China Building Materials Federation, commissioned by MIIT, issued *the Guidelines on Developing the Construction Materials Industry during the 14th FYP Period*²²⁰⁵. The 14th Raw Materials FYP and the guidelines give top-level guidance for the development of the construction materials sector from multiple angles, while the plan contains less specific data and the guidelines provide more details (see also Chapter 4 as concerns the Chinese planning system).

At the outset, the plan praises the past achievements of the raw materials industry, sharing that *“the added value of China’s raw materials industry accounted for 27.4 percent of industrial enterprises above designated size in 2020. [...] In 2020, 34 of China’s raw materials industrial enterprises (excluding Hong Kong, Macao and Taiwan) made it to the list of the world’s top 500 enterprises, accounting for 29.1 percent of all shortlisted Chinese enterprises. [...] [T]he proportion of R&D investment was lifted from 0.76 percent in 2015 to approximately 0.9 percent in 2020”*²²⁰⁶.

The 14th Raw Materials FYP acknowledges that the raw materials industry has challenges ahead as *“[t]he excessive surplus of medium and low-end products persists, whereas high-end products are in short supply; the autonomous and controllable level of core process technology and equipment of key materials is not high; it remains an arduous task to realize green and low-carbon development; [...] and the ability to guarantee critical strategic resources remains inadequate.”*²²⁰⁷ At the same time, the plan sets out the following goal: *“by 2025, the ability of raw materials industry to safeguard and lead the high-quality development of the manufacturing industry will be significantly boosted”*²²⁰⁸.

The 14th Raw Materials FYP repeatedly emphasizes accelerating green industrial development, using the term *“green building materials”*, and sets out that *“implementation plans for the accomplishment of carbon peaking in the building materials sector will be formulated to ensure carbon emissions peak before 2030”*²²⁰⁹.

As regards capacities, the 14th Raw Materials FYP specifies that *“newly increased production capacity will be strictly controlled”*, it calls for improvement and strict implementation of production capacity replacement policies and local governments are to be encouraged to expand the applicable scope of production capacity replacement in the raw materials industry. Moreover, *“[e]nergy conservation review needs to be implemented to strictly control the thermal coal consumption of major coal consumers, including sectors like building*

²²⁰⁴ Available at: https://www.miit.gov.cn/cms_files/filemanager/1226211233/attach/20226/5a2f85786c23414f8c3594073c7f1d5d.pdf (accessed on 4 September 2023).

²²⁰⁵ Guidelines on Developing the Construction Materials Industry during the 14th FYP Period, available at: <http://www.cbmf.org/c/2022/09/06/12672.shtml> (accessed on 4 September 2023).

²²⁰⁶ 14th Raw Materials FYP, Section I.I.

²²⁰⁷ *Ibid.*, Section I.II.

²²⁰⁸ *Ibid.*, Section II.III.

²²⁰⁹ *Ibid.*, Section V.I.

materials”²²¹⁰. The guidelines also emphasize the strict implementation of the capacity replacement policy, pointing out the need to “prevent the disorderly expansion of production capacity”, and to “increase the reduction of inefficient production capacity”²²¹¹.

With respect to implementation, the 14th Raw Materials FYP provides that “relevant departments [...] shall ensure the implementation of relevant initiatives, [...] all localities need to better themselves with this Plan and include the main contents and major projects herein in their primary local tasks.” The plan emphasizes that “sectoral organizations shall give full play to their role as a bridge between enterprises and the government through providing timely feedback on problems and suggestions on the implementation of the Plan.”²²¹² As for the funding the implementation, the plan states that “the existing funding channels will be made full use of to support major projects involved in the Plan.”, and “[the Government] will deepen the industry-finance cooperation and leverage the role of the National Industry-Financial Cooperative Platform to provide strong support for projects in line with the Plan by means of financial services and equity investment”²²¹³(see also Section 12.2.1.1). Financial institutions are encouraged to provide comprehensive services for raw materials enterprises that have implemented mergers and reorganization as well as transformation and upgrading²²¹⁴.

In 2022, the Chinese authorities issued the Building Materials Industry Carbon Peaking Implementation Plan (‘Carbon Peaking Plan’)²²¹⁵ which essentially aims to balance economic development and emissions control. Against this background, the Carbon Peaking Plan nominally seeks a structural reform in order to control the overall emissions and improve the use of the resources while strengthening the building materials industry ²²¹⁶. Accordingly, during the 14th FYP period, energy consumption and emissions in the ceramics production are expected to decrease while a system for a green and low carbon industry development should be promoted²²¹⁷. The strategy of strengthening the control of total carbon emissions comprises reducing low-efficiency production (those with high energy consumption and large carbon emissions) and the use of high-carbon building materials, as well as improving online and real-time monitoring of the overall carbon emissions. Furthermore, the Carbon Peaking Plan promotes the use of clean and green energy, in particular, by replacing coal with alternative fuels with high calorific value and standardized pre-treatment and/or with renewable energy sources. Finally, the Carbon Peaking Plan envisages building or re-building of 1000 green production lines by 2030 and providing a financial support for this purpose.

In view of the above, the 14th FYP on Developing the Raw Materials Industry and the Carbon Peaking Plan remain in line with the Government’s overall goals in relation to industrial policy, i.e. increase companies’ sizes and upgrading/modernizing their technology and product range.

²²¹⁰ *Ibid.*, Section IV.I.

²²¹¹ Guidelines on Developing the Construction Materials Industry during the 14th FYP Period, p. 12.

²²¹² 14th Raw Materials FYP, Section VIII.I.

²²¹³ *Ibid.*, Section VIII.II.

²²¹⁴ *Ibid.*, Section IV.III.

²²¹⁵ See at: http://www.gov.cn/zhengce/zhengceku/2022-11/08/content_5725353.htm (accessed on 4 September 2023).

²²¹⁶ *Ibid.*

²²¹⁷ *Ibid.*

In order to achieve the goal set, the planning documents instruct the relevant authorities to make use of a number of industrial policy tools, ranging from capacity controls to providing financial support (and mobilizing the financial sector to this end).

17.3.1.2. TRADITIONAL CERAMICS BELONGING TO THE LIGHT INDUSTRY SECTOR

For the 14th FYP period, the Chinese authorities did not publish a separate FYP for the light industry. Instead, the development goals for the light industry are incorporated in the 2022 Guiding Opinions on Promoting the High-quality Development of Light Industry issued by the MIIT, MOHRSS, MEE, MOFCOM, and SAMR (*‘Guiding Opinions’*)²²¹⁸. Like other similar documents, the Guiding Opinions explicitly acknowledge that their objectives are based on CCP’s decisions and ideology²²¹⁹, they list past achievements and existing problems – such as insufficient supply of high-end products and weak overall innovation ability – and they set out a number of objectives for the development of the sector.

The Guiding Opinions contain the usual language of setting developments goals: “[...] by 2025, *the comprehensive strength of light industry will be significantly improved, the proportion of light industry in gross industrial output will be basically stable, the effect of expanding domestic demand and promoting consumption will be obvious, and the ability to serve the building of a new development pattern and promote high-quality economic and social development will be enhanced*”²²²⁰. Moreover, during the 14th FYP period, the growth rate of the light industry’s added value should be consistent with the average growth rate of the national industrial added value, the profit margin of key industries and the international market share of major products are to remain basically stable, and the quality and efficiency should be significantly improved. In addition, a group of competitive enterprises and advanced manufacturing clusters is to be formed and cultivated, the process of carbon peaking in light industry to be promoted, and a low-carbon development roadmap for industries be drawn up.

In order to achieve these goals, the Guiding Opinions put forward specific measures, including those aimed at improving and modernizing the industrial chain and those aimed at encouraging enterprises to establish and improve the quality management system. Moreover, they set out that enterprises will be encouraged to “*optimize the allocation of production factors such as capital, technology and talents through mergers and reorganizations*” and “*promotion of the formation of world-class manufacturing clusters*”²²²¹. The light industry is also supposed to “go global”, to improve the added value of products, to consolidate the traditional international market and to open up emerging markets²²²².

Importantly, the Guiding Opinions envisage improving fiscal and financial support policies. Specifically, financial institutions are expected to “*innovate financial services and products, increase support for technological transformation and scientific and technological innovation*”

²²¹⁸ Available at: http://www.gov.cn/zhengce/zhengceku/2022-06/19/content_5696665.htm (accessed on 4 September 2023).

²²¹⁹ Guiding Opinions, Section 1(1).

²²²⁰ Guiding Opinions, Section 1(2).

²²²¹ Guiding Opinions, Section 6(17) and 6(18).

²²²² Guiding Opinions, Section 6(20).

of light industry enterprises”²²²³. Meanwhile, local governments are encouraged to improve relevant support policies according to the needs in developing local light industry and enhance development potential.

The Guiding Opinions require the local departments in charge of the industry to “*strengthen overall coordination, strengthen process management, and do a good job in implementation.*” Moreover, in the customary manner, the industry associations are supposed to act as “*a bridge between the government and enterprises, strengthen tracking of the implementation of these [Guiding] Opinions, [and] guide enterprises to strengthen the construction of self-discipline and creditworthiness systems*”²²²⁴.

In sum, the Guiding Opinions show that the Government steers the development of the light industry, including ceramics.

17.3.1.3. ADVANCED CERAMICS

As of writing, advanced ceramic (see Section 17.1) play a comparatively lower role in the context of this Report. Nevertheless, they represent a sector of growing importance which has also been recognized by the Chinese authorities which included the subsector into a number of policy documents. Following the inclusion of advanced ceramics into the 13th FYP as a component of the field of new materials²²²⁵, advanced ceramics have featured various catalogues, generally classifying them as a sector eligible for government support²²²⁶. Those catalogues include for example the Guidance Catalogue for the Industry Structural Adjustment (see Section 4.2.9), the Guiding Strategic Emerging Industries Key Product and Services Catalogue²²²⁷ or Guidelines for the Development of Key Common Technologies for Industry²²²⁸. Advanced ceramics are also among the sectors included in Made in China 2025²²²⁹ and classified among the SEIs²²³⁰ (see also Sections 4.2.1 and 4.2.3, including the overlap of Made in China 2025 with the SEI), given China’s focus on developing strategic sectors in which advanced ceramics represent a component, such as IT, high-end equipment, new materials or new energy²²³¹.

Advanced ceramics continue to feature also in the policy documents guiding the economic development during the 14th planning cycle. In the 14th FYP (see Section 4.2.5), advanced ceramics are considered in the context of China’s goal to “[a]ccelerate the development of a modern industrial system and consolidate and strengthen the foundation of the real

²²²³ Guiding Opinions, Section 7(21).

²²²⁴ Guiding Opinions, Section 7(25).

²²²⁵ See 13th FYP, Chapter VI, Section 1.

²²²⁶ See Section IX.5, available at <https://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 4 September 2023).

²²²⁷ See Section 3.1.2, available at: https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/t20170204_961174.html (accessed on 4 September 2023).

²²²⁸ Available at: https://www.gov.cn/xinwen/2017-10/30/content_5235348.htm (accessed on 4 September 2023).

²²²⁹ See Made in China 2025, Chapter 3, Section 5 and Section 6(9).

²²³⁰ Strategic Emerging Industries Classification is available at: https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5433037.htm (accessed on 4 September 2023).

²²³¹ See at: <https://baijiahao.baidu.com/s?id=1738223749331109227&wfr=spider&for=pc> (accessed on 4 September 2023).

economy“²²³². More specifically, as part of the objective to increase the country’s manufacturing core competitiveness, the 14th FYP envisages that China „will promote breakthroughs in advanced metals and inorganic non-metallic materials such as high-end rare earth functional materials, high-quality special steels, high-performance alloys, high-temperature alloys, high-purity rare metal materials, high-performance ceramics, and electronic glass; strengthen the R&D and application of carbon fibre, aramid fibre, and other high-performance fibres and their composite materials and bio-based and biomedical materials [...]”²²³³.

Moreover, according to the 14th Raw Materials FYP, China is “going to develop a range of key materials, including high-temperature alloy, aviation light alloy materials, ultra-high-purity RE metals and compounds, high-performance special-purpose steel, degradable biomaterials, special-purpose coating, photoresists, targets, polishing solution, industrial gas, biomimetic synthetic rubber, intraocular lens, high-performance glass with special functions, advanced ceramic materials, special-purpose separation film, and high-performance RE magnets, catalysts, optically functional materials and hydrogen storage materials”²²³⁴. To achieve this goal, China would “set up manufacturing innovation centres for high-end polyolefin, rare metals, powder metallurgy, advanced glass and advanced ceramics”²²³⁵.

17.3.2. PROVINCIAL AND LOCAL LEVEL 14TH PLANNING CYCLE POLICIES

Following up on the 14th Raw Materials FYP, provincial authorities issued local plans, providing development strategies to achieve specific objectives in the ceramics industry. The sector is further regulated at the municipal level through various policy instruments, which also follow national planning provisions. The local plans reflect the goals of the national plan, such as consolidation and modernisation of the ceramics industry, promotion of a technological upgrade and a move towards a more ecological industry and encompass the usual toolbox of industrial policies.

The degree of ceramic industry management by State authorities at all levels is exemplified below using the examples of the following provinces and municipalities: Shandong, Chongqing, Fujian and Chaozhou City in Guangdong.

17.3.2.1. SHANDONG

Traditional ceramics

The 14th FYP for the Development of the Building Materials Industry in Shandong Province (*‘Shandong Plan’*)²²³⁶ was published on 17 November 2021 by the Shandong Provincial Department of Industry and Information Technology. It starts by listing the achievements during the 13th FYP period, during which the building materials industry in the province “*resolutely eliminated backward production capacity, resolutely transformed and upgraded*

²²³² See 14th FYP, Part III.

²²³³ See 14th FYP, Article VIII, Table 4.

²²³⁴ See 14th Raw Materials FYP, Chapter II, Section III, Feature 2.

²²³⁵ *Ibid.*

²²³⁶ Available at: http://gxt.shandong.gov.cn/art/2021/12/1/art_103885_10300062.html (accessed on 4 September 2023).

*traditional innovation drive [...] continued to expand industrial scale, steadily improved the economic benefits, and has provided important support for the economic and social development of the province*²²³⁷. At the same time, the Shandong Plan admits that there are still many problems such as overcapacity of building material products, weak supporting role of emerging industries, insufficient extension of the industrial chain, and the need to improve innovation capabilities: *“The structural contradiction of the supply side of the building materials industry in Shandong province is prominent, [...] and it is urgent to develop new technologies [...] to build high-end brands to meet the market demand for building materials products”*²²³⁸.

The Shandong Plan also stipulates detailed quantitative targets, which are not included in the 14th Raw Materials FYP. The Shandong Plan envisages that *“by 2025, the output value of the building materials industry will reach RMB 700 billion, the output value of the top 10 building materials enterprises will account for 30% of the total industry, one 100-billion-level enterprise will be cultivated, five 10-billion level industrial clusters will be built [...]”*²²³⁹.

The Shandong Plan also specifies development priorities for the construction ceramics industry. It aims to strengthen selected construction ceramics production bases and support construction of a number of innovation demonstration parks. Furthermore, key enterprises of construction ceramics are encouraged to establish an enterprise brand management quality system. Promoting the application of new technologies and processes, as well as developing new ceramics and functional ceramics are also listed as development priorities for the construction ceramics industry.

One of the key tasks for the building materials industry in Shandong is to strengthen the international competitiveness of its enterprises in the sector. In order to achieve this, the Shandong plan envisages to *“deepen the “One Belt, One Road” economic and trade cooperation, [...] actively expand foreign trade, focus on promoting the export of [...] construction ceramics, [...] encourage powerful building materials enterprises to build overseas cooperation projects, and focus on driving cooperation in construction engineering, building materials, labour services, technology and capital, [...] improve the efficiency of resource allocation, and enhance the national competitiveness of Shandong’s building materials industry”*²²⁴⁰.

The Shandong Plan further calls for increased fiscal and tax support for the industry, in particular the implementation of national fiscal and taxation policies, such as the additional deduction of enterprise R&D expenses, and the reduction of value-added tax and income tax for building materials products with comprehensive utilization of resources. In addition, Shandong’s authorities will *“improve financial support policies, encourage all kinds of financial institutions to give credit support to qualified building materials projects, increase financing support for mergers and acquisitions, [...] actively develop financial leasing and supply chain financial services, and expand the financing scale for high-growth small and*

²²³⁷ Shandong Plan, Chapter 1.

²²³⁸ *Ibid.*, Chapter 2.

²²³⁹ *Ibid.*, Chapter 3.

²²⁴⁰ *Ibid.*, Chapter 5.4.

medium-sized building materials enterprises”²²⁴¹. The Shandong Plan also requires relevant authorities to “*enhance implementation efforts, improve the coordination and promotion mechanism, formulate work plans [...] and clarify roles and responsibilities.*” Accordingly, SOEs, private enterprises and SMEs are encouraged to deepen cooperation alongside the industrial chain and supply chain²²⁴².

In sum, the Shandong Plan reflects many of the mechanisms and targets of the 14th Raw Materials FYP but also sets concrete output targets and development objectives for the construction ceramics industry as well as puts an emphasis on international expansion and deepening cooperation between enterprise.

Advanced ceramics

In 2021, Shandong released the *Action Plan for the High-quality Development of New Materials Industry*²²⁴³ with a focus on key industrial sectors such as carbon fibre and advanced ceramics. This plan expects local authorities to attract a number of projects of strong industry chains or industry chain extensions, map out the bottlenecks concerning products and key core technologies and expand industry chain coordination and innovation.

The 14th Five Years Plan (2021-2025) for the Chongqing region was issued on 19 July 2021 by the Chongqing Municipal People’s Government. The Chongqing Plan (see Section 12.2.2.5) guides the development of the modern industrial system and advanced manufacturing centres, setting a strategic focus on certain sectors including ceramics. It not only covers the 2021-2025 period but also looks forward to 2035.

The Chongqing Plan specifies that one of the guiding principles should be the combination of an effective market and a government-led industry. This is reflected in the following objectives: “[g]iving full play to the decisive role of the market in resource allocation [...]; better involve the government, make sure the government’s coordination and control work focusses on systematically fostering an environment favourable to the industry development, on improving the quality of public services, on maintaining market order and on driving consumer demand [...]”. Furthermore, the Chongqing Plan underlines the need to reduce manufacturing costs and to “*optimis[e] the supply system of the manufacturing industry*”. In other words, it aims to regulate production factors. The Chongqing Plan also emphasizes the importance of the synergy between the consolidation of the industrial foundations and the modernization of the industrial chain, as well as the promotion of the development of large and small-sized enterprises. Moreover, the Chengdu-Chongqing economic circle is highlighted as an area to ensure a coordinated development of manufacturing industries. Moreover, the Chongqing Plan mentions the principle of stimulation of the potential growth of new industry models, for instance through the creation of “*Smart Manufacturing Towns*”²²⁴⁴.

²²⁴¹ *Ibid.*, Chapter 6.2.

²²⁴² *Ibid.*, Chapter 6.3.

²²⁴³ See at: <https://baijiahao.baidu.com/s?id=1715843812977892207&wfr=spider&for=pc> (accessed on 4 September 2023).

²²⁴⁴ *Ibid.*, Section 2(2).

According to the Chongqing Plan, the municipality benefits from a series of strategic opportunities, such as its location in the rapidly developing area of Southwest China, its involvement in crucial domestic and international trade channels, or its position at the forefront of technological transformation. The Chongqing Plan states that these factors played a key role in the development of a digitalized industrial production process and determined the growth of Chongqing manufacturing industry, including the ceramics sector²²⁴⁵. Despite these strengths, the Chongqing Plan observes that the industry finds itself facing several challenges. The production processes are becoming more and more complex, whilst the enterprises' innovation capability is weak and investments are insufficient to promote a transitional process.

In light of this, the Chongqing Plan considers the forthcoming years as crucial to the future of Chongqing's manufacturing industry and the CCP Central Committee "*requires Chongqing to put the high-quality development of the manufacturing industry in a more prominent position*"²²⁴⁶. With the overall purpose of extending the potential of Chongqing's manufacturing industry, the Chongqing Plan therefore lists specific goals. Particularly, it sets out the creation of internationally competitive industrial clusters and it underlines the need for improving high-quality products manufacturing, enhancing the efficiency of the industry through "*in-depth innovation of institutional mechanisms and enterprise management*"²²⁴⁷.

The Chongqing Plan also provides for the promotion and application of "*intelligent technology*" and "*raw material management equipment*". More precisely, it promotes the improvement of a "*green manufacturing system*" and "*mutual supply of raw materials*" as well as the "*sharing of resources*." With the aim of implementing intelligent technological and process equipment, the Chongqing Plan considers R&D as a key factor in order to create high-quality development regional poles of the manufacturing industry²²⁴⁸.

In addition, a major focus of the plan is on SOEs. The Chongqing Plan promotes the reform of and support to SOEs in the manufacturing industry and encourages investing of state-owned capital in SEIs and advanced manufacturing sector²²⁴⁹.

Overall, the Chongqing Plan identifies two milestones: one short-term and one longer term. First, it envisages that, by 2025, the manufacturing industry should be consolidated, its scale expanded and the region's GDP stable. Moreover, it sets out that the industrialization level will be advanced and the industrial chain will be effective. Second, it aims at creation, by 2035, of a "*nationally important advanced manufacturing centre*", which will contribute to strengthening the international competitiveness and influence of the municipality's manufacturing industry. The Chongqing Plan also envisages establishing of 20-30 manufacturing innovation centres and 50 platforms supporting industrial innovation in industrial parks in order to enhance innovation capability²²⁵⁰.

²²⁴⁵ *Ibid.*, Section 1(2).

²²⁴⁶ *Ibid.*, Section 2(1).

²²⁴⁷ *Ibid.*, Section 2(3).

²²⁴⁸ *Ibid.*, Section 4.

²²⁴⁹ *Ibid.*, Section 5(2).

²²⁵⁰ *Ibid.*, Section 2(4).

In sum, the Chongqing Plan demonstrates the ongoing active involvement of the Government in setting goals for the manufacturing industry and operational steps to achieve these goals. The industry is led and supported by local authorities, which promote its consolidation and modernisation in different ways. Particularly, as stated above, the Chongqing Plan sets the focus on enterprises' innovation capability and the involvement of state-owned capital to this end.

17.3.2.2.FUJIAN

The Fujian Plan (see Section 12.2.2.4), issued by the People's Government of Fujian Province in June 2021, covers the planning period of 2021-2025.

The Fujian Plan identifies the manufacturing industry as a basis of a strong economy and emphasizes the need for its consolidation and modernization in the province. Particularly, it aims at promoting efficiency and core competitiveness of the industry against the background of current challenges, such as existing significant instability and uncertainty, weak innovation and technological capability of enterprises and investments inadequate to ensure the strengthening and optimization of the industrial chain.

The Fujian Plan considers the current situation as an opportunity to be seized in order to provide strategic coordination both at provincial and local level and to support and promote the transition of the industry towards green and sustainable development driven by innovation²²⁵¹.

To achieve these goals, in a short-term perspective, the Fujian Plan sets out the goal of strengthening the industry through further optimization of its structure. Furthermore, it underlines the importance of traditional industries and a specific focus is set on building materials, setting out the goal that by 2025, the total output value of the building material industry should account for RMB 620 billion. The achievement of this aim is to be supported by the promotion of advanced and intelligent technologies, such as automatic quality inspection. The Fujian Plan also stipulates that this transitional process will be also supported by an accelerated research in special ceramic materials²²⁵².

Moreover, the Fujian Plan envisages gradual transfer of industries from the coast to the mountains, to “*accelerate the revitalization of industries in old revolutionary base areas and Soviet areas*” and boosts inter-provincial cooperation²²⁵³.

17.3.2.3. CHAOZHOU

The municipality of Chaozhou is an important manufacturing base for the Chinese ceramic sector, being the country's lead production location of daily-use ceramics, sanitary ceramics and electronic ceramics. Chaozhou is home to more than 6 000 ceramics manufacturers, which generated more than RMB 50 billion in 2021²²⁵⁴.

²²⁵¹ *Ibid.*, Chapter I, Section Two.

²²⁵² *Ibid.*, Chapter III, Section Building Materials.

²²⁵³ *Ibid.*, Chapter IV.

²²⁵⁴ Available at: <http://www.chaozhou.gov.cn> (accessed on 4 September 2023). An introduction to the current situation of Chaozhou's ceramics industry is available at: http://www.chaozhou.gov.cn/zwgk/jytabl/content/post_3822699.html (accessed on 4 September 2023).

In April 2018, the Chaozhou Government issued the Implementation Plan for Promoting the High-quality Development of the Ceramic Industry in Chaozhou City (*‘Chaozhou Implementation Plan’*)²²⁵⁵ in order to accelerate the transformation and upgrading of the city’s ceramic industry and promote the high-quality development of advantageous traditional industries.

The Chaozhou Implementation Plan envisages several measures to achieve that goal:

- bringing some corrections²²⁵⁶ to the porcelain clay market and improving the supply of raw materials;
- creating an innovation platform and gathering innovation resources;
- strengthening industry-university-research cooperation and accelerating technological innovation;
- improving industrial design and developing cultural creativity;
- implementing brand strategy and strengthening publicity and communication;
- developing industrial tourism and shaping the impression of porcelain capital;
- compiling price indexes and grasping market dynamics;
- accelerating construction of the gas grid and reducing gas costs;
- strengthening pollution control and promoting cleaner production.

The Chaozhou Implementation Plan requires the municipal authorities to *“rationally guide the allocation of resources, improve the market’s ability to allocate resources, and guide the city’s ceramic industry to accelerate the elimination of backward production capacity”* and to *“strengthen the cooperation with provincial price associations”*²²⁵⁷. In order to reduce overcapacity, the Chaozhou Implementation Plan asks to *“promote the structural reform of the supply side of the ceramic industry, [...] urge enterprises to adopt advanced production technology and equipment, and accelerate the elimination of high-pollution and high-emission production capacity”*²²⁵⁸.

The implementation is to be planned, coordinated and overseen by a special working group led by a vice mayor. Accordingly, *“[a]ll county and district governments and relevant municipal departments should formulate specific work plans according to the implementation plan and division of responsibilities, quantify and decompose development goals, and do a good job in the implementation of specific tasks.”*²²⁵⁹ Furthermore, *“[f]iscal and taxation policies and financial reward and subsidy projects enabling governments at all levels to support the transformation and upgrading of the ceramic industry shall be fully implemented”*²²⁶⁰.

²²⁵⁵ Available at: <http://www.chaozhou.gov.cn/attachment/0/429/429010/3418060.pdf> (accessed on 4 September 2023).

²²⁵⁶ Those corrections are likely to entail e.g. interventions into the corporate layout of the sector, given the Chaozhou Implementation Plan’s references to *“planning the [] clay mining in a reasonable and orderly manner”*, as well as to the need to *„carry out in-depth actions to control the chaotic phenomenon of China clay mining”*.

²²⁵⁷ The Implementation Plan, Section III.7.19.

²²⁵⁸ *Ibid.*, Section III.8.22.

²²⁵⁹ *Ibid.*, Section III.6.17.

²²⁶⁰ *Ibid.*, Section IV.3

Furthermore, the Chaozhou City adopted an Action Plan for Building a Hundred-billion-yuan Level Ceramic Industry Cluster²²⁶¹ (*‘Chaozhou Action Plan’*) to further promote its ceramic industry and enhance the influence of the Chaozhou ceramics regional brand. The Action Plan sets out that by 2025 *“the scale of the city’s ceramic industry will be further expanded, a group of leading enterprises with international and domestic influence will be formed, and the total industrial output value will reach RMB 100 billion.”* The authorities plan to have more than 1 000 enterprises of which more than 300 with an output value exceeding RMB 100 million and more than 100 national high-tech enterprises. In addition, Chaozhou strives to *“have more than 50 provincial-level engineering technology research and development centres and more than 50 provincial-level technical service centres for ceramic enterprises”*²²⁶².

The industrial layout is to be further steered into optimisation through the concentration of the industry. To that end, the government intends to provide support to a range of larger competitive flagship companies. The latter, also called ‘backbone’ companies, will benefit from a *“one company – one policy”* approach by the government, which translates into tailored policies for each such enterprise, including State support. Mergers and reorganizations of enterprises are also to be encouraged to enhance their overall competitiveness.

In the context of technological innovation and transformation, the plan stipulates to *“strengthen the dominant position of enterprises in technological innovation and promote the construction of research and development institutions of ceramic enterprises [...] to create a number of major innovation platforms”*²²⁶³.

Like the Chaozhou Implementation Plan, the Chaozhou Action Plan also seeks to *“establish a ceramic price index and cost index analysis mechanism, [...] understand the market dynamics of the ceramic industry and products through the cyclical fluctuations and changing trends of the price index, reasonably guide the allocation of resources, and improve the market.”*²²⁶⁴

For the purpose of innovating the industry’s marketing model, enterprises are to cooperate with well-known e-commerce enterprises such as Alibaba, Jingdong Group and AsiaBT. Enterprises are also supposed to be guided to continuously innovate multi-channel sales models, and actively expand the domestic and foreign markets of the Chaozhou ceramic industry.

As in other planning documents, in the Chaozhou Action Plan the authorities undertake to make use, at all levels, of all available support measures, including fiscal and taxation tools to implement the Action Plan. Prices of water, electricity and gas shall be appropriately adjusted for the ceramic industry enterprises. The Chaozhou Action Plan envisages the use of price policies to help enterprises reduce production cost and to *“guide financial institutions to optimize and adjust capital investment, expand the scale effect and leverage effect of the loan risk compensation fund for micro, small and medium-sized enterprise, increase support for ceramic enterprises, and provide high-quality financial products and services for enterprise*

²²⁶¹ See the Chaozhou Municipal Government Notice 2020/203, available at: <http://www.chaozhou.gov.cn/attachment/0/491/491711/3688965.pdf> (accessed on 4 September 2023).

²²⁶² The Action Plan, Chapter 1.

²²⁶³ *Ibid.*, Chapter 3.

²²⁶⁴ *Ibid.*, Chapter 3.20.

mergers and acquisitions, integration of upstream and downstream resources, capital increase and production expansion”²²⁶⁵.

In sum, the Chaozhou Implementation Plan and the Chaozhou Action Plan cover in detail almost all aspects of the ceramic industry’s development, particularly in terms of fiscal and taxation support, capacity reduction and setting of input prices, thus showing a high degree of government involvement in the sector.

17.4. FURTHER POLICIES RELEVANT TO THE CERAMIC SECTOR

Beside the planning documents guiding the development of the sector, a number of additional policies applicable to the ceramics industry are in place, reflecting the priorities of the Chinese authorities, be it for larger industrial segments (see also Chapter 4) or more specifically for the ceramics sector. The following can be pointed out for illustration:

- Guiding Catalogue for Industrial Development and Transfer (2018 Edition)²²⁶⁶ with its emphasis on shaping the geographical distribution of the industry (see also Section 17.2.2);
- Guiding Opinions on Promoting the Orderly Transfer of Manufacturing Industries (2021)²²⁶⁷ containing additional provisions on distribution and upgrading of the manufacturing industry sector;
- Guiding Catalogue for Industrial Structure Adjustment (see Section 4.2.9) with updated criteria between technologies to be encouraged, to be restricted and to be eliminated within the ceramics sector²²⁶⁸.

17.5. STATE SUPPORT MEASURES

As described above, the planning documents and other policy measures governing the ceramic sector in China allow for broad institutional and financial support to Chinese producers, notably to implement various industry development objectives. The ceramic industry, like many others, has benefited from numerous schemes related to various aspects of its activity.

This section lists certain support mechanisms which exist over and above the those envisaged in the national, provincial and local FYPs described above (see Sections 17.3.1 and 17.3.2).

For instance, under its 2022 Interpretation of Policy Measures to Support the High-quality Development of Advanced Ceramic Materials Industry Cluster²²⁶⁹, the Hunan provincial authorities provide a wide range of support measures to the advanced ceramics sector, related to industrial upgrade, geographical distribution, international expansion etc.:

²²⁶⁵ *Ibid.*, Chapter 4.2.

²²⁶⁶ See at: http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435564.htm and https://www.gov.cn/gongbao/content/2022/content_5682412.htm?eqid=ca07dc8c0000d23400000006645b6fb7 (accessed on 4 September 2023).

²²⁶⁷ See at: http://www.gov.cn/zhengce/zhengceku/2022-01/15/content_5668321.htm (accessed on 4 September 2023).

²²⁶⁸ See e.g., Sections 1.12.4, 1.19.6. or 2.9.2. of the Catalogue.

²²⁶⁹ See at: http://gxt.hunan.gov.cn/xxgk_71033/zcfg/zcjd/202209/t20220927_29018884.html (accessed on 4 September 2023).

- (1) Accelerate the development of industrial clusters. [...] Strive to build a dual-core agglomeration of Zhuzhou (Liling) and Loudi (Xinhua) ceramic industries, and multi-point agglomeration in Zhuzhou Economic Development Zone, Loudi Economic Development Zone, Changsha Wangcheng District, Huaihua City, Liling Economic Development Zone and other areas to achieve the agglomeration and development of characteristic ceramic industry.
- (2) Increase support for high-quality enterprises. Continuously improve the service system of small and medium-sized enterprises, promote the development of small and medium-sized enterprises in the direction of "specialized, refined, special and new" and cultivate a number of "little giant" enterprises and single champions and hidden champions [...].
- (4) Accelerate the rebuilding of the industrial base. Provide financial and policy support to the ceramic industry in terms of key products, R&D awards [...].
- (5) Accelerate the upgrading of the supporting level of the advanced ceramic industry chain. Increase support for the research and development of high-performance ceramic powder materials to ensure the stable and safe supply of ceramic raw materials. Support the construction of large databases and information service platforms. Support the introduction and cultivation of supporting enterprises in the ceramic industry.
- (6) Accelerate the promotion of intelligent upgrading. Promote the deep integration of the digital economy and the ceramic industry, guide enterprises to migrate to the cloud platform [...]. Support the creation of a number of intelligent manufacturing benchmarking workshops and benchmarking enterprises, and give financial support.
- (7) Accelerate green development. Build an efficient, clean, low-carbon and circular green manufacturing system around green factories, green products, green parks and green supply chains. Carry out "low-carbon and zero-carbon" pilot work in the field of advanced ceramics industry and provide financial support to carbon emission reduction benchmark enterprises. [...]
- (10) [...] Promote economic, trade and cultural exchanges between ceramic enterprises and relevant units in countries along the "Belt and Road", encourage the introduction of foreign investment, support ceramic products to expand foreign trade channels, promote exchanges and publicity of ceramic industries in various places, and vigorously develop the ceramic exhibition economy.

Further incentives are available under the VAT rebate policy where Chinese exporters of ceramic tiles and ceramic sanitary ware can benefit from a 13% VAT rebate²²⁷⁰. As specified above (see 15.5.2.2), China has been using such rebates to intervene in the market with the aim to achieve industry policy objectives.

Multiple examples of additional support mechanisms have been identified and some of them are listed below:

²²⁷⁰ See at: <http://hd.chinatax.gov.cn/nszx/InitChukou.html> (accessed on 29 June 2023).

- The Jingdezhen Municipality (Jiangxi) adopted the “Jingdezhen Advanced Ceramic Industry Development Plan (2022-2025)”²²⁷¹ aiming at further developing ceramics application in communication electronics and new energy sectors and at fostering new applications in aerospace, biomedicines etc, and seeking to attract advanced ceramics projects. For instance, the Municipality has developed the Jingdezhen Ceramic Industry Park focussing on fostering advanced ceramics, daily-use ceramics and art ceramics and developing an ecosystem gathering the government, enterprises and universities²²⁷². In 2022, the Park attracted 14 advanced ceramics projects, totalling RMB 12 billion investment and 42 advanced ceramics enterprises accounting for RMB 3.7 billion output value. In 2023, the Park’s advanced ceramics industry output was expected to reach RMB 8.5 billion output value.
- The Tongchuan Municipality (Shaanxi) issued early 2022 “Measures to foster the development of the advanced ceramic industry”²²⁷³ expanding the support granted to industry investment projects in the field of ceramics in the form of various bonuses according to the projects’ performance, energy price subsidisation, technological transformation support, preferential lending etc. In its 2023 work report²²⁷⁴, the Tongchuan Municipality acknowledged that the upgrading and transformation of the advanced ceramics industry was going forward.
- In October 2022, the Jiangxi Development and Reform Commission released the second batch of provincial key projects²²⁷⁵, totalling 115 projects with a total investment of RMB 241.5 billion and a planned annual investment of RMB 44.2 billion. Among these 115 projects, it is worth mentioning the Jiangxi Dinghua Xintai project with an annual output of 3.6 million ceramic boards.

17.6. FINDINGS IN PREVIOUS TRADE DEFENCE INVESTIGATIONS

The significant overcapacity in the Chinese ceramic sector and a slower development of domestic demand has led Chinese producers to focus increasingly on export markets. At the time of writing this Report, a number of jurisdictions either initiated trade defence investigations or already adopted trade defence measures against ceramic tiles originating in China.

According to regular WTO filings, besides the EU, the following countries maintain anti-dumping duties on ceramics products from China: Argentina, Brazil, Mexico, India, countries

²²⁷¹ See at: <http://jx.people.com.cn/n2/2023/0805/c190181-40520627.html> (accessed on 4 September 2023).

²²⁷² See at: <https://jxjdz.jxnews.com.cn/system/2023/07/16/020148697.shtml> (accessed on 4 September 2023).

²²⁷³ See at: https://www.sohu.com/a/515871065_121095469 (accessed on 4 September 2023).

²²⁷⁴ See at: http://district.ce.cn/newarea/roll/202303/17/t20230317_38449223.shtml (accessed on 4 September 2023).

²²⁷⁵ See at: https://www.sohu.com/a/592342175_120109837 (accessed on 4 September 2023).

of the Gulf Cooperation Council, the US, Taiwan, Korea, the UK²²⁷⁶. Moreover, the US have in place countervailing duties against Chinese ceramic tiles²²⁷⁷.

In the EU, several anti-dumping investigations resulted in the imposition and renewal of two trade defence measures on imports of ceramic goods originating in China, i.e., ceramic tiles and ceramic tableware and kitchenware. In both cases, market distortions were found.

17.6.1. CERAMIC TILES CASE

In September 2011, the EU imposed a definitive anti-dumping duty on imports of ceramic tiles originating in China with the duty levels applied ranging from 13.9% to 69.7%²²⁷⁸. On 13 September 2016, the Commission initiated a first expiry review of the measures which resulted in maintaining the measures²²⁷⁹. On 22 November 2022, the Commission initiated an expiry review of the measures²²⁸⁰. The investigation is ongoing as of writing of this Report.

The initial investigation established that the business licence of a group of exporting producers encompassed an export sales restriction, which was found to be applied in practice. It was therefore considered that sales decisions were not taken freely but were subject to significant State interference. Moreover, the Chinese producers were not able to demonstrate that they had paid for their land use rights. The latter element points to a distortion of an important input factor. Additionally, it was found that two groups of producers were not able to demonstrate the origin of the initial capital used in the companies' establishment, i.e. another distortion of a factor of production²²⁸¹.

17.6.2. CERAMIC TABLEWARE AND KITCHENWARE CASE

In May 2013, the EU imposed a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in China with the duty levels ranging from 13.1% to 36.1%²²⁸². On

²²⁷⁶ See at the WTO anti-dumping notifications portal, available at: https://www.wto.org/english/tratop_e/adp_e/antidum3_e.htm (accessed on 4 September 2023).

²²⁷⁷ See at the WTO countervailing measures notifications portal, available at: https://www.wto.org/english/tratop_e/scm_e/notif_e.htm#:~:text=1.,-Other%20optional%20notifications&text=Notifications%20of%20Countervailing%20Legislations.,or%20regulations%20should%20so%20notify (accessed on 4 September 2023).

²²⁷⁸ Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ L 238, 15.9.2011).

²²⁷⁹ Commission Implementing Regulation (EU) No 2017/2179 of 22 November 2017 imposing a definitive anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 307, 23.11.2017, p.25).

²²⁸⁰ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of ceramic tiles originating in the People's Republic of China, (OJ C 442, 22.11.2022, p.3).

²²⁸¹ Commission Regulation (EU) No 258/2011 of 16 March 2011 imposing a provisional anti-dumping duty on imports of ceramic tiles originating in the People's Republic of China (OJ L 70, 17.3.2011, p.5).

²²⁸² Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 131, 15.5.2013).

12 July 2019, following an expiry review, the Commission maintained the definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in China²²⁸³.

State intervention was found to exist already in the original investigation with regard to the purchase of land use rights, the purchase of raw materials and with regard to a company's recruitment process, which demonstrates that business decisions were not made in response to market signals, without State interference and that costs did not reflect market values²²⁸⁴. The expiry review investigation did not find any decrease of such State interference.

17.7. CHAPTER SUMMARY

The construction ceramics and daily-use ceramics are traditional sectors of the Chinese industry. The State has been closely overseeing, steering and managing their development since many decades. Advanced ceramics, being an important upstream sector for the high-tech industries, is also covered by various Government policies. As in the case of other key sectors, this State involvement is visible through the system of planning documents issued at all levels – from national to municipal. One important element that the State pushes in this context is the concentration of ceramic industrial clusters. This often translates into government requirements to develop large competitive conglomerates and enterprises are also directed to ‘reach out’ for foreign sales markets. Such consolidation would also facilitate greater control of the sector in order to implement government policies.

Compared to the 13th FYP period, the national level regulatory framework of the 14th FYP period focuses on more general aspects of the ceramics sector. However, regional and local plans provide detailed and specific targets, concerning, for example, industrial output, geographical distribution and value-chain positioning of the sector and R&D expenditure. Pursuing such targets is part of wider policies aimed at consolidation and modernization of the industry, with which businesses and the relevant implementing authorities are supposed to comply. The financial support from the various state levels may take the form of financial transfers (available under individual policy measures), preferential loans, export incentives, tax relieves and land-use cost relief, etc. In turn, these policies and the support related to them have direct and indirect consequences on the prices of inputs and hence on cost structures of companies, leading to significant market distortions in the sector.

²²⁸³ Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036 (OJ L189, 15.7.2019).

²²⁸⁴ Commission Regulation (EU) No 1072/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China (OJ L 318, 15.11.2012, p. 28).

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18.1. INTRODUCTION

The global telecommunications equipment industry is an important and constantly growing industry, reaching revenues of almost USD 100 billion (~ EUR 84.6 billion) in 2021 – a 20% increase over 2017²²⁸⁵. The industry includes market participants from around the world,

²²⁸⁵ Pongratz, S. (2022). *Key takeaways – 2021 total telecom equipment market*. Dell'Oro Group; available at: <https://www.delloro.com/key-takeaways-2021-total-telecom-equipment-market/> (accessed on 3 March 2023). Throughout the chapter, conversions to EUR are based on the average exchange rate during the timeframe referenced, using the exchange rate calculator publicly available on the European Central Bank's

producing equipment that falls into three distinct categories: (1) telecommunications terminal equipment, (2) wireless telecommunications equipment and (3) network interconnection transmission equipment²²⁸⁶. Telecommunications terminal equipment includes end-use equipment, such as mobile and landline telephones, modems and fax machines²²⁸⁷. Wireless telecommunications equipment covers base stations, microwave communication equipment and satellite stations²²⁸⁸. Network interconnection transmission equipment consists of products such as internet protocol gateways, switches, access network equipment and routers²²⁸⁹. This chapter will cover the latter two categories – wireless telecommunications and network interconnection equipment – and exclude end-use equipment, such as mobile handsets.

Like in other sectors, in order to secure a leading position in the global telecommunications equipment market, the Chinese government has prioritised the development of its indigenous industry through a web of national and sub-national industrial policies²²⁹⁰. The most prominent Chinese entities in the global telecommunications equipment market are Huawei Technologies Co., Ltd (‘Huawei’) and ZTE Corporation (‘ZTE’), which together accounted for almost 40% of the global telecommunications equipment market in 2021²²⁹¹.

18.2. CHINESE TELECOMMUNICATIONS INDUSTRY

18.2.1. MAIN INDUSTRY SEGMENTS AND PRODUCERS

The Chinese telecommunications industry is divided into three main segments²²⁹². The first segment of the industry is the manufacturers of baseband chips, optical modules and devices and radio frequency devices²²⁹³. The second segment consists of the base station and transmission equipment manufacturers and network technology companies²²⁹⁴. The third segment is the manufacturers of end-use equipment (which includes some of the same manufacturers of transmission equipment), the telecommunications service providers and the

website. European Central Bank. (2023). *Euro foreign exchange reference rates*. https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html (accessed on 25 March 2023).

²²⁸⁶ Wang, J. (28 September 2016). *Introduction of telecommunications equipment network access license (NAL)*, p.6, available at: <https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/SiteAssets/Pages/Events/2016/Oct-CandI2016/CAICT2016/Session%201-2%20Introduction%20of%20Telecommunications%20Equipment%20Network%20Access%20License-王健-final.pdf> (accessed on 3 March 2023).

²²⁸⁷ *Ibid.*

²²⁸⁸ *Ibid.*

²²⁸⁹ *Ibid.*

²²⁹⁰ See Section 18.3.

²²⁹¹ Pongratz, S. (2022). *Key takeaways – 2021 total telecom equipment market*. Dell’Oro Group; available at: <https://www.delloro.com/key-takeaways-2021-total-telecom-equipment-market/> (accessed on 3 March 2023); Zhao, S. (17 March 2022). *Huawei remains top global player in telecom equipment*. China Daily, available at: <https://global.chinadaily.com.cn/a/202203/17/WS6232fe2fa310fd2b29e5192d.html> (accessed on 3 March 2023).

²²⁹² LeadLeo (2020). *Overview of telecommunications industry in China in 2020*, p.9, see: https://pdf.dfcfw.com/pdf/H3_AP202010131421070209_1.pdf?1602600927000.pdf (accessed on 3 March 2023).

²²⁹³ *Ibid.*

²²⁹⁴ *Ibid.*

end users of telecommunications technologies²²⁹⁵. As noted in the introduction, this report does not cover the third category. This section will instead focus on the first two segments.

Two major entities dominate the Chinese telecommunications equipment market – Huawei and ZTE. They combine for a total of 90% of Chinese telecommunications equipment revenue²²⁹⁶. Other manufacturers in the industry, such as FiberHome Telecommunication Technologies Co., Ltd; Datang Mobile Communications Equipment Co., Ltd; Hytera; Unisplendour Co., Ltd; Fujian Star-net Communication Co., Ltd and Nokia Shanghai Bell Co., Ltd account for the other 10%²²⁹⁷.

Huawei and ZTE also occupy significant shares of the global telecommunications equipment market based on a variety of metrics. Huawei had the largest share of the global telecommunications equipment market in 2021, with 28.7% of global sales revenue, while ZTE had 10.5% of global sales revenue²²⁹⁸. Moreover, ZTE’s share of the global market is growing. For the first quarter of 2022, ZTE attained 12% of the revenue share, an increase of 4 percentage points since 2018²²⁹⁹. In global base stations, Huawei had a higher market share in 2021 than

²²⁹⁵ *Ibid.*

²²⁹⁶ Dell’Oro Group’s analysis of the equipment market covered broadband access equipment, microwave and optical transport equipment, mobile core network equipment, RAN equipment and service provider routers and switches. Pongratz, S. (2022). *Key takeaways – 1H22 total telecom equipment market*. Dell’Oro Group, available at: https://www.delloro.com/key-takeaways-1h22-total-telecom-equipment-market/#_ftn1 (accessed on 3 March 2023).

²²⁹⁷ LeadLeo (2020). *Overview of telecommunications industry in China in 2020*, p. 9, available at: https://pdf.dfcfw.com/pdf/H3_AP202010131421070209_1.pdf?1602600927000.pdf (accessed on 3 March 2023); see also ASKCI (2022). *Ranking of publicly listed Chinese telecom equipment companies in 2022 (by revenue)*, available at: <https://m.askci.com/news/20220516/1059071857440.shtml> (accessed on 3 March 2023); Caiqin Technology (2021). *IPO and listing application documents on the Science and Technology Innovation Board*, p. 8-1-16, available at: <http://www.csrc.gov.cn/csrc/c100090/c1518958/1518958/files/%E5%8F%91%E8%A1%8C%E4%BA%BA%E5%8F%8A%E4%BF%9D%E8%8D%90%E4%BA%BA%E5%85%B3%E4%BA%8E%E5%8F%91%E8%A1%8C%E6%B3%A8%E5%86%8C%E7%8E%AF%E8%8A%82%E5%8F%8D%E9%A6%88%E6%84%8F%E8%A7%81%E8%90%BD%E5%AE%9E%E5%87%BD%E7%9A%84%E5%9B%9E%E5%A4%8D.pdf> (accessed on 20 March 2023); Yurong, W. (29 July 2021). *Shanghai Nokia Bell: attaches great importance to the localization of 700MHz products, which can meet the needs of large-scale deployment across the country*. Communication World All Media, available at: <http://www.cww.net.cn/article?id=489265> (accessed on 20 March 2023); Pongratz, S. (2022). *Key Takeaways – 1H22 Total Telecom Equipment Market*. Dell’Oro Group, available at: https://www.delloro.com/key-takeaways-1h22-total-telecom-equipment-market/#_ftn1 (accessed on 3 March 2023).

²²⁹⁸ Other main global market players include Telefonaktiebolaget LM Ericsson (‘Ericsson’), with 15%; Nokia Corporation (‘Nokia’), with 14.9%; Cisco Systems, Inc. (‘Cisco’), with 5.6% and Samsung Electronics Co., Ltd, with 3.1%. See Pongratz, S. (2022). *Key takeaways – 1H22 total telecom equipment market*. Dell’Oro Group, see: https://www.delloro.com/key-takeaways-1h22-total-telecom-equipment-market/#_ftn1 (accessed on 3 March 2023); Zhao, S. (17 March 2022). *Huawei remains top global player in telecom equipment*. China Daily, see: <https://global.chinadaily.com.cn/a/202203/17/WS6232fe2fa310fd2b29e5192d.html> (accessed on 3 March 2023).

²²⁹⁹ Pongratz, S. (2022). *1Q22 total telecom equipment market: ZTE gains share*. Dell’Oro Group. <https://www.delloro.com/1q22-total-telecom-equipment-market-zte-gains-share/#:~:text=Our%20assessment%20is%20that%20ZTE%27s,four%20percentage%20points%20since%202018> (accessed on 3 March 2023).

either Ericsson or Nokia, with a 30% market share²³⁰⁰. In global trade, Chinese telecommunications equipment manufacturers account for 44.6% of global telecommunications equipment exports²³⁰¹. Whether recent sanctions and other restrictions from the United States and others will have a lasting impact on the position of Chinese telecommunications equipment firms in the global market remains unclear.

Domestic and cross-border M&A activity throughout the 2010s led to growth in the Chinese industry. In June 2016, Datang Telecom Group announced a partnership with Equinix, Inc, a California-based digital infrastructure firm, offering Equinix's Chinese-based customers an array of interconnection services²³⁰². In 2018, the merger of FiberHome Technologies Group and Datang Telecom Group under China Information and Communication Technologies Group was reported to have occurred in part to establish China's growing presence in the 5G space and to facilitate rapid 5G construction²³⁰³.

18.2.2. CORPORATE STRUCTURE OF ENTITIES IN THE MARKET

18.2.2.1. PERMITTED FORMS OF BUSINESS ASSOCIATION

Chinese law does not mandate a specific legal form for the economic operators as a prerequisite for participation in the telecommunications equipment market. As a result, several types of business associations operate in the market²³⁰⁴. Under the Company Law (see Section 2.2.3.2), companies can be organized in the form of either limited liability companies or joint stock companies²³⁰⁵. SOEs supervised by SASAC (see Chapter 5) also operate in the telecommunications equipment market.

18.2.2.2. PRESENCE AND ROLE OF SOES IN THE SECTOR

Many telecommunications companies are at least partially state-owned or are otherwise connected to the government, even if this is not (at least publicly) required. ZTE, for example, previously operated as a state-owned military enterprise and maintains a mix of partial state

²³⁰⁰ Hsieh, K. (2022). *Top three equipment manufacturers estimated to account for 74.5% of global base station market in 2022*. TrendForce, available at: <https://www.trendforce.com/presscenter/news/20220801-11324.html> (accessed on 3 March 2023).

²³⁰¹ This statistic includes exports; OEC. Telecommunications equipment, n.e.s.; And parts, n.e.s. of and accessories for the apparatus and equipment falling within division 76. See: <https://oec.world/en/profile/sitc/telecommunications-equipment-nes-and-parts-nes-of-and-accessories-for-the-apparatus-and-equipment-falling-within-division-76> (accessed on 3 March 2023).

²³⁰² Cision PR NewsWire (23 June 2016). *Equinix extends data center services in China through partnership with Datang Telecom Group*, available at: <https://www.prnewswire.com/news-releases/equinix-extends-data-center-services-in-china-through-partnership-with-datang-telecom-group-300289133.html> (accessed on 3 March 2023).

²³⁰³ Si, M. (21 July 2018). *Telecom merger to usher in 5G era*. China Daily, available at: <http://www.chinadaily.com.cn/a/201807/21/WS5b529dd6a310796df4df7d61.html> (accessed on 3 March 2023).

²³⁰⁴ State Council (2021). *Regulations for Administration of Registration of Market Players of the People's Republic of China*. See: http://www.gov.cn/zhengce/content/2021-08/24/content_5632964.htm (accessed on 3 March 2023).

²³⁰⁵ Ministry of Commerce (2019). *Company Law of the People's Republic of China*. See: <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml> (accessed on 3 March 2023).

ownership and private management²³⁰⁶. 3 of the 10 largest shareholders of ZTE are SOEs²³⁰⁷. Though Huawei claims it is held by its employees²³⁰⁸, they actually hold only virtual shares that do not constitute ownership and confer no voting rights. The actual shares issued by Huawei are held by the Trade Union Committee. Therefore, taking into account the regulatory framework applicable to trade unions in China, not least the Trade Unions' Charter²³⁰⁹, the government and/or the CCP have ample leeway to interfere in any of Huawei's business decisions.

Datang Telecom Group and FiberHome Telecommunication Technologies Co., Ltd are both state-owned and operate as subsidiaries of China Information and Communication Technologies Group Corp²³¹⁰. The controlling shareholder of Fujian Star-net Communication Co., Ltd is the Fujian Province SASAC²³¹¹. Moreover, many purchasers of telecommunications equipment in China are supervised by the national SASAC, such as China Mobile Communications Group Co., Ltd ('*China Mobile*'), China Telecom Corporation Ltd ('*China Telecom*') and China United Network Communications Group Co., Ltd ('*China Unicom*')²³¹².

18.2.2.3. TALENT DEVELOPMENT

In order to develop a leading telecommunications equipment industry, China has encouraged the frequent pooling and rotation of talent and expertise between the government and equipment manufacturers. Chinese telecommunications equipment firms benefit from deep connections with government agencies and the military, creating pathways 'for personnel transfers, commercialization of state-sponsored R&D ("spin-off"), and militarization of commercial R&D

²³⁰⁶ State-Owned Assets Report Magazine (22 July 2019). *Hou Weigui: Pioneer of mixed ownership*. <http://www.sasac.gov.cn/n2588025/n4423279/n4517386/n11788753/c11790574/content.html> (accessed on 3 March 2023).

²³⁰⁷ ZTE Corp (2022). *2022 semi-annual report*, p.63, available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000063&stockCode=000063&announcementId=1214421646&announcementTime=2022-08-27> (accessed on 3 March 2023).

²³⁰⁸ See Huawei (N.D.) *Who owns Huawei?*; available at: <https://www.huawei.com/my/facts/question-answer/who-owns-huawei#:~:text=Huawei%20is%20an%20independent%2C%20privately-held%20company.%20We%20are,that%20has%20been%20in%20place%20since%20the%20beginning> (accessed on 11 April 2023).

²³⁰⁹ See China Federation of Trade Unions (2020). *Articles of Association of Trade Unions in China*; available at: https://nzw.acftu.org/zcfgjwj/202009/t20200923_494156.html?7OkeOa4k=qAcUrAkL_iOL_iOL_tkjjjB_NYYfVFe6_1gYNkYuS2Glqqt0o898oqAqq_q (accessed on 11 April 2023).

²³¹⁰ Si, M. (23 July 2018). *Telecom merger to usher in 5G era*. China Daily; available at: <http://www.chinadaily.com.cn/a/201807/21/WS5b529dd6a310796df4df7d61.html> (accessed on 3 March 2023).

²³¹¹ Fujian Starnet Ruijie Communications Co., Ltd (2022). *2021 annual report*, pp. 91, 205. Star-Net <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=9900012131&stockCode=002396&announcementId=1214662705&announcementTime=2022-09-24> (accessed on 20 March 2023). The national SASAC supervises central SOEs, while some municipalities have their own SASAC that supervises local SOEs. Wils-Owens, L. (2017). *China's Status as a Non-Market Economy*. US Department of Commerce, p. 55; available at: <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf> (accessed on 3 March 2023).

²³¹² SASAC. *Home directory*. See: http://en.sasac.gov.cn/n_688_2.htm (accessed on 3 March 2023).

(“spin-on”)²³¹³. The rotation of engineers and other relevant personnel between and among the government and equipment providers is reported to have aided both Huawei and ZTE in their technological development²³¹⁴.

18.3. REGULATORY AND POLICY FRAMEWORK

18.3.1. EARLY POLICY FRAMEWORK

In the 1990s, China began to emphasise the transition to ‘informatisation’ – the application of information technology to different sectors of the economy – such as through the call during the Fifth Plenary Session of the 14th CCP Central Committee in 1995 to increase informatisation in the Chinese economy, and the creation of China’s Ministry of Information Industry, now the MIIT, in 1998²³¹⁵. This greater attention to informatisation and technological advancement reflected the growing importance of telecommunications equipment for China’s economic development.

As China focused more on developing its telecommunications equipment industry, the government attempted to reduce the country’s reliance on foreign products by developing domestic production capabilities through the use of JVs. Scholars Qing Mu and Keun Lee noted in a 2005 paper that beginning with the first approved foreign investment in the telecommunications equipment industry in 1984 between Shanghai Bell Telephone Equipment Manufacturing Corporation and Bell Telephone Manufacturing Company, the Chinese market became dominated by JVs between foreign firms and domestic entities. Dr Robert Atkinson of the Information Technology & Innovation Foundation (‘ITIF’) explained that China began directing telecommunications service providers to purchase equipment from these JVs and established quotas limiting how much equipment each service provider could import. These JVs, paired with other government and military investments in the industry, became the foundation upon which China’s web of strategic plans and policies supported and promoted its indigenous telecommunications equipment companies²³¹⁶.

18.3.2. 14TH FIVE YEARS PLAN FOR NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT

²³¹³ Medeiros, E.S., et al. (2005). *A new direction for China’s defense industry*, pp. 217–218. https://www.rand.org/content/dam/rand/pubs/monographs/2005/RAND_MG334.pdf (accessed on 3 March 2023).

²³¹⁴ Atkinson, R. (2020). *How China’s Mercantilist Policies Have Undermined Global Innovation in the Telecom Equipment Industry*. Information Technology & Innovation Foundation, p. 10; available at: <https://www2.itif.org/2020-china-mercantilist-telecom-equipment-industry.pdf> (accessed on 3 March 2023).

²³¹⁵ China E-Government (13 April 2012). *China’s informatisation and e-government construction has a long way to go*, available at: <http://www.e-gov.org.cn/article-7515.html> (accessed on 3 March 2023).

²³¹⁶ Atkinson, R. (2020). *How China’s Mercantilist Policies Have Undermined Global Innovation in the Telecom Equipment Industry*. Information Technology & Innovation Foundation, p. 10; available at: <https://www2.itif.org/2020-china-mercantilist-telecom-equipment-industry.pdf> (accessed on 3 March 2023).

The telecommunications equipment industry has been consistently designated in past FYPs as a priority sector for development. For example, the 12th FYP (2011–2015)²³¹⁷ and the 13th FYP (2016–2020)²³¹⁸ both targeted the development of the telecommunications industry.

The 14th FYP (see Chapter 4) designates Chinese technological independence and self-reliance as core goals for the country’s economic development²³¹⁹. The 14th FYP addresses telecommunications equipment in three respects, as discussed below. In promotion of these goals, the 14th FYP directs the provision of various forms of policy support, such as central fiscal funding for major projects, simplifying the processes for project approval and providing the land needed for projects²³²⁰.

Promotion of SEIs: China includes next-generation information technology, including telecommunications equipment, on its list of SEIs that are singled out for support²³²¹. The 14th FYP aims to have the ‘added value’ of these SEIs represent more than 17% of China’s GDP by the end of 2025²³²².

New Infrastructure Construction: The 14th FYP also sets forth China’s ambition to modernise its industrial system by upgrading the country’s technological infrastructure. The plan specifically identifies the development of new digital infrastructure to advance the widespread deployment of 5G networks throughout China and to upgrade gigabit fibre networks²³²³. The plan also prioritises the future development of 6G network capabilities²³²⁴. The plan states that China intends to “[a]ccelerate the digital transformation of traditional infrastructure such as transportation, energy, and municipal services, and strengthen the construction of ubiquitous sensing, terminal networking and intelligent dispatching systems”²³²⁵.

Digital Development: The 14th FYP further calls for the development of emerging industries that promote China’s digitalisation, including advancing the telecommunications equipment industry and “*build[ing] 5G-based application scenarios and industrial ecosystems*”²³²⁶. This goal also addresses China’s ambitions to develop ‘Smart Cities and Digital Villages’, which would include “*incorporat[ing] facilities with [Internet of Things] IoT sensors and communication systems into the unified planning and construction of public infrastructure*”²³²⁷.

²³¹⁷ National People’s Congress (2011). *The 12th FYP for National Economic and Social Development*; available at: http://www.gov.cn/zhuanti/2011-03/16/content_2623428_4.htm (accessed on 3 March 2023).

²³¹⁸ National People’s Congress (2016). *The 13th FYP for National Economic and Social Development*; available at: <https://en.ndrc.gov.cn/policies/202105/P020210527785800103339.pdf> (accessed on 3 March 2023).

²³¹⁹ National People’s Congress (2021). Outline of the 14th FYP for National Economic and Social Development and Long-Range Objectives for 2035 of the PRC, Recital of Part 2; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023).

²³²⁰ *Ibid.*, Chapter 22.

²³²¹ *Ibid.*, Chapter 9.

²³²² *Ibid.*, Chapter 9.

²³²³ *Ibid.*, Chapter 11.

²³²⁴ *Ibid.*, Chapter 11.

²³²⁵ *Ibid.*, Chapter 11.

²³²⁶ *Ibid.*, Chapter 15.

²³²⁷ *Ibid.*, Chapter 16.

18.4. TELECOMMUNICATION EQUIPMENT AS PART OF STRATEGIC EMERGING INDUSTRIES

18.4.1. HISTORICAL BACKGROUND

In 2010, China released its Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries (see Section 2.3.2). This document directed national and sub-national government agencies to ‘*vigorously develop strategic emerging industries*’ to achieve key national goals, such as building a ‘well-off society’, ‘*promot[ing] the country’s modernisation drive*’ and occupying ‘a favourable position in future international competition’²³²⁸. Included among the SEIs, that should be supported through central planning and coordination, including through financial support²³²⁹, was also the next-generation information technology, which included telecommunications equipment²³³⁰.

China’s 12th FYP for National Strategic Emerging Industries, released in 2012, described in greater detail the types of next-generation technologies that China aimed to promote through R&D and industrialisation, including IPv4/IPv6 network equipment; high-speed and high-performance network and terminal equipment; support systems; network security equipment; chips that support IPv6; TD-SCDMA; TD-LTE; 4G mobile communication equipment and terminals; high-performance computers; high-end servers; intelligent terminals; network storage and information security and other equipment necessary for informatisation²³³¹.

The following year, China released the Guiding Catalogue of Key Products and Services for Strategic Emerging Industries, which was revised again in 2016. This catalogue includes in its list of key products network equipment, including next-generation mobile telecommunications equipment; next-generation internet equipment (such as core routers, broadband network access servers, rate interfaces and the supporting IPv6 routing protocol, Ethernet switches, Layer 3 switches and OpenFlow switches); optical telecommunications equipment and terminal testing and meter equipment²³³².

In its 13th FYP for National Strategic Emerging Industries, China emphasized the construction of a ‘digital China’ – its main forward-looking digital strategy, which includes the development of 5G and 6G technologies²³³³ – and promoted integrating various emerging technologies such

²³²⁸ State Council (2010). *Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries*; available at: http://www.gov.cn/zwggk/2010-10/18/content_1724848.htm (accessed on 3 March 2023).

²³²⁹ *Ibid.*

²³³⁰ *Ibid.*

²³³¹ State Council (2012). *12th Five-Year National Strategic Emerging Industry Development Plan* Art. 3(2)1; available at: http://www.gov.cn/zwggk/2012-07/20/content_2187770.htm (accessed on 3 March 2023).

²³³² NDRC (2013), revised 2016. *Guiding Catalogue of Key Products and Services for Strategic Emerging Industries*, Art. 1.1.1.; available at: <http://www.gov.cn/xinwen/2018-09/22/5324533/files/dcf470fe4eac413cabb686a51d080eec.pdf> (accessed on 3 March 2023).

²³³³ Dorman, D. and Hemmings, J. (11 May 2022). *China’s Digital Challenge: Hidden in Plain Sight, Bigger Than You Thought, and Much Harder to Solve*. Center for Strategic and International Studies; available at: <https://www.csis.org/analysis/chinas-digital-challenge-hidden-plain-sight-bigger-you-thought-and-much-harder-solve> (accessed on 30 June 2023).

as IoT, cloud computing and artificial intelligence (‘AI’) into different industries, while building a next-generation information technology industry²³³⁴.

18.4.2. CURRENT SITUATION

18.4.2.1. NATIONAL LEVEL

Although the central-level 14th FYP for National Strategic Emerging Industries has not been issued as of writing of this Report, some explicit indications have been published by NDRC and MIIT in the form of suggestions for the 14th FYP to develop SEIs (see also Sections 2.3.2, 4.2.1 and 5.2). For example, the NDRC issued in 2021 its Judgment on the Situation of Strategic Emerging Industries and Development Suggestions for the 14th FYP, which highlighted the introduction of numerous national and sub-national level policies and plans during the period of the 13th FYP for National Strategic Emerging Industries, while promoting during the 14th FYP period the ‘construction of regional clusters’ rather than ‘specific industrial projects’ and promulgating ‘a demand-side innovation policy’, such as through increased 5G network construction²³³⁵.

18.4.2.2. LOCAL LEVEL

Against this background, sub-national governments – including Shanghai²³³⁶, Guangzhou²³³⁷, Hunan²³³⁸, Chongqing²³³⁹ and Fujian²³⁴⁰ – have issued their own 14th FYPs for Strategic Emerging Industries. For example, Shanghai’s 14th FYP for Strategic Emerging Industries, issued in 2021, sets the goal that by 2025 the output value of the city’s telecommunications industry would be CNY 350 billion (~EUR 46 billion), with an emphasis on next-generation

²³³⁴ State Council (2016). *13th Five-Year Development Plan for the National Strategic Emerging Industries*, Art. 2; available at: http://www.gov.cn/zhengce/content/2016-12/19/content_5150090.htm (accessed on 3 March 2023).

²³³⁵ NDRC (2021). *Judgment on the situation of strategic emerging industries and development suggestions of the 14th FYP. Part I*, https://www.ndrc.gov.cn/xxgk/jd/wsdwhfz/202101/t20210104_1264124.html and *Part II*, https://www.ndrc.gov.cn/wsdwhfz/202101/t20210112_1264810.html (accessed on 9 June 2023).

²³³⁶ The General Affairs Office of Shanghai Municipal People’s Government (2021). *14th FYP for the Development of Strategic Emerging Industries and Leading Industries in Shanghai*; available at: <https://www.shanghai.gov.cn/nw12344/20210721/d684ff525ead40d8a2dfa51e541a14e4.html> (accessed on 9 March 2023).

²³³⁷ The General Affairs Office of Guangzhou Municipal People’s Government (2022). *14th FYP for the Development of Strategic Emerging Industries in Guangzhou*; available at: <https://www.chacewang.com/newsdetail/news153715.html> (accessed on 3 March 2023).

²³³⁸ The General Affairs Office of Hunan Provincial People’s Government (2021). *14th FYP for the Development of Strategic Emerging Industries*; available at: http://www.hunan.gov.cn/hnszf/xxgk/wjk/szfbgt/202108/t20210825_20396613.html (accessed on 3 March 2023).

²³³⁹ The Chongqing Municipal People’s Government (2022). *14th FYP for the Development of Strategic Emerging Industries in Chongqing (2021–2025)*; available at: http://www.cq.gov.cn/zwgk/zfxgkml/wlzcxx/qyif/wqszf/202203/t20220321_10531169.html (accessed on 3 March 2023).

²³⁴⁰ Fujian People’s Government (2021). *14th FYP for Development of Strategic Emerging Industries in Fujian Province*; available at: <http://www.fujian.gov.cn/zwgk/ztlz/gjcjgxxgg/zc/202110/P020211029381889347681.pdf> (accessed on 9 March 2023).

infrastructure, such as new IP networks and all-optical transmission equipment²³⁴¹. The Guangzhou 14th FYP for Strategic Emerging Industries provides discounted rent for buildings used for innovative industries²³⁴². Hunan's 14th FYP for Strategic Emerging Industries establishes the goal of building 150 000 5G base stations²³⁴³. FYPs from other sub-national governments – such as Chongqing²³⁴⁴ – include general statements about providing tax, loan, grant and other types of subsidies and support, but without including specific commitments.

18.5. TELECOMMUNICATION EQUIPMENT AND MADE IN CHINA 2025

Made in China 2025 (see Section 4.2.3) identifies telecommunications equipment as a critical sector where technological breakthroughs should be pursued²³⁴⁵.

18.5.1. MAIN GOALS FOR TELECOMMUNICATIONS EQUIPMENT

For telecommunications equipment, Made in China 2025 aims to achieve breakthroughs in 5G technology, core routing and switching technology and ‘ultra-high-speed and large-capacity intelligent optical transmission’ equipment, while developing next-generation base stations and other telecommunications equipment²³⁴⁶. By 2020, China sought to have a leading telecommunications equipment industry and attain 5G leadership²³⁴⁷. China's ten-year objectives include having 75% of its domestic market for mobile communications system equipment supplied by Chinese companies²³⁴⁸, a 50% share of the global market for optical communications equipment and a 20% share of the global routers and switches market²³⁴⁹. Moreover, China promulgated the ‘Four Essentials’ catalogue in 2016, highlighting key components in which China seeks to promote its manufacturing capabilities²³⁵⁰. The first category consists entirely of components for ‘new generation information technology’,

²³⁴¹ The General Affairs Office of Shanghai Municipal People's Government (2021). *14th FYP for the Development of Strategic Emerging Industries and Leading Industries in Shanghai*, Art. 3(7); available at: <https://www.shanghai.gov.cn/nw12344/20210721/d684ff525ead40d8a2dfa51e541a14e4.html> (accessed on 9 March 2023).

²³⁴² The People's Government of Guangzhou Municipality (2022). *14th FYP for the Development of Strategic Emerging Industries in Guangzhou*, Art. 7(3); available at: https://www.gz.gov.cn/zwgk/fggw/wyzzc/content/post_8300595.html (accessed on 9 June 2023).

²³⁴³ Department of Science and Technology of the Hunan Province (2021). *Hunan Province's 14th FYP for the Development of Strategic Emerging Industries*, Art. 3(1); available at: http://kjt.hunan.gov.cn/kjt/xxgk/gzdt/yw/202108/t20210826_20399643.html (accessed on 5 June 2023).

²³⁴⁴ Chongqing Municipal People's Government (2022). *14th FYP for the Development of Strategic Emerging Industries in Chongqing*, Art. 6(2); available at: <https://www.cq.gov.cn/index/detail.html?policyId=4385> (accessed on 5 June 2023).

²³⁴⁵ State Council (2015). *Made in China 2025*; available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 3 March 2023).

²³⁴⁶ State Council (2015). *Made in China 2025*, Art. III(6)(1); available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 3 March 2023).

²³⁴⁷ National Manufacturing Strategy Advisory Committee (2015). *Roadmap of Major Technical Domains for Made in China 2025*, Art. 1.2.2, available at: https://cset.georgetown.edu/wp-content/uploads/t0181_Made_in_China_roadmap_EN.pdf (accessed on 3 March 2023).

²³⁴⁸ *Ibid.*

²³⁴⁹ *Ibid.*

²³⁵⁰ National Manufacturing Power Construction Strategy Advisory Committee (2016). *Four Essentials Development Catalogue*; available at: <http://www.cm2025.org/uploadfile/2016/1122/20161122053929266.pdf> (accessed on 9 June 2023).

including intelligent optical communication modules, certain ultra-low loss optical fibres and high-performance base station radio frequency modules and components, among others²³⁵¹. The other categories address other topics unrelated to telecommunications equipment.

18.5.2. SMART MANUFACTURING

Made in China 2025 also emphasizes the development of information technology and telecommunications equipment to improve the Chinese manufacturing process based on the concept of ‘smart manufacturing’²³⁵². To this end, MOF and MIIT issued the Smart Manufacturing Development Plan (2016–2020)²³⁵³, and MIIT also issued the 14th FYP for the Development of Smart Manufacturing in partnership with other agencies based on the goals outlined in the 14th FYP²³⁵⁴. The Smart Manufacturing Development Plan specifically directed the research and development of “industrial network equipment and systems that integrate IPv6, 4G/5G, short-distance wireless, and WiFi technologies” and to “upgrade and transform existing public telecommunication networks’ to support smart manufacturing capabilities²³⁵⁵. The 14th FYP for the Development of Smart Manufacturing promoted the development of 5G and other technologies that have industrial applications in smart manufacturing, and improvements to IT infrastructure, including 5G²³⁵⁶.

18.5.3. SUPPORT MEASURES

With Made in China 2025, China’s support for telecommunications equipment consists of four parts. The first part is to promote intellectual property rights of firms in the telecommunications equipment industry²³⁵⁷. Second, China seeks to support major projects for Chinese telecommunications equipment manufacturers²³⁵⁸. Third, Made in China 2025 explains that “5G spectrum planning” should “account [for] the spectrum requirements of mobile communications, radio and television, satellite, and military-civil fusion so as to maximize the value of spectrum utilization and achieve the integrated development of related industries”²³⁵⁹. Finally, Made in China 2025 calls for the creation of an inter-ministerial coordination mechanism to encourage the creation of an ‘information silk road’ and for the industry to go

²³⁵¹ *Ibid.*

²³⁵² National Manufacturing Strategy Advisory Committee (2015). *Roadmap of Major Technical Domains for Made in China 2025*, Art. 1.4.; available at: https://cset.georgetown.edu/wp-content/uploads/t0181_Made_in_China_roadmap_EN.pdf (accessed on 3 March 2023).

²³⁵³ MIIT and MOF (2016). *Development Plan for Smart Manufacturing (2016–2020)*; available at: http://www.gov.cn/xinwen/2016-12/08/content_5145162.htm (accessed on 3 March 2023).

²³⁵⁴ MIIT, et al. (2021). *14th FYP for the Development of Smart Manufacturing*, available at: https://wap.miit.gov.cn/cms_files/filemanager/1226211233/attach/20226/95c25b0b936d49f1995bd8771599d18a.pdf (accessed on 3 March 2023).

²³⁵⁵ MIIT and MOF (2016). *Development Plan for Smart Manufacturing (2016–2020)*, Art. 4; available at: http://www.gov.cn/xinwen/2016-12/08/content_5145162.htm (accessed on 3 March 2023).

²³⁵⁶ MIIT, et al. (2021). *14th FYP for the Development of Smart Manufacturing*, Arts. 3-4, see: https://wap.miit.gov.cn/cms_files/filemanager/1226211233/attach/20226/95c25b0b936d49f1995bd8771599d18a.pdf (accessed on 3 March 2023).

²³⁵⁷ National Manufacturing Strategy Advisory Committee (2015). *Roadmap of Major Technical Domains for Made in China 2025*, p. 10; available at: https://cset.georgetown.edu/wp-content/uploads/t0181_Made_in_China_roadmap_EN.pdf (accessed on 3 March 2023).

²³⁵⁸ *Ibid.*, pp. 10-11.

²³⁵⁹ *Ibid.*, p. 11.

global²³⁶⁰. Moreover, the Four Essentials catalogue specifically directs financial institutions, creditors and insurers to support R&D and production of the products in the catalogue²³⁶¹.

18.6. INFORMATISATION POLICY

18.6.1. OVERVIEW

Already at the Fifth Plenary Session of the 15th CCP Central Committee, the Committee and the State Council created the 2006–2020 National Informatisation Development Strategy, highlighting informatisation’s growing strategic importance for the Chinese authorities²³⁶². The promotion and development of telecommunications equipment is also mentioned in the 2016 National Informatisation Development Strategy²³⁶³, which is an update to the 2006 strategy, and the 13th FYP for National Informatisation²³⁶⁴.

18.6.2. 14TH FYP FOR NATIONAL INFORMATISATION

China’s Central Cyberspace Affairs Commission issued the 14th FYP for National Informatisation in December 2021²³⁶⁵. The ambitions of the plan are clearly stated:

The digital infrastructure system shall be more complete. 5G networks shall be further popularised and adopted, and the requirements of sixth generation mobile communication (6G) technology shall be clarified [...] IPv6 and 5G, industrial Internet, Internet of Vehicles, and other fields shall be integrated and innovatively developed [...] The capabilities of China’s digital infrastructure, including 5G, Internet of Things, cloud computing, and Industrial Internet shall reach globally advanced levels²³⁶⁶.

One explicit aim of the 14th FYP for National Informatisation, included as one of the ‘Major Task and Focus Projects’ of the FYP, is to build a “ubiquitous, intelligent, and connected digital infrastructure system”²³⁶⁷. To achieve this objective, China sets goals around developing more

²³⁶⁰ *Ibid.*, p. 11.

²³⁶¹ National Manufacturing Power Construction Strategy Advisory Committee (2016). *Four Essentials Development Catalogue*; see: <http://www.cm2025.org/uploadfile/2016/1122/20161122053929266.pdf> (accessed on 9 June 2023).

²³⁶² General Affairs Office of the Central Committee of CPC & General Affairs Office of the State Council (2006). *2006–2020 National Informatisation Development Strategy*; available at: http://www.gov.cn/gongbao/content/2006/content_315999.htm (accessed on 3 March 2023).

²³⁶³ General Affairs Office of the Central Committee of CPC & General Affairs Office of the State Council (2016). *Outline of National Informatisation Development Strategy*; available at: http://www.gov.cn/xinwen/2016-07/27/content_5095336.htm (accessed on 3 March 2023).

²³⁶⁴ The State Council (2016). *13th Five-Year National Informatisation Plan*; available at: http://www.gov.cn/zhengce/content/2016-12/27/content_5153411.htm (accessed on 3 March 2023).

²³⁶⁵ Central Cyberspace Affairs Commission (2022). Expert Discussion of the 14th FYP for National Informatisation: Build Intelligent Emergency Response System and Promote the Modernization of Emergency Management; available at: http://www.cac.gov.cn/2022-03/14/c_1648865135184134.htm (accessed on 3 March 2023).

²³⁶⁶ Central Commission for Cybersecurity and Informatisation (2021). *14th FYP for National Informatisation*, Art. II(3); see: <https://digichina.stanford.edu/work/translation-14th-five-year-plan-for-national-informatization-dec-2021/#:~:text=During%20the%20E2%80%9C14th%20Five%2DYear,informatization%2C%20there%20is%20no%20modernization> (accessed on 3 March 2023).

²³⁶⁷ *Ibid.*, Art. IV(1).

robust digital infrastructure requiring significant telecommunications equipment investments, such as mass development of 5G commercial networks, upgrading broadband in urban areas, piloting a ‘Gigabit City’ network, transforming the country’s network infrastructure to deploy the latest internet protocol (IPv6) and supporting research on 6G technology and advanced network infrastructure²³⁶⁸. Furthermore, the plan aims to advance ‘cutting-edge information infrastructure’, such as ‘satellite telecommunications networks and other [...] networks aimed at global coverage’ and ‘smart maritime projects’ that include ‘telecommunications transmission’²³⁶⁹. Obviously, these projects require innovative telecommunications equipment. The 14th FYP for National Informatisation describes various 5G projects, which include building out the 5G network, developing and piloting ‘5G+ Industrial Internet’ and the use of 5G in various industries and continued research into ‘5G enhanced technical standards and applications’²³⁷⁰. On policy support for developing a ‘digital China’, the plan includes measures such as support for R&D of key technologies, improved financial support and coordination across various governmental technology plans²³⁷¹.

18.6.3. PROVINCIAL LEVEL PLANS

Provincial governments – including Hebei Province²³⁷², Guangzhou²³⁷³ and Chengdu²³⁷⁴ – have also issued their own FYPs for Informatisation to promote development in their regions. For example, Guangzhou’s plan promotes the development of access network and core network equipment, next-generation internet equipment, optical communications equipment and satellite telecommunications equipment based on 4G and 5G technologies, while actively testing and developing telecommunications system and terminal equipment²³⁷⁵. Guangzhou’s 14th FYP for Informatisation includes discounted loans, insurance subsidies and the creation of an ‘industrial introduction support fund’ for SOEs to fund informatisation projects²³⁷⁶.

18.6.4. 14TH FYP ON JOINT DEVELOPMENT OF INFORMATISATION AND INDUSTRIALISATION

²³⁶⁸ *Ibid.*, Art. IV(1).

²³⁶⁹ *Ibid.*, Art. IV(1).

²³⁷⁰ *Ibid.*, Box 1.

²³⁷¹ *Ibid.*, Art. CI(2).

²³⁷² Hebei Cybersecurity and Informatisation Commission (2022). *14th FYP for Informatisation in Hebei*; available at: <http://www.caheb.gov.cn/system/2022/06/30/030174590.shtml> (accessed on 3 March 2023).

²³⁷³ Guangzhou People’s Government (2022). *14th FYP for Industry and Informatisation Development in Guangzhou*; available at: https://www.gz.gov.cn/zwgk/fggw/sfbgtwj/content/post_8319334.html (accessed on 9 March 2023).

²³⁷⁴ Chengdu Cyberspace Administration (2022). *14th FYP for Informatisation in Chengdu*; see: <http://cddrc.chengdu.gov.cn/cdfgw/c147315/2022-06/16/35d226e663e84509a4c5bfa52654e473/files/26e5a973ac4247f6ae576e4db38f0793.pdf> (accessed on 3 March 2023).

²³⁷⁵ Guangzhou People’s Government (2022). *14th FYP for Industry and Informatisation Development in Guangzhou*, Art. 3.1.1.; available at: https://www.gz.gov.cn/zwgk/fggw/sfbgtwj/content/post_8319334.html (accessed on 9 March 2023).

²³⁷⁶ *Ibid.*

Since at least the 16th CCP Congress in 2002, another area of focus for the government has been the integration of informatisation and industrialisation²³⁷⁷. Government plans thereafter continued to promote the view that informatisation and industrialisation were mutually reinforcing²³⁷⁸. MIIT issued the 14th FYP on the Joint Development of Informatisation and Industrialisation, which promotes the coordination of China's informatisation ambitions with its industrialisation goals. The plan explains that this coordination is necessary for China to increase the digital transformation of its economy, and to incorporate IT into its manufacturing capabilities. In furtherance of these efforts, the plan notes the significant progress that China has already made in constructing 5G base stations, and it encourages the continued development of large-scale 5G network infrastructure²³⁷⁹. Some sub-national governments, including the provincial governments of Jiangsu²³⁸⁰ and Jiangxi²³⁸¹, issued their own plans focused on the integration of informatisation and industrialisation in their regions, which include commitments to promote these efforts through policy measures and financial support, such as through the use of 'special funds' to upgrade the IT industry and to increase 'research on network infrastructure'²³⁸². Moreover, local governments are encouraged to increase investment in businesses that integrate industrialisation and informatisation²³⁸³.

18.7. OTHER PLANS, POLICIES AND STRATEGIES

In addition to the policies already identified, China has other policies covering telecommunications equipment industry. MIIT's 14th FYP for the Development of Software and Information Technology specifically addresses the need to develop new 5G base stations²³⁸⁴. The Restructuring Catalogue²³⁸⁵ (see Section 8.2.2.3 and 4.2.9) and the Catalogue

²³⁷⁷ Communist Party Network (2002). *The report made by Jiang Zeming at the 16th National Congress of the Communist Party of China*; available at: <https://fuwu.12371.cn/2012/09/27/ARTI1348734708607117.shtml> (accessed on 3 March 2023).

²³⁷⁸ MIIT (2017). *Development Plan for the Integration of Informatisation and Industrialisation (2016–2020)*; available at: https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/201706/t20170621_1196820.html (accessed on 3 March 2023).

²³⁷⁹ MIIT (2021). *14th FYP on the Joint Development of Informatisation and Industrialisation*, Art. 3(3)1; available at: http://www.gov.cn/zhengce/zhengceku/2021-12/01/content_5655208.htm (accessed on 3 March 2023).

²³⁸⁰ Jiangsu Provincial People's Government (2021). *14th FYP of Jiangsu Province on the Development Plan for the Deep Integration of Informatisation and Industrialization*; available at: <https://sme.sipac.gov.cn/epservice/techsub/Apps/psp/index.php?s=/policysearch/policydetail/id/110837> (accessed on 3 March 2023).

²³⁸¹ Jiangxi Provincial People's Government (2021). *14th FYP of Jiangxi Province on the Development Plan for the Deep Integration of Informatisation and Industrialization*; available at: http://www.jiangxi.gov.cn/art/2021/9/16/art_61150_3590645.html (accessed on 9 March 2023).

²³⁸² Jiangsu Provincial People's Government (2021). *14th FYP of Jiangsu Province on the Development Plan for the Deep Integration of Informatisation and Industrialization*; available at: <https://sme.sipac.gov.cn/epservice/techsub/Apps/psp/index.php?s=/policysearch/policydetail/id/110837> (accessed on 3 March 2023).

²³⁸³ *Ibid.*

²³⁸⁴ MIIT (2021). *14th FYP for the Development of Software and Information Technology*; available at: http://www.gov.cn/zhengce/zhengceku/2021-12/01/content_5655205.htm (accessed on 3 March 2023).

²³⁸⁵ NDRC (2019). *Guiding Catalogue for Industrial Structure Adjustment*.

Encouraging Foreign Investment²³⁸⁶ both identify objectives relating to the development of the telecommunications equipment industry as necessary for achieving China’s ambitions in these areas.

18.7.1. GUIDANCE CATALOGUE FOR INDUSTRIAL STRUCTURE ADJUSTMENT

The Guidance Catalogue for Industrial Structure Adjustment (see Section 4.2.9) created three industry categories to direct investment: (1) ‘encouraged’, in which investment is promoted; (2) ‘restricted’, in which industries must be upgraded to receive new investment; and (3) ‘obsolete’, in which there will be no new investment. The ‘encouraged’ category includes the ‘Information Industry’, which, as far as telecommunications are concerned, covers activities such as the production of satellite communications system equipment, network equipment, base stations, routers, switches and other supporting equipment²³⁸⁷.

18.7.2. CATALOGUE ENCOURAGING FOREIGN INVESTMENT

The Encouraged FI Catalogue (see Section 8.2.3.1) includes in its ‘national catalogue of industries that encourage foreign investment’ the “*development and manufacture of mobile phones, base stations, core network equipment, optical transmission equipment and network testing equipment for the fourth and fifth generation and subsequent mobile communication systems*”, among others²³⁸⁸. Meanwhile, at the sub-national level, the catalogue promotes investment in “*R&D and production of communication terminal products and parts*” in Jiangxi Province and the “*R&D and production of contact display and communication terminal products and parts*” in Shaanxi Province²³⁸⁹.

18.7.3. PROVINCIAL LEVEL FYPS

On the sub-national level, examples of plans that sought to foster the telecommunications equipment industry and the development of 5G base stations include the Guangxi Zhuang Autonomous Region’s 14th FYP for the High-Quality Development of Industry and Informatisation²³⁹⁰ and Shanxi Province’s 14th FYP for the Development of Future Industries²³⁹¹, 14th FYP for the Development of New Equipment²³⁹² and 14th FYP for the

²³⁸⁶ NDRC, Ministry of Commerce (2012). *Catalogue for Industries Encouraging Foreign Investment*; available at: http://www.gov.cn/zhengce/2022-11/29/content_5730383.htm (accessed on 3 March 2023).

²³⁸⁷ *Ibid.*

²³⁸⁸ NDRC, MOFCOM (2012). *Catalogue for Industries Encouraging Foreign Investment*; available at: http://www.gov.cn/zhengce/2022-11/29/content_5730383.htm (accessed on 3 March 2023).

²³⁸⁹ *Ibid.*

²³⁹⁰ People’s Government of Guangxi Zhuang Autonomous Region (2021). *14th FYP for the High-quality Development of Industry and Informatisation*; available at: <http://www.gxzf.gov.cn/zwgk/fzgh/zxgh/t11186073.shtml> (accessed on 9 March 2023).

²³⁹¹ Shanxi Provincial People’s Government (2021). *14th FYP for the Development for the Future Industries of Shanxi Province*; available at: https://www.shanxi.gov.cn/zfxgk/zfxgkzsl/fdzdgnr/lzyj/szfwj/202205/t20220513_5976511.shtml (accessed on 3 March 2023).

²³⁹² Shanxi Provincial People’s Government (2021). *14th FYP for the Development New Equipment*; available at: <http://www.dt.gov.cn/dtzw/sxyw/202106/f9d85b006a064dadb257399fe2fea636.shtml> (accessed on 3 March 2023).

Development of New Technology²³⁹³. For example, Shanxi Province’s 14th FYP for the Development of Future Industries includes a section on ‘Next Generation Internet Industry’ that highlights how the province has built 3,800 5G base stations and established 5G coverage in 11 ‘city hotspot areas’²³⁹⁴. Looking ahead, Shanxi Province intends to “[s]upport the research and development of 6G network requirements, structure and enabling technologies”²³⁹⁵. In order to achieve this and other goals, Shanxi Province’s plan directs the implementation of “preferential tax policies such as pre-tax deduction of research and development expenses and high-tech enterprises”, the “integrat[ion] and coordinat[ion of] existing relevant industry support policies”, stronger “financial support for key areas of future industries” and developing and formulating “government procurement policies for new products, new technologies, and new services that support future industries”, among others. Other relevant policies and plans are described in greater detail in Sections 4.2.6 to 4.2.10.

18.7.4. ELECTRONIC INFORMATION AND ICT POLICY

China’s plans for the electronic information and ICT industries also impact the telecommunications equipment industry. Plans such as the *Adjustment and Revitalisation Plan for the Electronic Information Industry*²³⁹⁶ and the *ICT Industry Development Plan (2016–2020)*²³⁹⁷ addressed telecommunications equipment directly. The 13th FYP articulated China’s ‘cyber development strategy’, which included widespread deployment of telecommunications networks such as high-speed fibre-optic networks and wireless broadband networks²³⁹⁸. Goals included fibre-optic networks in 98% of ‘administrative villages’ and the promulgation of widespread high-speed wireless networks in public spaces²³⁹⁹. Moreover, the 13th FYP also promoted the implementation of the ‘Internet+’ action plan²⁴⁰⁰ – which aimed to integrate the internet with manufacturing capabilities and supported the development of ‘key network equipment’ in furtherance of that goal²⁴⁰¹. MIIT’s 14th FYP for the Development of the ICT

²³⁹³ Shanxi Provincial People’s Government (2021). *14th FYO for the Development of the New Technology*; available at: http://www.lvliang.gov.cn/llxxgk/zfxxgk/xxgkml/sswghzxccx/sjghjjd/wj/202209/t20220919_1693315.html (accessed on 3 March 2023).

²³⁹⁴ Shanxi Provincial People’s Government (2021). *14th FYP for the Development for the Future Industries of Shanxi Province*; available at: https://www.shanxi.gov.cn/zfxxgk/zfxxgkzl/fdzdgnr/lzyj/szfwj/202205/t20220513_5976511.shtml (accessed on 3 March 2023).

²³⁹⁵ *Ibid.*

²³⁹⁶ The General Affairs Office of the State Council (2009). *Adjustment and Revitalization Plan of the Electronic Information Industry*; available at: http://www.gov.cn/zwgg/2009-04/15/content_1282430.htm (accessed on 3 March 2023).

²³⁹⁷ MIIT (2016). *Development Plan of Information and Telecommunication Industry (2016–2020)*; available at: https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/201706/t20170622_1196826.html (accessed on 3 March 2023).

²³⁹⁸ National People’s Congress (2016). *The 13th FYP for National Economic and Social Development*. Chapter 25; available at: <https://en.ndrc.gov.cn/policies/202105/P020210527785800103339.pdf> (accessed on 3 March 2023).

²³⁹⁹ *Ibid.*

²⁴⁰⁰ *Ibid.*, Chapter 26.

²⁴⁰¹ State Council (2015). *China unveils Internet Plus action plan to fuel growth*; available at: http://english.www.gov.cn/policies/latest_releases/2015/07/04/content_281475140165588.htm (accessed on 9 June 2023); NDRC, MOST, MIIT, CAC (2016). “Internet+” Artificial Intelligence Three-Year Action

Industry builds upon previous plans with a focus on 5G deployment and 6G R&D, while offering fiscal and financial support for ICT R&D, such as through the availability of ‘special funds’ for network development and a ‘guiding role’ for ‘national government investment funds’ and the availability of the ‘super deduction’ in tax relief for R&D expenses, discussed below in Section 19.4.2. Sub-national governments, including Zhejiang Province²⁴⁰² and Jilin Province²⁴⁰³ have also issued plans covering electronics and ICT. For example, Zhejiang Province established the goal of building 200 000 5G base stations by 2025, at an average annual growth rate of 26.2% in base station construction, supported in part by ‘special funds for digital infrastructure’ and ‘policy support for infrastructure power supply, construction, and application’²⁴⁰⁴. Jilin Province sought to build 55 000 5G base stations by 2025 with a 5G penetration rate of 56%. To achieve that goal, Jilin Province’s policies included a ‘5G base station power supply guarantee’ as well as a ‘government 5G electricity fee subsidy’²⁴⁰⁵.

18.7.5. DIGITAL ECONOMY POLICY

China’s efforts to build a ‘digital China’ requires upgrading the country’s digital economy technologies and telecommunications infrastructure. Requisite progress in AI, cloud computing and security will, among other things, require cutting-edge telecommunications equipment²⁴⁰⁶. Moreover, the 14th FYP for the Development of the Digital Economy aims to accelerate the development of new network infrastructure to build China’s digital economy²⁴⁰⁷.

18.7.6. NEW INTERNET INFRASTRUCTURE POLICY

The CCP’s 2018 Economic Work Conference, the top-level economic policy meeting organized by the CCP Central Committee and the State Council and taking place annually, behind closed doors, proposed accelerating the commercial use of 5G and strengthening new internet

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- and Implementation Plan, Art. II(i); available at: <https://cset.georgetown.edu/publication/internet-artificial-intelligence-three-year-action-and-implementation-plan> (accessed on 9 June 2023).
- ²⁴⁰² Zhejiang Provincial Development and Reform Commission, Zhejiang Provincial Telecommunication Administration Bureau (2021). *The 14th FYP of Zhejiang Province for the Development of Information and Communication Industry*; available at: https://fzggw.zj.gov.cn/art/2021/7/27/art_1229123366_2312987.html (accessed on 3 March 2023).
- ²⁴⁰³ Jilin Provincial Telecommunication Administration Bureau (2021). *The 14th FYP of Jilin Province for the Development of Information and Communication Industry*; available at: https://jlca.miit.gov.cn/zwgk/tzgg/art/2021/art_214cbb5dbff84d2f9917714620900223.html (accessed on 3 March 2023).
- ²⁴⁰⁴ Zhejiang Provincial Development and Reform Commission (2021). *14th FYP for the Development of Information and Communication Industry in Zhejiang Province*; available at: https://fzggw.zj.gov.cn/art/2021/7/27/art_1229123366_2312987.html (accessed on 9 June 2023).
- ²⁴⁰⁵ Jilin Provincial Telecommunication Administration Bureau (2021). *The 14th FYP of Jilin Province for the Development of Information and Communication Industry*; available at: https://jlca.miit.gov.cn/zwgk/tzgg/art/2021/art_214cbb5dbff84d2f9917714620900223.html (accessed on 3 March 2023).
- ²⁴⁰⁶ National People’s Congress (2021). Outline of the 14th FYP for National Economic and Social Development and Long-Range Objectives for 2035 of the People’s Republic of China, Part 5; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023).
- ²⁴⁰⁷ State Council (2021). *14th FYP for the Development of the Digital Economy*, Art 3(1); available at: http://www.gov.cn/zhengce/content/2022-01/12/content_5667817.htm (accessed on 3 March 2023).

infrastructure²⁴⁰⁸. China's 2019 *Government Work Report* reiterated the goal of strengthening next-generation internet infrastructure²⁴⁰⁹, while the 14th FYP also addresses this ambition²⁴¹⁰. Sub-national governments such as Jiangxi Province²⁴¹¹, Shanxi Province²⁴¹² and Sichuan Province²⁴¹³ similarly address internet infrastructure through their own plans. Shanxi Province, for instance, sets the goal of building 120 000 5G base stations and the construction of gigabit optical fibre broadband, including through the issuance of medium- and long-term loans²⁴¹⁴. Sichuan Province aims to increase the 5G base stations in the province from 36 000 to 250 000, with user penetration increasing from 11% to 60% from 2020 to 2025, which it aims to achieve through greater credit support, state subsidies and government special bonds²⁴¹⁵. China has also released national plans specifically on industrial internet²⁴¹⁶ and IoT²⁴¹⁷ that implicate

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- ²⁴⁰⁸ Xinhua News Agency (2018, December 21). *The Economic Work Conference of CPC Central Committee was held, Xi Jinping and Li Keqiang made an important speech*; available at: http://www.gov.cn/xinwen/2018-12/21/content_5350934.htm (accessed on 3 March 2023).
- ²⁴⁰⁹ Keqiang, L. (2019). *Report on the Work of the Government*. Premier of the State Council; available at: http://english.www.gov.cn/premier/speeches/2019/03/16/content_281476565265580.htm (accessed on 3 March 2023).
- ²⁴¹⁰ National People's Congress (2021). *Outline of the 14th FYP for National Economic and Social Development and Long-Range Objectives for 2035 of the People's Republic of China*, Chapter 11, § 1; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023).
- ²⁴¹¹ The General Affairs Office of Jiangxi Provincial People's Government (2021). *14th FYP for New Infrastructure Construction of Jiangxi Province*; available at: http://www.jiangxi.gov.cn/art/2021/11/8/art_4968_3711667.html (accessed on 9 March 2023).
- ²⁴¹² Shanxi Provincial People's Government (2021). *14th FYP for New Infrastructure Construction of Shanxi Province*; available at: https://xxgk.jcgov.gov.cn/szfgzbm/jcsdsjyyj/fdzdgnr_31650/ghjh_31657/202108/t20210803_1444991.shtml (accessed on 3 March 2023).
- ²⁴¹³ Sichuan Provincial People's Government (2021). *14th FYP for New Infrastructure Construction of Sichuan Province*; available at: <https://www.sc.gov.cn/10462/zfwjts/2021/9/10/ff0c000e339b4bd8b83dc2f24e9c88ed/files/103000275dd147fdad979120da9ec426.pdf> (accessed on 3 March 2023).
- ²⁴¹⁴ Shanxi Provincial People's Government (2021). *14th FYP for New Infrastructure Construction of Shanxi Province*; available at: https://xxgk.jcgov.gov.cn/szfgzbm/jcsdsjyyj/fdzdgnr_31650/ghjh_31657/202108/t20210803_1444991.shtml (accessed on 3 March 2023).
- ²⁴¹⁵ Sichuan Provincial People's Government (2021). *14th FYP for New Infrastructure Construction of Sichuan Province*; available at: <https://www.sc.gov.cn/10462/zfwjts/2021/9/10/ff0c000e339b4bd8b83dc2f24e9c88ed/files/103000275dd147fdad979120da9ec426.pdf> (accessed on 3 March 2023).
- ²⁴¹⁶ National People's Congress (2016). *13th FYP of National Economy and Social Development*, Chapter 25; available at: http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm (accessed 3 March 2023); State Council (2017). *Guiding Opinions of the State Council on Deepening 'Internet + Advanced Manufacturing' and Developing Industrial Internet*; available at: http://www.gov.cn/zhengce/content/2017-11/27/content_5242582.htm (accessed on 3 March 2023); MIIT (2018). *Action Plan for the Development of Industrial Internet (2018–2020)*; available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/zh/art/2020/art_3feeff24ae854421b06134a9efd73753.html (accessed on 3 March 2023); MIIT.(2020). *Action Plan for the Innovative Development of Industrial Internet (2021–2023)*; available at: http://www.gov.cn/zhengce/zhengceku/2021-01/13/content_5579519.htm (accessed on 3 March 2023); National People's Congress (2021); available at: *Outline of the 14th FYP for National Economic and Social Development and Long-Range Objectives for 2035 of the People's Republic of China*, Chapter 16, § 2; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023).
- ²⁴¹⁷ National People's Congress (2021). *Outline of the 14th FYP for National Economic and Social Development and Long-Range Objectives for 2035 of the People's Republic of China*, Chapter 15, § 3; ava

telecommunications equipment through the deployment of these technologies over 5G networks. NDRC's 2020 Guiding Opinions About Expanding Investment in Strategic Emerging Industries and Guiding Opinions on Cultivating and Expanding New Growth Points and Growth Poles specifically promote next-generation IT as a 'key industrial investment area' and direct greater investment in 5G construction and faster paced commercial development of 5G²⁴¹⁸.

18.7.7. INNOVATION STRATEGY

China's 2006 National Science and Technology Conference identified scientific and technological innovation as a priority area of development²⁴¹⁹. Accordingly, indigenous innovation (see also Chapter 2) in technology and science became an area of focus in official Chinese policies, as evidenced by the promulgation of the National Medium- and Long-Term Plan for Science and Technology Development (2006–2020)²⁴²⁰. With information technology, the plan aimed to develop 'high-performance core network equipment, transmission equipment, [and] access equipment'²⁴²¹. Thereafter, at the 18th CCP Congress, China proposed an Innovation-Driven Development Strategy that focused on technological innovation with 'Chinese characteristics' and the development of new technologies²⁴²², which was followed in 2015 by the Several Opinions on Deepening the Reform of Systems and Mechanisms and Accelerating the Implementation of Innovation-Driven Development Strategy²⁴²³. The State Council then issued the National Innovation-Driven Development Strategy in 2016, which established the goal that China would become an innovative country by 2020, move to the forefront of innovation by 2030 and become a world-leader in science and technology innovation by 2050²⁴²⁴. To achieve this goal, one 'strategic task' was to develop next-generation

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- liable at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023); MIIT, et al. (2021). 3-Year Action Plan for the Development of Infrastructures for the Internet of Things; available at: http://www.gov.cn/zhengce/zhengceku/2021-09/29/content_5640204.htm (accessed on 3 March 2023).
- ²⁴¹⁸ NDRC.(2020). *Guiding Opinions About Expanding Investment in Strategic Emerging Industries*; available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200925_1239582.html (accessed on 9 June 2023); NRDC (2020). *Guiding Opinions on Cultivating and Expanding New Growth Points and Growth Poles*; available at: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200925_1239582.html (accessed on 9 June 2023).
- ²⁴¹⁹ Xinhua News Agency (2006, January 9). *Hu Jintao's important speech made at the National Science and Technology Conference*; available at: http://www.gov.cn/ldhd/2006-01/09/content_152487.htm (accessed on 3 March 2023).
- ²⁴²⁰ *Ibid.*
- ²⁴²¹ State Council (2006). *National Middle to Long-Term Science and Technology Development Plan (2006–2020)*, Art. 3.1; available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 3 March 2023).
- ²⁴²² China Court International (2012). *Report made by Hu Jintao at the 18th National Congress of the Communist Party of China*; available at: <https://www.chinacourt.org/article/detail/2012/11/id/788634.shtml> (accessed on 3 March 2023).
- ²⁴²³ Central Committee of the Communist Party of China and State Council (2015). *Several Opinions on Deepening System and Mechanism Reform and Accelerating the Implementation of Innovation-Driven Development Strategy*; available at: http://www.gov.cn/xinwen/2015-03/23/content_2837629.htm (accessed on 3 March 2023).
- ²⁴²⁴ Central Committee of the Communist Party of China and State Council (2016). *National Innovation-Driven Development Strategy Outline*; available at: http://www.gov.cn/zhengce/2016-05/19/content_5074812.htm (accessed on 3 March 2023).

information network technology²⁴²⁵. Moreover, sub-national governments, such as that of Heilongjiang Province²⁴²⁶, have issued their own policies on technology innovation.

18.7.8. CYBERSPACE SECURITY STRATEGY

As discussed in greater detail below in Section 18.8.2.1; cybersecurity certification requirements can amount to a regulatory barrier to accessing the Chinese telecommunications equipment market. More generally, China has repeatedly highlighted cybersecurity as part of its information technology ambitions. In 2016, the 13th FYP noted the relationship between cybersecurity and informatisation development²⁴²⁷. China enacted its Cybersecurity Law in November 2016²⁴²⁸, which, as discussed below in Section 18.8.2.1, serves as a barrier to access the Chinese telecommunications equipment market. As part of the implementation of the Cybersecurity Law, the Cyberspace Administration of China (‘CAC’) issued the National Cyberspace Security Strategy, which called for developing a strong cybersecurity foundation through the development of network infrastructure, promoting safe technological products and strengthening cybersecurity standards²⁴²⁹. The need for strengthened cybersecurity is reiterated in the chapter on the digital economy in the 14th FYP²⁴³⁰.

18.8. MARKET DISTORTIONS

18.8.1. STATE SUPPORT

18.8.1.1. PUBLIC PROCUREMENT

China’s emphasis on self-sufficiency in the telecommunications industry and related technologies is reflected in its public procurement and SOE purchasing practices (see also Chapter 7), with both explicit and implicit ‘buy China’ requirements included in public procurement tenders, especially for products in ‘sensitive sectors’ such as ICT²⁴³¹. China’s Government Procurement Law directs government entities to grant preference to domestic products over foreign products²⁴³², but there is no clear or consistent definition of what

²⁴²⁵ *Ibid.*

²⁴²⁶ Heilongjiang Provincial Industry and Informatisation Bureau (2021). *14th FYP for the Development of Technology Innovation of Industry and Informatisation*; available at: <https://zwgk.hlj.gov.cn/zwgk/ueditor/upload/file/20211216/1639645047183073861.pdf> (accessed on 3 March 2023).

²⁴²⁷ National People’s Congress (2016). *13th FYP of National Economy and Social Development*, Chapter 25; available at: http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm (accessed on 3 March 2023).

²⁴²⁸ National People’s Congress. (2016). *Cybersecurity Law*; available at: <https://www.audit.gov.cn/n8/n28/c10241260/part/10241604.pdf> (accessed on 3 March 2023).

²⁴²⁹ CAC (2016). *National Cyberspace Security Strategy*, Art. 4.7; available at: http://www.xinhuanet.com/politics/2016-12/27/c_1120196479.htm (accessed on 3 March 2023).

²⁴³⁰ National People’s Congress (2021). Outline of the 14th FYP for national economic and social development and long-range objectives for 2035 of the People’s Republic of China; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 3 March 2023).

²⁴³¹ Schonberg, A. (2021). *Government procurement and sales to state-owned enterprises in China*. US-China Business Council, p. 6; available at: https://www.uschina.org/sites/default/files/uscbsc_government_procurement_report_2021.pdf (accessed on 3 March 2023).

²⁴³² National People’s Congress. *Government Procurement Law*, Art. 10; available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/06/content_1382108.htm (accessed on 3 March 2023).

constitutes a ‘domestic’ product²⁴³³. Practice among procuring entities is inconsistent as to whether products produced domestically by foreign-owned companies or through Sino-foreign joint ventures will qualify, or whether products must be produced by wholly Chinese-owned companies²⁴³⁴. In the ICT sector, SOEs prefer Chinese products over foreign ones, apparently having ‘*non-public plans to replace foreign products with domestic alternatives in the ICT sector during the 2020–2022 period*’²⁴³⁵. Moreover, the lack of transparency in assessment and certification processes creates difficulties for foreign firms to determine how they can qualify their products as ‘domestic’, particularly with increased weight being placed on difficult-to-quantify security concerns²⁴³⁶.

18.8.1.2. BELOW MARKET LENDING AND CREDIT FACILITIES

Public reporting suggests that Chinese telecommunications equipment firms have received significant credit assistance from the government and state-owned banks (see Chapter 5). In 2019, it was reported that in the past 20 years, Huawei had USD 30.6 billion (~EUR 27.3 billion) available in credit from China’s policy banks²⁴³⁷. In 2019, Chinese media reported that Huawei received a five-year CNY 14 billion (~EUR 1.8 billion) loan from a group of state-owned banks²⁴³⁸. As of June 2022, ZTE received CNY 7.8 billion (~EUR 1.12 billion) (out of a line of credit of CNY 23.6 billion (~EUR 3.39 billion)) from the CDB, and CNY 6.8 billion (~EUR 976.5 million) (out of a line of credit of CNY 11 billion (~EUR 1.58 billion)) from the EXIM²⁴³⁹. Because there are no disclosure requirements for such lending, identifying the scale and extent of preferential credit made available to Huawei, ZTE and other telecommunications equipment producers is difficult²⁴⁴⁰.

18.8.1.3. PREFERENTIAL TAX TREATMENT

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- ²⁴³³ Schonberg, A. (2021). *Government procurement and sales to state-owned enterprises in China*. US-China Business Council, p. 6; available at: https://www.uschina.org/sites/default/files/uscbc_government_procurement_report_2021.pdf (accessed on 3 March 2023).
- ²⁴³⁴ Schonberg, A. (2021). *Government procurement and sales to state-owned enterprises in China*. US-China Business Council, p. 7; available at: https://www.uschina.org/sites/default/files/uscbc_government_procurement_report_2021.pdf (accessed on 3 March 2023).
- ²⁴³⁵ *Ibid.*, p. 8.
- ²⁴³⁶ *Ibid.*, p. 9.
- ²⁴³⁷ Yap, C.W. (25 December 2019). *State support helped fuel Huawei’s global rise*. Wall Street Journal; available at: <https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736> (accessed on 3 March 2023).
- ²⁴³⁸ Link, J. (19 November 2020). *Huawei has an advantage in its push for global dominance. Now the U.S. is trying to counter it*. Washington Post; available at: <https://www.washingtonpost.com/politics/2020/11/19/huawei-has-hidden-advantage-its-push-global-dominance-now-us-is-trying-counter-it/> (citing: <https://tech.sina.com.cn/t/2019-03-05/doc-ihxncv0071993.shtml>) (accessed on 3 March 2023).
- ²⁴³⁹ ZTE (2022). *Prospectus of ZTE on Issuing the 3rd Installment of Super Short-term Commercial Papers in 2022*; available at: http://pdf.dfcfw.com/pdf/H2_AN202209201578532013_1.pdf (accessed on 9 June 2023).
- ²⁴⁴⁰ Hart, M., Link, J. (2020). *There is a solution to the Huawei challenge*. Center for American Progress; available at: <https://www.americanprogress.org/article/solution-huawei-challenge/> (accessed on 3 March 2023).

As explained in Chapter 19, China provides an array of forms of tax relief, both broadly to high-technology sectors and specifically to certain telecommunications equipment firms. The telecommunications equipment industry has access to this reduced tax rate. Moreover, the High- and New-Technology Enterprise (‘HNTe’) must own the IP of the critical technology for its products or services²⁴⁴¹. A 2013 report detailed how the IP requirements and disclosure process with local regulators have created a system of de facto discrimination against foreign companies operating in China²⁴⁴². In addition, extensive tax breaks have been reported for Chinese telecommunications equipment firms. From 2008 to 2018, Huawei received deductions and exemptions on up to USD 25 billion (~EUR 21.2 billion) in income, value-added and other taxes²⁴⁴³. In 2022, ZTE received CNY 1.3 billion (~EUR 184 million) as a VAT tax refund related to software products, and a refund of CNY 22.4 million (~EUR 3.17 million) in individual income tax service charges²⁴⁴⁴. For 2018 and 2019, FiberHome Telecommunication invested a total of CNY 1.792 billion (~EUR 231 million) in R&D, and it enjoyed a weighted tax ‘super deduction’ of CNY 1.06 billion (~EUR 136.4 million) for R&D expenses²⁴⁴⁵.

18.8.1.4. GRANTS AND OTHER SUBSIDIES

Chinese authorities provide an array of support to the telecommunications equipment industry, including through grants, loans and favourable land sales. The government has made available substantial grant money through initiatives such as the major science and technology projects, first developed in the National Medium- and Long-Term Science and Technology Development Plan (2006–2020)²⁴⁴⁶ (see Section 8.2.2.1 and 19.3.3.2). Thereafter, the State Council’s 13th FYP for National Science and Technology Innovation in 2016 (see also Section 19.3.3), which extended the prior plan to 2030, includes among its projects New Generation Broadband Wireless Mobile Telecommunication, under which both national and sub-national governments have provided significant financial support²⁴⁴⁷.

²⁴⁴¹ State Council (2016). Notice of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the ‘Administrative Measures for the Identification of High-tech Enterprises’, Art. 11; available at: http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 25 March 2023).

²⁴⁴² US-China Business Council (2013). *China’s High and New-Technology Enterprise (HNTe) Program*; available at: <https://www.uschina.org/sites/default/files/2013%20HNTe%20Background.pdf> (accessed on 3 March 2023).

²⁴⁴³ Yap, C.W. (2019, December 25). *State support helped fuel Huawei’s global rise*. Wall Street Journal; available at: <https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736> (accessed on 3 March 2023).

²⁴⁴⁴ ZTE. (2023). *2022 Annual Report of ZTE*, available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000063&stockCode=000063&announcementId=1216094376&announcementTime=2023-03-11> (accessed on 9 June 2023).

²⁴⁴⁵ Y. Yuntao (22 April 2021). *100%! Weighted Deduction of R&D Expenses is ‘Upgraded’*, FiberHome Telecommunication May Enjoy Addition Tax Reduction of RMB 170 Million Each Year. Hubei Daily News; available at: http://m.cnhubei.com/content/2021-04/22/content_13752245.html (accessed on 9 June 2023).

²⁴⁴⁶ State Council (2006). *Outlines of the National Medium- and Long-term Science and Technology Development Plan (2006–2020)*; available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 3 March 2023).

²⁴⁴⁷ For example, in 2011, under the ‘New Generation Broadband Wireless Mobile Telecommunication’ category, the national government provided CNY 990 000 000, and sub-national governments provided CNY 290 000 000 for 63 projects. (2012). *2011 China Science and Technology Development Report*, p.

Huawei, ZTE and others have received extensive government grants, tax incentives and other subsidies²⁴⁴⁸. It was estimated that Huawei received USD 46 billion (~EUR 41 billion) in loans, credit and other forms of state support²⁴⁴⁹, as well as that the company saved USD 2 billion (~EUR 1.8 billion) on purchases of state-owned land through favourable sales terms²⁴⁵⁰. ZTE disclosed in 2010 that China would provide CNY 301.2 million (~EUR 33.6 million) for certain special projects of ZTE and the subsidiaries controlled by ZTE²⁴⁵¹. FiberHome Telecommunication disclosed in its 2022 annual report that its balance of assets-related government subsidies was CNY 89.2 million (~EUR 11.3 million), and the balance of income-related government subsidies was CNY 377.5 million (~EUR 48 million)²⁴⁵².

18.8.1.5. FORCED TECHNOLOGY TRANSFER

China's practice of requiring foreign firms to share intellectual property and other proprietary information as a condition for market access has been well documented. In 2018, the EU brought a dispute at the WTO raising a number of allegations relating to these practices²⁴⁵³. In that dispute, the EU alleged that China's regulatory framework discriminates against foreign IP rights holders²⁴⁵⁴. The USTR documented similar problems in its *2018 Findings on the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974*²⁴⁵⁵. In that report, the USTR highlighted China's JV requirements, market access conditioned on technology transfer, discretionary and informal approval of foreign investments and the close

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- 105; available at: <https://www.sciping.com/wp-content/uploads/2019/06/%E5%9B%BD%E5%AE%B6%E7%A7%91%E6%8A%80%E9%87%8D%E5%A4%A7%E4%B8%93%E9%A1%B9-%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E7%A7%91%E5%AD%A6%E6%8A%80%E6%9C%AF%E9%83%A82011.pdf> (accessed on 3 March 2023).
- 2448 Atkinson, R. (2020). *How China's mercantilist policies have undermined global innovation in the telecom equipment industry*. Information Technology & Innovation Foundation, p. 28; available at: <https://www2.itif.org/2020-china-mercantilist-telecom-equipment-industry.pdf> (accessed on 3 March 2023).
- 2449 Yap, C.W. (2019, December 25). *State support helped fuel Huawei's global rise*. Wall Street Journal; available at: <https://www.wsj.com/articles/state-support-helped-fuel-huaweis-global-rise-11577280736> (accessed on 3 March 2023).
- 2450 *Ibid.*
- 2451 *Announcement on Obtaining Funds for Special Projects*, see: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000063&stockCode=000063&announcementId=57487339&announcementTime=2010-01-09%2006:30> (accessed on 3 March 2023).
- 2452 *2022 Annual Report of FiberHome Telecommunication*, available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=gssh0600498&stockCode=600498&announcementId=1216517684&announcementTime=2023-04-22> (accessed on 3 March 2023).
- 2453 WTO. (2018). *China – Certain Measures on the Transfer of Technology*. Request for Consultations by the European Union, WT/DS549/1; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/549-1.pdf> (accessed on 3 March 2023).
- 2454 *Ibid.*
- 2455 US Trade Representative. (2018). *Report on China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*; available at: <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/investigation> (accessed on 3 March 2023).

coordination between the government and commercial entities as ways in which foreign entities are compelled to transfer technology to domestic firms²⁴⁵⁶.

Reports indicate that these practices are common in the telecommunications equipment industry. China relied heavily on JVs initially to build its domestic telecommunications equipment industry beginning in the 1970s. This practice became more widespread in the 1990s, with Siemens, Ericsson, Motorola, Lucent, Fujitsu, NEC and Nortel all forming JVs. Both Huawei and ZTE established JVs in China with foreign competitors in the late 1990s and early 2000s. To compel foreign firms to establish JVs, the government directed telecommunications service providers to purchase equipment from these JVs and set other limitations on accessing foreign-produced equipment²⁴⁵⁷.

18.8.1.6. CHINESE GOVERNMENT PROMOTION ABROAD

The government has used extraordinary export financing arrangements to bolster Chinese telecommunications equipment firms. Public reports reveal that Huawei benefited from significant loans granted to international customers to purchase Huawei's telecommunications equipment. For example, at the direction of the government and in accordance with the policy and planning documents, CDB and other state banks (see Section 6.3.1.3) have offered up to 130% financing for a 20-year period at zero percent interest, including a three-year payment holiday, for the rollout of 5G networks overseas²⁴⁵⁸. ZTE has also been the benefactor of significant export financing over the last 20 years. In 2004, the China Exim Bank provided a USD 500 million (~EUR 402 million) export credit line to ZTE²⁴⁵⁹. In 2009, China Exim Bank agreed to provide ZTE and its business units with USD 10 billion (~EUR 7.2 billion) in export credits and to prioritise such funding²⁴⁶⁰. Moreover, the CDB provided a USD 15 billion (~EUR 10.75 billion) line of export credits to ZTE in 2009 for five years, and USD 20 billion (~EUR 15.6 billion) in 2012²⁴⁶¹.

²⁴⁵⁶ *Ibid.*

²⁴⁵⁷ Atkinson, R. (2020). *How China's mercantilist policies have undermined global innovation in the telecom equipment industry*. Information Technology & Innovation Foundation, pp. 7–8; available at: <https://www2.itif.org/2020-china-mercantilist-telecom-equipment-industry.pdf> (accessed on 3 March 2023).

²⁴⁵⁸ Balding, C. (2020). *Financing 5G rollout in the face of nation state security threats and non-market subsidies*; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537463 (accessed on 3 March 2023).

²⁴⁵⁹ ZTE. (2004). *Announcement of the Board of Directors of ZTE Corporation*, available at: <https://www.zte.com.cn/china/about/investorrelations/announcement/200402/348993.html> (accessed on 9 June 2023).

²⁴⁶⁰ Reuters. (2009, May 22). *ZTE says China Exim Bank to provide loan facility*; available at: <https://www.reuters.com/article/zte-eximbank-idUSHKV00214920090522> (accessed on 9 June 2023).

²⁴⁶¹ CN Info. (2009). *Announcement on Entry into Development Finance Cooperation Agreement with CDB*; see: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000063&stockCode=000063&announcementId=50375809&announcementTime=2009-03-21%2006:32> (accessed on 9 June 2023); CN Info. (2012). *Announcement on Entry into Development Finance Strategic Cooperation Agreement with CDB*; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=gssz0000063&stockCode=000063&announcementId=61872270&announcementTime=2012-12-05%2006:30> (accessed on 9 June 2023).

Aggressive export financing has permitted Chinese telecommunication equipment companies to undercut competitors that lack access to such generous terms. For example, in 2006, ZTE won a major telecommunications network contract in Ethiopia through USD 1.6 billion (~EUR 1.3 billion) in low-interest financing supported by Chinese state banks²⁴⁶². A 2016 report from the China Africa Research Initiative at Johns Hopkins University's School of Advanced International Studies highlighted the use of generous export financing from CDB and EXIM by both Huawei and ZTE in South Africa to undercut other telecommunications equipment firms on price²⁴⁶³. In 2019, Huawei outbid Ericsson in negotiations with the Dutch telecommunications company KPN to provide equipment for its 5G network, in part based on the financing available for KPN's purchase of Huawei equipment²⁴⁶⁴. Huawei acknowledged that China's state-owned banks had made USD 100 billion (~EUR 89 billion) in credit available to purchasers of Huawei equipment, though it claimed suppliers had used less than 10% of that available credit²⁴⁶⁵.

According to an analysis compiling a database of 99 projects that involved Chinese state banks, Huawei and foreign purchasers, such as mobile operators in third country buying Huawei network equipment (see Section 18.2.1)²⁴⁶⁶, the average loan size across the 99 projects was USD 155.57 million (~EUR 136.4 million), and for the 32 projects where the interest rate could be identified, 16 had an interest rate below 2%²⁴⁶⁷. The collective value of the loans provided for these projects was almost USD 14.8 billion (~EUR 13 billion), with the largest amount of loans for projects in Africa, Europe and Asia²⁴⁶⁸.

The government has also used the Digital Silk Road, which was added to BRI (see Section 4.2.4 in 2015²⁴⁶⁹, as a means of incentivising foreign governments to purchase Chinese telecommunications equipment. According to a 2020 report from the Asia Society Policy Institute on BRI, Huawei and ZTE led the construction of fibre-optic cable networks in 70

²⁴⁶² Dalton, M. (6 January 2014). *Telecom Deal by China's ZTE, Huawei in Ethiopia Faces Criticism*. Wall Street Journal; available at: <https://www.wsj.com/articles/telecom-deal-by-china8217s-zte-huawei-in-ethiopia-faces-criticism-1389064617?tesla=y%20> (accessed on 9 June 2023).

²⁴⁶³ Sun, J. (2016). *Technology Transfer in Telecommunications: Barriers and Opportunities in the Case of Huawei and ZTE in South Africa*. China Africa Research Initiative; available at: <https://static1.squarespace.com/static/5652847de4b033f56d2bdc29/t/578e8f0be3df282899301e08/1468960523721/Sun+brief+v.6.pdf> (accessed on 9 June 2023).

²⁴⁶⁴ Nakashima, E. (29 May 2019). *U.S. pushes hard for a ban on Huawei in Europe, but the firm's 5G prices are nearly irresistible*. The Washington Post; available at: https://www.washingtonpost.com/world/national-security/for-huawei-the-5g-play-is-in-europe--and-the-us-is-pushing-hard-for-a-ban-there/2019/05/28/582a8ff6-78d4-11e9-b7ae-390de4259661_story.html (accessed on 3 March 2023).

²⁴⁶⁵ *Ibid.*

²⁴⁶⁶ Hart, M., Link, J. (2020). *There is a solution to the Huawei challenge*. Center for American Progress; available at: <https://www.americanprogress.org/article/solution-huawei-challenge/> (accessed on 3 March 2023).

²⁴⁶⁷ *Ibid.*

²⁴⁶⁸ *Ibid.*

²⁴⁶⁹ Greene, R., Triolo, P. (2020). *Will China control the global internet via its digital Silk Road?* Carnegie Endowment for International Peace; available at: <https://carnegieendowment.org/2020/05/08/will-china-control-global-internet-via-its-digital-silk-road-pub-81857> (accessed on 3 March 2023).

countries, including 12 underwater cable projects in Southeast Asia²⁴⁷⁰. By 2021, Huawei had built 70% of the 4G networks in Africa and had increased its share of the global telecommunications equipment market by 40% following the implementation of BRI²⁴⁷¹. Indeed, in a 2016 speech, the Secretary-General of the Academic Committee of the NDRC noted that ‘without [BRI], there would be no Huawei’²⁴⁷².

18.8.1.7. CHINA’S PRESENCE IN INTERNATIONAL STANDARDS-SETTING BODIES

To benefit Chinese companies and to advance the goal of Chinese technological leadership, the state directs Chinese companies to develop standards for the technologies that the companies are using in projects pursued under state-sponsored initiatives such as BRI²⁴⁷³. By using technologies with these standards in projects funded under these programs – and supplemented by the signing of nonbinding memoranda of understanding on standards that facilitate cooperation between national standardisation bodies and pursuing other standards harmonisation efforts with project host states – China expands the use of these standards that benefit Chinese telecommunications equipment companies in foreign markets²⁴⁷⁴.

18.8.2. MARKET ACCESS BARRIERS

18.8.2.1. REGULATORY AND LICENSING BARRIERS

In December 1998, the Ministry of Information Industry (now MIIT) issued the Administrative Measures for the Examination and Approval of Telecommunications Equipment Network Access, which requires that any equipment used to connect to public and special-use telecommunications networks must first obtain a network access license from the ministry²⁴⁷⁵. Moreover, MIIT developed with the State Bureau of Quality Supervision a catalogue of telecommunications equipment that must receive a license, based on three categories: telecommunications terminal equipment, wireless telecommunications equipment and network

²⁴⁷⁰ Russel, D.R., Berger, B.H. (2020). *Weaponizing the Belt and Road Initiative*. Asia Society Policy Institute, p. 21; available at: https://asiasociety.org/sites/default/files/2020-09/Weaponizing%20the%20Belt%20and%20Road%20Initiative_0.pdf (accessed on 9 June 2023).

²⁴⁷¹ Sacks, D. (2021). *China’s Huawei is winning the 5G race. Here’s what the United States should do to respond*. Council on Foreign Relations; available at: <https://www.cfr.org/blog/china-huawei-5g> (accessed on 3 March 2023).

²⁴⁷² Xiaofei, L. (2 September 2016). *Zhang Yansheng: Without the Belt and Road initiative, there would be no Huawei*. Finance China; available at: <http://finance.china.com.cn/news/special/2016g20summit/20160902/3889560.shtml> (accessed on 3 March 2023).

²⁴⁷³ Russel, D.R. & Berger, B.H. (2021). *Stacking the deck: China’s influence in international technology standards setting*. Asia Society Policy Institute, p. 9; available at: https://asiasociety.org/sites/default/files/2021-11/ASPI_StacktheDeckreport_final.pdf (accessed on 3 March 2023).

²⁴⁷⁴ Russel, D.R. & Berger, B.H. (2021). *Stacking the deck: China’s influence in international technology standards setting*. Asia Society Policy Institute, pp. 9, 28; available at: https://asiasociety.org/sites/default/files/2021-11/ASPI_StacktheDeckreport_final.pdf (accessed on 3 March 2023).

²⁴⁷⁵ Ministry of Information Industry. (1998). *Administrative Measures on the Approval of Telecommunications Equipment Access to Network*, Art. 3; available at: <https://law.pkulaw.com/chinalaw/0bd23fcadbe2bb74bdfb.html> (accessed on 3 March 2023).

connection equipment²⁴⁷⁶. In January 2023, China dropped the licensing requirement for 11 types of telecommunications equipment (mostly end-use equipment), though producers must share standards used for these products with Chinese regulators. While those 11 categories of equipment are exempt from the licensing requirement, licensing requirements have been introduced for two new categories – satellite internet equipment and functional visualisation equipment²⁴⁷⁷. Radio transmission equipment, both domestically produced and imported into China, must also obtain and file an approval certificate before it can be sold in the Chinese market²⁴⁷⁸.

Following the adoption of China's Cybersecurity Law in 2016, some telecommunications equipment must undergo additional certification requirements²⁴⁷⁹. Under that law, a qualified institution must certify the security of and test critical network equipment and network security-specific products²⁴⁸⁰. The government also promulgates a catalogue of network equipment and network security-specific products that must undergo testing and certification before they can be marketed in China²⁴⁸¹. The first catalogue was issued in 2017 and includes routers, switches, servers and programmable logic controller devices as key network equipment²⁴⁸². Pursuant to authority under the Cybersecurity Law and China's National Security Law, CAC led the promulgation of Measures for Cybersecurity Review in 2020²⁴⁸³.

China's Catalogue of Network Equipment and Network Security Products outlines the requirements for certification and testing to qualify for sale in China²⁴⁸⁴. Article 7 requires that telecommunications equipment must undergo 'implementation testing' by certain Chinese ministries and state-controlled organizations and also must retain an installation license²⁴⁸⁵. Article 8 of China's Critical Network Equipment Security Testing Rules states that MIIT 'shall

²⁴⁷⁶ Wang, J. (2016). *Introduction of Telecommunications Equipment Network Access License (NAL)*. International Telecommunications Union; available at: <https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/SiteAssets/Pages/Events/2016/Oct-CandI2016/CAICT2016/Session%201-2%20Introduction%20of%20Telecommunications%20Equipment%20Network%20Access%20License-%E7%8E%8B%E5%81%A5-final.pdf> (accessed on 3 March 2023).

²⁴⁷⁷ MIIT. (2023). *Reform Measures on the Network Access License System for Telecommunications Equipment*, Art. 1; available at: http://www.gov.cn/zhengce/zhengceku/2023-02/07/content_5740471.htm (accessed on 3 March 2023).

²⁴⁷⁸ State Council & Military Commission of the Central Committee of the CCP. (2016). *Regulations on the Radio Management*, Art. 44, 48; available at: http://www.gov.cn/zhengce/content/2016-11/25/content_5137687.htm (accessed on 3 March 2023).

²⁴⁷⁹ National People's Congress. (2016). *Cybersecurity Law*, Art. 23; available at: <https://www.audit.gov.cn/n8/n28/c10241260/part/10241604.pdf> (accessed on 3 March 2023).

²⁴⁸⁰ *Ibid.*

²⁴⁸¹ *Ibid.*

²⁴⁸² MIIT, et al. (2017, June 1). Announcement on the Issuance of the Catalog of Key Network Equipment and Network Security-Safety Products (1st Batch); available at: http://www.gov.cn/xinwen/2017-06/09/content_5201276.htm (accessed on 3 March 2023).

²⁴⁸³ Ross, L. & Zhou, K. (2020). *China issues new cybersecurity review measures*. WilmerHale; available at: <https://www.wilmerhale.com/en/insights/client-alerts/20200518-china-issues-new-cybersecurity-review-measures> (accessed on 3 March 2023).

²⁴⁸⁴ L.C., Neville, K. & Webster, G. (12 June 2019). *Translation: New draft rules for 'critical network equipment security testing' in China*. New America; available at: <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/translation-critical-network-equipment-testing-implementing-measures-draft-comment/> (accessed on 3 March 2023).

²⁴⁸⁵ *Ibid.*

review and verify critical network equipment security testing reports and materials and issue a list of critical network equipment that has passed security testing [...] in accordance with relevant state regulations, valid for 3 years'²⁴⁸⁶. Available analyses suggest that these regulations operate as market access barriers to foreign businesses attempting to supply the Chinese market, with ambiguity in how these laws, regulations and standards would be applied creating opportunity for discriminatory enforcement²⁴⁸⁷.

18.8.2.2. INCONSISTENT ENFORCEMENT AND PROTECTION OF INTELLECTUAL PROPERTY

As with forced technology transfer²⁴⁸⁸, China's enforcement of intellectual property rights results in uneven protection for foreign telecommunications firms operating in China. Cybersecurity audits under China's Cybersecurity Law can require the disclosure of intellectual property and proprietary source code and "[w]hile the government may not always choose to enforce these unwritten rules, the government's position can change at any time as it leverages the vagueness of the rules"²⁴⁸⁹.

The EU filed a WTO dispute in February 2022 challenging China's policy of blocking the enforcement of intellectual property rights abroad by EU telecommunications equipment companies²⁴⁹⁰. The EU complained that Chinese courts use 'anti-suit injunctions' under China's Civil Procedure Law to prevent European firms from enforcing patents (notably, standard-essential patents) against Chinese companies in foreign courts and to reduce royalties and licences paid to these firms²⁴⁹¹. Violating these anti-suit injunctions and seeking to enforce these rights can result in significant fines for the foreign firms²⁴⁹². The EU's request for consultations noted five cases involving telecommunications equipment vendors since 2020 that resulted in the application of anti-suit injunctions, two of which involved Huawei and ZTE, with the others filed by Chinese consumer electronics manufacturers OPPO and Xiaomi, as well as Samsung, the South Korean manufacturer²⁴⁹³. This case is still pending, and a WTO panel has yet to rule on the EU's allegations.

²⁴⁸⁶ *Ibid.*

²⁴⁸⁷ Sacks, S. & Li, M.K. (2018). *How Chinese cybersecurity standards impact doing business in China*. Center for Strategic & International Studies; available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180802_Chinese_Cybersecurity.pdf (accessed on 3 March 2023).

²⁴⁸⁸ See Section 18.8.1.5.

²⁴⁸⁹ Sacks, S. & Li, M.K. (2018). *How Chinese Cybersecurity Standards Impact Doing Business in China*. Center for Strategic & International Studies, p. 4; available at: https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/180802_Chinese_Cybersecurity.pdf (accessed on 3 March 2023).

²⁴⁹⁰ WTO. (2022). *China – Enforcement of intellectual property rights*. Request for Consultations by the European Union, WT/DS611/1; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/611-1.pdf> (accessed on 3 March 2023).

²⁴⁹¹ *Ibid.*

²⁴⁹² *Ibid.*

²⁴⁹³ *Ibid.*

18.9. CHAPTER SUMMARY

China's designation of the telecommunications equipment industry as critical for technological development and leadership is reflected in the myriad plans, policies and strategies that the country's national and sub-national governments have promulgated. This web of government planning is implemented through a broad array of policies that benefit domestic firms – at the expense of foreign firms. By protecting the domestic market and promoting Chinese firms abroad, China has assisted its key stakeholders in developing a significant presence in the global telecommunications equipment market²⁴⁹⁴. 5G infrastructure is a case in point where China's policies have allowed its firms (notably, Huawei and ZTE) to operate relatively expensively on the protected home market, while helping them to offer less expensive services abroad.

China's distortions of the telecommunications equipment market come in a variety of forms. The State provides support to firms through procurement preferences, below market lending, tax relief and subsidies and grants. The government both explicitly and implicitly forces the transfer of technology from foreign firms to domestic entities. Internationally, China uses generous export financing to convince foreign governments and other buyers to purchase Chinese-made telecommunications equipment. China has also developed a national standardisation strategy that includes seeking leadership positions and exercising influence in international standards-setting bodies to promote Chinese commercial interests. China further protects its internal market through complex regulatory and licensing barriers. Finally, the government's inconsistent intellectual property enforcement leaves foreign firms vulnerable to intellectual property right violations and involuntary and uncompensated technology transfer.

²⁴⁹⁴ Pongratz, S. (2022). *Key takeaways – 1H22 total telecom equipment market*. Dell'Oro Group; available at: https://www.delloro.com/key-takeaways-1h22-total-telecom-equipment-market/#_ftn (accessed on 3 March 2023).

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19.1. CHINA'S SEMICONDUCTOR INDUSTRY

19.1.1. MAIN INDUSTRY SEGMENTS

Semiconductors, also known as computer chips ('*chips*') or integrated circuits ('*ICs*')[²⁴⁹⁵], are small electronic devices that form the foundation of many key technological systems, including consumer electronics such as cell phones and laptops, as well as more complex systems in the areas of defence, healthcare, manufacturing and transportation, among many others. When implanted onto the circuit board of electronic devices, semiconductors can operate to store and process data; run software applications; or perform communication, graphics, power management or other capabilities, depending on the precise functionality for which the semiconductor was built[²⁴⁹⁶].

The semiconductor production supply chain is globally interconnected, with various stages of the production process operating across national borders. The steps involved in the production of semiconductors include three distinct phases:

Design: The design of the semiconductor determines how the chip should operate in the system using it, and engineers use specialised software (known as electronic design automation software) to draw a detailed layout of the interconnected electronic components that will form an IC. This stage of the production process is generally talent-intensive, relying on the skills and knowledge of design engineers. The design stage also relies on intellectual property ('*IP*') related to chip design, known as 'core IP'[²⁴⁹⁷].

²⁴⁹⁵ Semiconductors is a term also used to refer to products containing semiconducting materials, such as silicon.

²⁴⁹⁶ See The Organization for Economic Co-operation and Development, (2019, December 12), Measuring distortions in international markets: The semiconductor value chain. *OECD Trade Policy Papers*, No. 234, p. 11, available at: https://www.oecd-ilibrary.org/trade/measuring-distortions-in-international-markets_8fe4491d-en (accessed on 25 May 2023) ('*OECD Report 2019*').

²⁴⁹⁷ *Ibid.*, p. 17; Khan, S. M., Peterson, D., & Mann, A. (2021). The semiconductor supply chain: Assessing national competitiveness. *Center for Security and Emerging Technology* ('*CSET*'), p. 4, available at: <https://doi.org/10.51593/20190016> (accessed on 25 May 2023) ('*CSET Report 2021*').

Fabrication: Fabrication facilities, also known as ‘*fabs*’, undertake the physical production of semiconductors. For purposes of fabrication, semiconductors comprise several components. The base layer of a semiconductor is the wafer, a thin disk (approximately 0.5 to 1 millimetres thick) that is manufactured using high-purity silicon. The wafer generally undergoes several fabrication processing steps, such as doping²⁴⁹⁸, etching and photolithography²⁴⁹⁹. Electronic circuits with components such as transistors are formed on the surface of the wafer. This stage of the production process generally involves highly specialised machinery and production equipment, known as semiconductor manufacturing equipment, which is itself an important segment of the industry²⁵⁰⁰.

Assembly, Testing and Packaging (‘ATP’): During this stage of the production process, wafers are sliced into individual semiconductors, encased in plastic and put through a quality control process. The ATP phase of semiconductor production generally is more labour-intensive and lower value than design and fabrication, and therefore has fewer barriers to entry. Firms conducting these activities have historically set up ATP facilities in developing countries²⁵⁰¹. Some firms have developed expertise in more advanced ATP as well.

There are generally two models for semiconductor production. Under the first model, a single integrated device manufacturer (‘*IDM*’) firm performs all three of the production steps, whereas under the second, ‘*fabless-foundry*’ model, each step is performed by a different firm.

Developed countries in Europe, along with the US, South Korea, Japan and Taiwan, specialise in various segments of the semiconductor supply chain. China is a strong participant in the ATP segment of the supply chain; it also demonstrates strength in segments of the industry relating to tools for assembly and packaging, as well as raw materials. China’s market presence is less strong in other supply chain segments, particularly with production inputs including semiconductor manufacturing equipment, electronic design automation and core IP; still, China is making progress in the areas of chip design and manufacturing with the assistance of substantial state support²⁵⁰².

19.1.2. CHINA’S POSITION IN THE GLOBAL MARKETPLACE

²⁴⁹⁸ Doping is the process of introducing impurities (such as boron, aluminium or gallium) to vary the number of electrons and holes in semiconductors.

²⁴⁹⁹ Photolithography is the process by which ultra-violet light is used to print and etch circuits directly onto the surface of a silicon wafer.

²⁵⁰⁰ CSET Report 2021, p. 19.

²⁵⁰¹ *Ibid.*, p. 23.

²⁵⁰² *Ibid.*, p. 3.

Overall, total global semiconductor sales for 2022 were estimated to be valued at approximately USD 574.1 billion (~EUR 546 billion)²⁵⁰³—marking the highest total to date²⁵⁰⁴. In 2020, Chinese-headquartered firms were estimated to account for between 6,7% and 9% of global sales of semiconductor devices, with some estimates indicating that China surpassed Taiwan in global sales that year for the first time and was approaching a market share similar to that of Europe and Japan²⁵⁰⁵. In 2022, global semiconductor sales revenue rose to approximately USD 602 billion (~EUR 573 billion), up from USD 595 billion (~EUR 503 billion) in 2021²⁵⁰⁶. Some estimates indicate that China’s share of the overall market declined slightly in 2021, to as low as 6,5%²⁵⁰⁷. It has been suggested that this decline may be at least partially a consequence of export control measures adopted by the US against Chinese semiconductor products²⁵⁰⁸. While China’s relative share may have dipped slightly, reporting by the Chinese Semiconductor Industry Association (‘SIA’) indicates that in absolute terms, “sales by China’s integrated circuit industry in 2021 were about RMB 1.05 trillion [~EUR 137 billion], a year-on-year increase of 18,2%”²⁵⁰⁹.

Since 2005, China has been the largest single-country market for semiconductors²⁵¹⁰. In 2020, China imported approximately USD 378 billion (~EUR 331,4 billion) in semiconductors²⁵¹¹.

²⁵⁰³ Throughout the chapter, conversions to EUR are based on the average exchange rate during the timeframe referenced, using the exchange rate calculator publicly available on the European Central Bank’s website. European Central Bank. (2023). *Euro foreign exchange reference rates*, available at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html (accessed on 25 May 2023).

²⁵⁰⁴ Semiconductor Industry Association (‘SIA’). (2023). *Global Semiconductor Sales Increase 3.3% in 2022 Despite Second-Half Slowdown*, available at: <https://www.semiconductors.org/global-semiconductor-sales-increase-3-2-in-2022-despite-second-half-slowdown/> (accessed on 25 May 2023).

²⁵⁰⁵ SIA. (2022). *China’s share of global chip sales now surpasses Taiwan’s, closing in on Europe’s and Japan’s*, available at: <https://www.semiconductors.org/chinas-share-of-global-chip-sales-now-surpasses-taiwan-closing-in-on-europe-and-japan/> (accessed on 25 May 2023).

²⁵⁰⁶ Gartner. (2023, January 17). *Gartner Says Worldwide Semiconductor Revenue Grew 1.1% in 2022* [Press release], available at: <https://www.gartner.com/en/newsroom/press-releases/2023-01-17-gartner-says-worldwide-semiconductor-revenue-grew-one-percent-in-2022> (accessed on 23 May 2023).

²⁵⁰⁷ *Ibid.*

²⁵⁰⁸ China Semiconductor Industry Association (‘CSIA’), (2022). *The operation of China’s integrated circuit industry in 2021*, available at: <https://web.csia.net.cn/newsinfo/2523503.html> (accessed on 25 May 2023); Gartner. (2022, April 14). *Gartner says worldwide semiconductor revenue grew 26% in 2021* [Press release], available at: <https://www.gartner.com/en/newsroom/press-releases/2022-04-14-gartner-says-worldwide-semiconductor-revenue-grew-26-percent-in-2021> (accessed on 25 May 2023).

²⁵⁰⁹ CSIA. (2022). *The operation of China’s integrated circuit industry in 2021*, available at: <https://web.csia.net.cn/newsinfo/2523503.html> (accessed on 25 May 2023). This discrepancy in measurements across trade associations may be due in part to use of divergent data sets. In addition, it is possible that, even if China’s market share was indeed decreasing, as reported by SIA, this may not correspond with an absolutely decrease in production quantities.

²⁵¹⁰ PricewaterhouseCoopers. (2016). *China’s semiconductor market*, available at: <https://www.pwc.com/gx/en/industries/technology/chinas-impact-on-semiconductor-industry/china-semiconductor-market.html> (accessed on 25 May 2023); Yinug, F. (2009). *Challenges to foreign investment in high-tech semiconductor production in China*. *US International Trade Commission Journal of International Commerce and Economics*; available at: https://www.usitc.gov/publications/332/journals/semiconductor_production.pdf (accessed on 8 June 2023).

²⁵¹¹ SIA. (2021). *SIA Whitepaper: Taking stock of China’s semiconductor industry*, p. 1, available at: https://www.semiconductors.org/wp-content/uploads/2021/07/Taking-Stock-of-China’s-Semiconductor-Industry_final.pdf (accessed on 25 May 2023).

Sizable Chinese demand is driven in part by China's status as the world's largest manufacturing hub for electronics²⁵¹². As of mid-2021, China produced approximately 36% of the world's supply of electronics²⁵¹³. Many of these products are exported, with China accounting for 30% to 70% of global TV, PC and mobile phone exports, depending on the precise product²⁵¹⁴. Domestic Chinese demand for such products is also substantial. China is the second largest final consumption market for electronics embedded with semiconductors, accounting for one-quarter of global consumption in 2020²⁵¹⁵.

Coupled with this strong demand is unprecedented growth of the semiconductor industry in China across all segments of the supply chain, with design (*'fabless'*) and manufacturing (*'foundry'*) firms in 2020 having achieved an estimated annual growth rate of 36% and 32%, respectively, according to industry data²⁵¹⁶. China holds a substantial share of the ATP market²⁵¹⁷ and is also strong with respect to the production of certain raw materials used in the semiconductor sector²⁵¹⁸. In particular, China has the largest market share for several key raw materials used in the production of integrated circuits (*'ICs'*), including aluminium, antimony, arsenic, bismuth, carbon, fluorine, gallium, germanium, magnesium, molybdenum, phosphorus, rare earth materials, silicon, tellurium and tungsten²⁵¹⁹ (see also Chapter 12). China also has significant market share for many other raw materials used in the production of semiconductors, with notable exceptions for cobalt and platinum²⁵²⁰. Moreover, China is also a major front-end wafer manufacturer.

In order to secure proximity to customer supply chains, an increasing number of Chinese and foreign foundries and IDMs have been setting up fabrication plants in China. As a result, almost a quarter of the global installed wafer capacity is now located in China²⁵²¹.

By May 2021, China's IC output had grown by roughly 37,6% since May 2020²⁵²². Overall, the semiconductor sector's value-added industrial output grew by 60% between 2020 and 2021²⁵²³.

²⁵¹² *Ibid.*

²⁵¹³ *Ibid.*

²⁵¹⁴ *Ibid.*

²⁵¹⁵ *Ibid.*

²⁵¹⁶ SIA. (2022). *China's share of global chip sales now surpasses Taiwan's, closing in on Europe's and Japan's*, available at: <https://www.semiconductors.org/chinas-share-of-global-chip-sales-now-surpasses-taiwan-closing-in-on-europe-and-japan/> (accessed on 25 May 2023).

²⁵¹⁷ *Ibid.*

²⁵¹⁸ CSET Report 2021, p. 4.

²⁵¹⁹ *Ibid.*, p. 54.

²⁵²⁰ *Ibid.*, pp. 53–54.

²⁵²¹ Installed wafer capacity measures the share of production capacity (fabs) located in a particular country, regardless of the location of the headquarters for the companies that own the fabs. China, specifically, hosts 23% of global installed wafer capacity, of which 30% is owned and operated by multinational firms predominantly from other East Asian nations. SIA Whitepaper 2021, pp. 2–3.

²⁵²² Ye, J. (2021, June 16). *China's semiconductor output in May hits all-time high amid chip shortage and tech war with US*. South China Morning Post, available at: <https://www.scmp.com/tech/tech-war/article/3137537/chinas-semiconductor-output-may-hits-all-time-high-amid-chip-shortage> (accessed on 25 May 2023) (reporting on the release of data by China's National Bureau of Statistics).

²⁵²³ Lee, J., & Kleinhans, J. P. (2021). *Mapping China's semiconductor ecosystem in global context*. Mercator Institute for China Studies (*'MERICS'*), available at: <https://merics.org/en/report/mapping-chinas-semiconductor-ecosystem-global-context-strategic-dimensions-and-conclusions> (accessed on 25 May 2023).

With respect to the supply of ICs in China's domestic market, ICs produced in China were estimated to account for approximately 16% of total domestic semiconductor sales, or USD 22.7 billion (~EUR 19,9 billion), in 2020²⁵²⁴. According to sectoral research reports, China-headquartered companies produced an estimated USD 12.3 billion (~EUR 10,4 billion), or 39,4%, of the USD 31.2 billion (~EUR 26,4 billion) worth of ICs manufactured in the country in 2021²⁵²⁵. With the Government's efforts to pursue self-reliance in the semiconductor industry, and with the funding available to boost chip production, it is expected that the growth trend will continue in the following years.

19.1.2.1. GROWTH IN NUMBER AND SCALE OF CHINESE FIRMS

The Government's push to develop the semiconductor industry in China has led to a sometimes chaotic race to establish new companies. More than 22 800 new semiconductor companies were established in China in 2020 alone, nearly tripling in number from 2019 to 2020²⁵²⁶. This growth trend continued into the first half of 2021, with a further 15 700 new semiconductor companies established during just the first five months of 2021, operating across supply chain segments including chip design and manufacturing²⁵²⁷. The creation of these companies was made possible in part by broadly available financing offered both by the State and private actors. Of the 22 800 new firms established in 2020, 40 were publicly traded on the Shanghai 'STAR' Market²⁵²⁸ as of May 2021 and had collectively raised approximately EUR 25 billion during their IPOs²⁵²⁹. This race in chip company creation led also to a number of bankruptcies and corruption investigations. A number of large market players collapsed after receiving considerable financing from GGFs (see Section 6.5), including Tsinghua Unigroup, Wuhan Hongxin Semiconductor Manufacturing ('HSMC') and Quanxin Integrated Circuit Manufacturing²⁵³⁰.

In addition to an increase in the number of firms, Chinese semiconductor firms are also expanding in terms of the size and scope of their operations. For example, in 2021:

²⁵²⁴ Foster, S. (2021, January 18). *Get real about the Chinese semiconductor industry*. Asia Times, available at: <https://asiatimes.com/2021/01/get-real-about-the-chinese-semiconductor-industry/> (accessed on 25 May 2023).

²⁵²⁵ See for example at: <https://www.design-reuse.com/news/51960/china-ic-marketshare-forecast.html> (accessed on 17 November 2022).

²⁵²⁶ SIA Whitepaper 2021, p. 4.

²⁵²⁷ Ye, J. (2021, June 9). *New Chinese semiconductor firms have tripled in 2021 as Beijing and Washington jockey over technological supremacy*. South China Morning Post, available at: <https://www.scmp.com/tech/tech-war/article/3136660/new-chinese-semiconductor-firms-have-tripled-2021-beijing-and> (accessed on 25 May 2023).

²⁵²⁸ SIA Whitepaper 2021, p. 4. Established in 2019, the Shanghai 'STAR' market is a Chinese science and technology focused equities market.

²⁵²⁹ *Ibid.*

²⁵³⁰ Chiang, M. H. (2022). *Exposing China's semiconductor vulnerabilities*. The Heritage Foundation, available at: <https://www.heritage.org/asia/commentary/exposing-chinas-semiconductor-vulnerabilities> (accessed on 25 May 2023).

- Huawei Technologies Co. invested USD 12.8 million (~EUR 10,8 million) in RSLaser Opto-Electronics Technology, a Beijing-based company that produces excimer lasers for lithography²⁵³¹.
- Semiconductor Manufacturing International Corp. ('SMIC') announced plans to establish a USD 8.87 billion (~EUR 7,5 billion) chip factory in Shanghai with a projected capacity of 100 000 silicon wafers per month. SMIC also announced plans to build new foundries in Beijing, Shenzhen and Shanghai, as well as to implement expansion plans at other existing facilities²⁵³².
- Xiaomi Corp. became one of the few smartphone manufacturers (along with Samsung, Apple and Huawei) that design their own chips²⁵³³.

Along with this growth in the number and scale of companies active in the semiconductor industry, Chinese output is also increasing, as noted above.

19.1.2.2. FUTURE OUTLOOK

At the time of writing this Report, China was estimated to account for between 6,7% and 9% of global chip sales in 2020²⁵³⁴. IC Insights, a semiconductor market research company, further reported that China-based IC production is estimated to grow by 2026 to “8,1% of the total forecasted 2026 worldwide IC market of \$717.7 billion”²⁵³⁵. US-based SIA estimates that China may capture over 17% of total market sales in the semiconductor sector by 2024, obtaining the third-highest market share behind the US and South Korea²⁵³⁶. SIA reports that foundry capacity as well as memory capacity in China is projected to increase at a compound annual growth rate of 14,7% through 2031, and China’s semiconductor industry as a whole is expected to nearly double its installed wafer capacity, reaching approximately 19% of worldwide installed chip manufacturing capacity²⁵³⁷.

19.2. PRESENCE OF STATE-OWNED OR CONTROLLED ENTITIES IN THE SEMICONDUCTOR SECTOR

²⁵³¹ R. Mitchell (2021, June 6). *Huawei invests in lithography to achieve supply-chain sovereignty*, available at: <https://www.electropages.com/blog/2021/06/huawei-invests-lithography-achieve-supply-chain-sovereignty> (accessed on 25 May 2023).

²⁵³² Pan, C. (2022, March 31). *US-China tech war: Top Chinese chip makers push ahead with expansion plans despite political tensions, talk of supply glut*. South China Morning Post, available at: <https://www.scmp.com/tech/tech-war/article/3172628/us-china-tech-war-top-chinese-chip-makers-push-ahead-expansion-plans> (accessed on 25 May 2023).

²⁵³³ Jeet. (2021, June 9). *Xiaomi to reorganize team for chip manufacturing as it eyes re-entry in the market*. GIZMOCHINA, available at: <https://www.gizmochina.com/2021/06/09/xiaomi-entering-chip-manufacturing-market/> (accessed on 25 May 2023).

²⁵³⁴ SIA. (2022). *China’s share of global chip sales now surpasses Taiwan’s, closing in on Europe’s and Japan’s*, available at: <https://www.semiconductors.org/chinas-share-of-global-chip-sales-now-surpasses-taiwan-closing-in-on-europe-and-japan/> (accessed on 25 May 2023).

²⁵³⁵ See for example at: <https://www.design-reuse.com/news/51960/china-ic-marketshare-forecast.html> (accessed 17 November 2022).

²⁵³⁶ SIA. (2022). *China’s share of global chip sales now surpasses Taiwan’s, closing in on Europe’s and Japan’s*, available at: <https://www.semiconductors.org/chinas-share-of-global-chip-sales-now-surpasses-taiwan-closing-in-on-europe-and-japan/> (accessed on 30 May 2023).

²⁵³⁷ SIA Whitepaper 2021, pp. 3, 5.

19.2.1. STATE BACKED FUND AND SOE EQUITY POSITIONS IN OSTENSIBLY PRIVATE ENTERPRISES

Ownership structures within Chinese semiconductor firms are often opaque, which complicates efforts to understand the precise role played by the Government within the sector. In recent years, the Government has sought to expand its share in domestic semiconductor firms by creating several state-backed entities that invest in companies operating in the sector. As described in greater detail in Section 19.4.1.1, China created one such fund in 2014, the National Integrated Circuit Industry Investment Fund, which is colloquially referred to as the ‘*Big Fund*’. The Big Fund was accompanied by the establishment of smaller sister funds at provincial and municipal levels.

This type of state-led industrial policy approach is now pervasive throughout China’s emerging and critical technology sectors. Indeed, the GGFs are set up by state agencies and act as limited partnership financiers that provide fresh capital and heavily impact investment decisions²⁵³⁸ (see also Section 6.5). The expansion of this model has permitted the State to increase its ownership of semiconductor assets while also providing large injections of capital. The strategy incentivises Chinese technology companies as well as private investment flows to move towards government priorities—e.g., away from soft technologies, such as consumer internet services, and towards hard technologies, including semiconductors, robotics and enterprise software²⁵³⁹.

19.2.2. EIGHT SOES AMONG THE TOP 10 CHINESE SEMICONDUCTOR FIRMS (2020)

Eight of the top 10 Chinese semiconductor firms (ranked by revenue for 2020) are either partially or fully-owned by the State²⁵⁴⁰:

1. HiSilicon (Huawei Technologies Co.)²⁵⁴¹
2. SMIC²⁵⁴²
3. Jiangsu Changjiang Electronics Technology (‘*JCET*’)²⁵⁴³

²⁵³⁸ MERICS Report 2021, p. 14.

²⁵³⁹ Goldman Sachs. (2021). *Is China investable?*, available at: <https://www.goldmansachs.com/insights/pages/gs-research/is-china-investable/report.pdf> (accessed on 30 May 2023).

²⁵⁴⁰ SIA. (2022). *China’s share of global chip sales now surpasses Taiwan’s, closing in on Europe’s and Japan’s*, available at: <https://www.semiconductors.org/chinas-share-of-global-chip-sales-now-surpasses-taiwan-closing-in-on-europe-and-japan/> (accessed on 30 May 2023).

²⁵⁴¹ Although Huawei has asserted that its employees own the company, through a virtual stockholding plan, 99% of shares legally reside in a state-controlled trade union, Trade Union Committee of Huawei Investment & Holding, which represents its shareholders. See Strumpf, D., & Wang, Y. (2019, April 25). *Huawei says it is employee-owned-but not really*. Wall Street Journal, available at: <https://www.wsj.com/articles/huawei-says-it-is-employee-ownedbut-not-really-11556204552> (accessed on 26 October 2022).

²⁵⁴² Due to increased participations from the Big Fund, state-owned Datang Telecom, and Tsinghua Unigroup, State participation in SMIC grew from less than 15% in 2004 to more than 45% as of 2018. See OECD Report 2019, p. 8.

²⁵⁴³ Following JCET’s acquisition of STATS-ChipPAC in 2015—a Singapore-based firm—the State now maintains control over roughly 20–35% of JCET. See *Ibid*.

4. OmniVision²⁵⁴⁴
5. UNISOC²⁵⁴⁵
6. ZTE Corp.
7. Nexperia²⁵⁴⁶
8. Huada Semiconductor²⁵⁴⁷

For two of these firms, SMIC and UNISOC (via its parent company Tsinghua Unigroup, which defaulted on its bonds in 2021 but has been kept afloat through debt restructuring²⁵⁴⁸), total government backing surpassed 30% of their annual consolidated revenues²⁵⁴⁹. Bolstered by an increased domestic appetite for ‘home-grown’ technology, spurred in part by US export controls targeting Chinese semiconductor firms, certain of these Chinese ‘giants’ continued to grow their production in 2022²⁵⁵⁰. For instance, SMIC “reported a 67% surge in quarterly sales in mid-2022, outpacing far larger rivals”²⁵⁵¹.

In addition to state minority equity investment in private semiconductor firms, the Government has created several majority state-owned semiconductor firms, such as China Electronics Corp., ChangXin Memory Technologies and Yangtze Memory Technologies Co. These companies maintain an extensive presence in the industry, including through ownership or investment in ostensibly private firms²⁵⁵².

²⁵⁴⁴ In 2016, OmniVision was acquired by Seagull International Ltd. and Seagull Acquisition Corp. (Seagull). Seagull is composed of a multitude of state-backed investment funds that claim to pursue state objectives. See US Trade Representative. (2018). *Findings of the investigation into China’s acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974*, p. 119, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 30 May 2023).

²⁵⁴⁵ UNISOC is the chip-making unit of state-owned Tsinghua Unigroup.

²⁵⁴⁶ Nexperia, a Netherlands-based chip firm, is owned by Wingtech Technology. Nearly 30% of Wingtech’s shares can be traced back to the State. See Shead, S. (2021, July 7). *The Chinese firm behind the acquisition of the UK’s largest chip plant is state backed, analysis shows*. CNBC, available at: <https://www.cnbc.com/2021/07/07/nexperia-owner-wingtech-is-backed-by-chinese-government-analysis-says.html> (accessed on 30 May 2023).

²⁵⁴⁷ Huada Semiconductor is owned by state-owned China Electronics Corp. See OECD Report 2019, p. 57.

²⁵⁴⁸ Pan, C. (2022, July 12). *China’s Tsinghua Unigroup completes debt restructuring, ownership change to keep afloat its major semiconductor operations*. South China Morning Post, available at: <https://www.scmp.com/tech/big-tech/article/3185033/chinas-tsinghua-unigroup-completes-debt-restructuring-ownership> (accessed on 30 May 2023); Bray, C. (2020, December 10). *China chip maker Tsinghua Unigroup to default on US \$450 million bond as concerns mount over debt levels on mainland*. South China Morning Post, available at: <https://www.scmp.com/business/banking-finance/article/3113357/china-chip-maker-tsinghua-unigroup-default-us450-million?module=inline&pgtype=article> (accessed on 30 May 2023). As these sources reported, Tsinghua Unigroup was transferred to the Sichuan State-owned Assets Supervision and Administration Commission, with the expectation that the agency would then transfer the entity’s assets to a state-owned enterprise under its control known as Sichuan Energy Industry Investment Group (SCEI). The disclosure is a slight deviation from a plan announced at the end of 2021 that said SCEI would directly take over Tsinghua Holdings.

²⁵⁴⁹ OECD Report 2019, p. 8.

²⁵⁵⁰ Liu, J. (2022, June 21). *US sanctions help China supercharge its chipmaking industry*. Bloomberg News, available at: <https://www.bloomberg.com/news/articles/2022-06-20/us-sanctions-helped-china-supercharge-its-chipmaking-industry?sref=OuEBXo2C> (accessed on 2 December 2023).

²⁵⁵¹ *Ibid.*

²⁵⁵² Ezell, S. (2021). *Moore’s Law under attack: The impact of China’s policies on global semiconductor innovation*. Information Technology & Innovation Foundation, available at:

Across all segments of the Chinese semiconductor sector, 43% of registered capital (USD 51 billion or ~EUR 43,1 billion in value) is directly or indirectly owned or controlled by the State²⁵⁵³. Notably, a 2019 OECD report revealed that state support provided by equity investment is a significant contributor to total government support directed towards China's semiconductor value chain, accounting for 86% of all state support received by the Chinese firms sampled in the report²⁵⁵⁴. Through such equity investments, the State is involved in nearly every aspect of the Chinese semiconductor industry as a minority or majority shareholder in virtually all medium- and large-sized semiconductor enterprises in the country²⁵⁵⁵.

19.3. REGULATORY AND POLICY FRAMEWORK

The Government plays a key role in the development of the Chinese semiconductor industry. Measures designed to support development of the industry are pervasive, and place great emphasis on China gaining self-sufficiency in innovating new IC-related technologies²⁵⁵⁶. While China's policies have resulted in greater funding (and corresponding distortions) of the IC sector in China, recent allegations of corruption in the implementation of government policies and funding mechanisms have called into question the effectiveness of such measures²⁵⁵⁷. Top government officials are evaluating how the measures may be falling short or could be improved²⁵⁵⁸. This section describes the plans, directives, guidelines and other documents implemented by China in the IC sector, including the extent of influence and intervention exerted by the State over the industry.

19.3.1. 14TH FYP

19.3.1.1. 14TH FYP AND THE SEMICONDUCTOR SECTOR

The 14th FYP amplifies the Government's emphasis of technological independence and self-reliance as key goals for China's economic development²⁵⁵⁹. The plan specifically addresses ICs in three respects. First, the 14th FYP identifies ICs as one of eight frontier fields in which it seeks to promote research and development through the implementation of Major Scientific and

<https://itif.org/publications/2021/02/18/moores-law-under-attack-impact-chinas-policies-global-semiconductor> (accessed on 30 May 2023).

²⁵⁵³ SIA Whitepaper 2021, p. 3.

²⁵⁵⁴ OECD Report 2019, pp. 9, 54.

²⁵⁵⁵ *Ibid.*, p. 57.

²⁵⁵⁶ See Yuan, L. (2022, August 29). *Xi Jinping's vision for tech self-reliance in China runs into reality*. New York Times, available at: <https://www.nytimes.com/2022/08/29/technology/china-semiconductors-technology.html> (accessed on 19 February 2023).

²⁵⁵⁷ See Reuters. (2022, August 9). *China watchdog investigates three more execs linked to chip-focused Big Fund*. <https://www.reuters.com/technology/china-watchdog-investigates-three-more-execs-linked-chip-focused-big-fund-2022-08-09/> (accessed 26 October 2023).

²⁵⁵⁸ See *ibid.* See also Financial Times. (2022, September 28). *China's Big Fund corruption probe casts shadow over chip sector*, available at: <https://www.ft.com/content/8358e81b-f4e7-4bad-bc08-19a77035e1b4> (accessed on 22 December 2022).

²⁵⁵⁹ National People's Congress. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of the People's Republic of China, Recital of Part 2, available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 4 May 2023).

Technological Projects (*‘Major S&T Projects’*)²⁵⁶⁰. Second, the plan targets ICs in the context of promoting the optimisation of the manufacturing industry²⁵⁶¹. In particular, the plan calls for cultivating advanced manufacturing clusters and promoting innovation and development with respect to ICs, among other areas²⁵⁶². Third, with respect to building the digital economy, it focuses on developing high-end and neuromorphic chips as one of several frontier technologies²⁵⁶³.

19.3.1.2. NATIONAL SECTOR-SPECIFIC 14TH FIVE YEARS PLAN

In addition to the overarching 14th FYP (see Section 4.2.5), China’s national government has also issued sector-specific plans directly or indirectly impacting the semiconductor sector in China. This section provides examples of such sectoral plans.

19.3.1.2.1. National 14th Five Years Plan on Informatisation

The National 14th Five Years Plan for Informatisation establishes multiple objectives relevant to the semiconductor industry in China. These include goals to make significant breakthroughs in fields relating to ICs, including basic software, equipment and materials, as well as core components²⁵⁶⁴. To achieve this objective, China seeks to accelerate the development of IC-related key technologies; promote the innovation of computing and storage ICs; speed up R&D for design tools, key equipment and key materials, including high-purity target materials²⁵⁶⁵ and other products in the IC sector; and facilitate breakthroughs in manufacturing processes, including for insulated-gate bipolar transistors (*‘IGBT’*) and microelectromechanical systems (*‘MEMS’*)²⁵⁶⁶. The National 14th FYP for Informatisation also seeks to strengthen China’s strategic research plans and the development of key fields such as artificial intelligence, quantum information, ICs, aerospace information, brain-inspired computing, neuromorphic

²⁵⁶⁰ *Ibid.*, Part 2, Chap. 4, § 2. For additional information on the Major Scientific and Technological Projects, see Section 19.3.3.2, *National Medium- and Long-Term Science and Technology Development Plan (2006–2020)*.

²⁵⁶¹ National People’s Congress. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of the People’s Republic of China, Part 3, Chap. 8, § 3, available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 30 May 2023).

²⁵⁶² *Ibid.*

²⁵⁶³ *Ibid.*, Part 5, Chap. 15, § 1.

²⁵⁶⁴ Central Cyberspace Affairs Committee. (2021). *14th Five-Year Plan for National Informatisation*, Arts. 2.3, 8–9, available at: http://www.cac.gov.cn/2021-12/27/c_1642205314518676.htm (accessed on 30 May 2023).

²⁵⁶⁵ High purity targets are the elemental materials for thin film deposition. See 360 Research Reports. (2023). *Global high purity target market 2023 by manufacturers, regions, type and application, forecast to 2029*, available at: <https://www.360researchreports.com/global-high-purity-target-market-22286099> (accessed on 30 May 2023).

²⁵⁶⁶ Central Cyberspace Affairs Committee. (2021). *14th Five-Year Plan for National Informatisation*, Art. 4.3, pp. 21–22, available at: http://www.cac.gov.cn/2021-12/27/c_1642205314518676.htm (accessed on 30 May 2023).

chips, DNA storage, brain-computer interface, digital twins²⁵⁶⁷, new non-volatile memory²⁵⁶⁸, silicon-based optoelectronics and non-silicon-based semiconductors²⁵⁶⁹. In addition, China intends under the plan to accelerate the commercialisation for key and core information technologies in the fields of basic materials, key ICs, high-end components and new display components²⁵⁷⁰.

19.3.1.2.2. National 14th Five Years Plan on the Digital Economy

On 22 January 2022, the State Council issued the 14th Five Years Plan for the Development of the Digital Economy, which emphasises strengthening innovation capabilities related to key technologies in the IC sector, as well as other strategic emerging industries such as sensors, quantum information, network communications, critical software, big data, artificial intelligence, blockchain and new materials²⁵⁷¹. The plan also highlights the need to improve competitiveness and efficiency within the IC supply chain²⁵⁷².

19.3.1.2.3. National Five Years Plan for Strategic Emerging Industries

Although a 14th Five Years National Plan for Strategic Emerging Industries has not been made public as of writing of this Report, the 12th and 13th FYPs for SEIs provide a starting point for understanding how China seeks to cultivate its IC capabilities. Issued by the State Council in 2012, the 12th FYP for National Strategic Emerging Industries provided detailed descriptions of IC technologies identified for development, as well as a roadmap identifying goals that China sought to respectively achieve for 20 SEIs by the end of 2015 and 2020²⁵⁷³. Specifically, China's 12th FYP for National Strategic Emerging Industries provided detailed descriptions of seven strategic emerging industries (see also Section 2.3.2), including (ii) new generation information technology industry (iv) high-end equipment manufacturing industry, (vi) new material industry and (vii) new energy automobile industry²⁵⁷⁴. With regard to the new

²⁵⁶⁷ A digital twin is a digital representation of a physical object, process, service or environment that behaves and looks like its counterpart in the real-world. TWI. *What is digital twin technology and how does it work?*, available at: <https://www.twi-global.com/technical-knowledge/faqs/what-is-digital-twin> (accessed on 30 May 2023).

²⁵⁶⁸ Non-volatile memory ('NVM') or non-volatile storage is defined as "a type of computer memory that can retain stored information even after power is removed". University of Hawaii. What are non-volatile memories and solid-state drives, available at: [https://www.soest.hawaii.edu/atmo/index.php/knowledgebase/what-are-non-volatile-memories-and-solid-state-drives/#:~:text=Non%2Dvolatile%20memory%20\(NVM\),in%20order%20to%20retain%20data](https://www.soest.hawaii.edu/atmo/index.php/knowledgebase/what-are-non-volatile-memories-and-solid-state-drives/#:~:text=Non%2Dvolatile%20memory%20(NVM),in%20order%20to%20retain%20data) (accessed on 30 May 2023).

²⁵⁶⁹ Central Cyberspace Affairs Committee. (2021). *14th Five-Year Plan for National Informatisation*, Art. 4.3, p. 22, available at: http://www.cac.gov.cn/2021-12/27/c_1642205314518676.htm (accessed on 30 May 2023).

²⁵⁷⁰ *Ibid.*, Art. 4.4, p. 25.

²⁵⁷¹ State Council of the People's Republic of China ('State Council'). (2022). *14th Five-Year Plan for the Development of Digital Economy*, Art. 6.1, available at: http://www.gov.cn/zhengce/zhengceku/2022-01/12/content_5667817.htm (accessed on 30 May 2023).

²⁵⁷² *Ibid.*, Art. 6.2.

²⁵⁷³ State Council. (2012). *12th Five-Year Plan for National Strategic Emerging Industries*, available at: http://www.gov.cn/zwgk/2012-07/20/content_2187770.htm (accessed on 30 May 2023).

²⁵⁷⁴ *Ibid.*

generation information technology industry, the plan specifically focused on the development of ICs²⁵⁷⁵.

The 13th FYP for National Strategic Emerging Industries, issued by the State Council in 2016, further emphasised accelerating the expansion of the SEIs²⁵⁷⁶. With regard to ICs, the plan called for accelerating the industrialization of the 16/14 nanometre process as well as the construction of memory production lines, improving the technical level and industrial concentration of the packaging and testing industry and improving the planned layout of chip-related fields²⁵⁷⁷. The 13th FYP for National Strategic Emerging Industries also expanded the SEIs identified in the 12th FYP by adding to the list the ‘digital creation industry’²⁵⁷⁸.

The SEI Decision (Section 2.3.2), identified seven ‘strategic emerging industries’ that China aimed to promote through central planning²⁵⁷⁹. The State Information Center (‘SIC’) – a public institution directly affiliated with the NDRC – released Parts 1 and 2 of the Judgment on the Situation of Strategic Emerging Industries and Development Suggestions for the 14th Five Years Period in December 2020 and January 2021, respectively²⁵⁸⁰. Among other things, Part 2 states that “China shall take advantage of its system for mobilizing the resources nationwide, increase investment and focus on tackling problems to make breakthroughs in major ‘stranglehold’ sectors” within China’s SEIs, including with respect to basic manufacturing processes, core equipment and high-end functional IC materials²⁵⁸¹.

19.3.2. SUB-NATIONAL 14TH FIVE YEARS PLANS

As explained in Chapter 4 for each five-year plan period, sub-national entities – e.g. provinces and municipalities – issue their own corresponding plans, and many of them identify ICs as a priority field for development. The sections below address sub-national plans, including sector-specific plans, issued by sub-national governments, and discuss some ways in which they impact the semiconductor industry.

19.3.2.1. OVERARCHING SUB-NATIONAL 14TH FIVE YEARS PLANS

19.3.2.1.1. Beijing

The *Beijing 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035* focuses on creating an innovation ecosystem for the entire supply

²⁵⁷⁵ *Ibid.*, Art. 3(2). New displays refer to new-generation display technologies such as organic light-emitting diodes (‘OLEDs’), three-dimensional stereoscopic (3D) and laser displays. High-end software refers to basic software represented by networked operating system software and massive data processing software.

²⁵⁷⁶ State Council. (2016). *13th Five-Year Plan for National Strategic Emerging Industries*, available at: http://www.gov.cn/zhengce/content/2016-12/19/content_5150090.htm (accessed on 30 May 2023).

²⁵⁷⁷ *Ibid.*

²⁵⁷⁸ *Ibid.*

²⁵⁷⁹ State Council. (2010). Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries, available at: http://www.gov.cn/zwggk/2010-10/18/content_1724848.htm (accessed on 30 May 2023).

²⁵⁸⁰ National Development and Reform Commission (‘NDRC’). (2021). *Judgment on the Situation of Strategic Emerging Industries and Development Suggestions for the 14th Five-Year Period (Part 1)*, available at: https://www.ndrc.gov.cn/xxgk/jd/wsdwhfz/202101/t20210104_1264124.html?code=&state=123 (accessed on 30 May 2023).

²⁵⁸¹ *Ibid.*, Part 2, 3.2.

chain of the IC industry, including design, equipment, chip manufacturing and developing intellectual property portfolios and software tools²⁵⁸². It includes the following elements:

- Building technology parks to promote the development of IC technology through financial support, tax incentives and other support instruments²⁵⁸³. These parks include the Zhongguancun Integrated Circuit Design Park Phase II, China Mobile International Information Port, Beijing Economic and Technological Development Zone Integrated Circuit Equipment Industrial Base Phase II and the National Information Technology Application Innovation Park²⁵⁸⁴.
- Supporting a number of breakthrough projects in areas including advanced processing technology, manufacturing materials, electronic design automation and carbon-based ICs²⁵⁸⁵.
- Implementing and supporting new projects for IC manufacturing, including the launch of eight-inch wafer production lines and eight-inch MEMS high-end production lines²⁵⁸⁶.

19.3.2.1.2. Shanghai

Shanghai's 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035 (the '*Shanghai 14th FYP*') lists the IC industry as one of three industries that can play a leading role in innovation development²⁵⁸⁷. In particular, the Shanghai 14th FYP aims to create a comprehensive industrial ecosystem for ICs²⁵⁸⁸. With an emphasis on R&D, the plan also seeks to strengthen industry supply chain coordination in the Yangtze River Delta to gradually form a comprehensive IC industry cluster²⁵⁸⁹.

19.3.2.1.3. Jiangsu Province

²⁵⁸² Beijing Municipal People's Congress. (2021). *Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Beijing*, Part 7, Chap. 4, p. 98, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dfzgh/202103/P020210331517775703990.pdf> (accessed on 30 May 2023).

²⁵⁸³ *Ibid.*, Part 7, Chap. 4, p. 98; EEWORLD. (2019, January 5). *Beijing Haidian integrated circuit industry multi-policy "blessing"*, available at: <http://news.eeworld.com.cn/xfdz/2019/ic-news010592597.html> (accessed on 30 May 2023).

²⁵⁸⁴ Beijing Municipal People's Congress. (2021). *Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Beijing*, Part 7, Chap. 4, p. 98, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dfzgh/202103/P020210331517775703990.pdf> (accessed 30 May 2023).

²⁵⁸⁵ *Ibid.*

²⁵⁸⁶ *Ibid.*, Part 7, Chap. 4, pp. 98–99.

²⁵⁸⁷ Shanghai Municipal People's Congress. (2021). *Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Shanghai*, Art. 5.1, available at: <https://www.shanghai.gov.cn/nw12344/20210129/ced9958c16294feab926754394d9db91.html> (accessed on 30 May 2023).

²⁵⁸⁸ *Ibid.*, Art. 5.1.1.

²⁵⁸⁹ *Ibid.* This Shanghai 14th FYP also lists the goals or focuses that the Shanghai government decided to reach during the next 5-year period, though it does not address financing of those policy goals. As an example of one incentive, Shanghai stated it would subsidize up to 30% of investment in semiconductor projects, up to a total of RMB 100 million (~EUR 14.13 million). Pan, C. (2022, January 19). *US-China tech war: Shanghai to woo semiconductor talent and support local chip development with shower of cash*. South China Morning Post, available at: <https://www.scmp.com/tech/tech-war/article/3163966/us-china-tech-war-shanghai-showers-cash-woo-semiconductor-talent-and> (accessed on 30 May 2023).

In its 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035²⁵⁹⁰, the Jiangsu Province targets RMB 6 trillion (~EUR 787,2 billion) in gross production by 2025 across a series of advanced manufacturing clusters that target, among a number of other areas, ICs and new displays²⁵⁹¹.

19.3.2.1.4. Zhejiang Province

Zhejiang Province's 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035 (the '*Zhejiang 14th FYP*')²⁵⁹² proposes focusing on 10 major industrial chains, which include among them ICs and chip-related technologies²⁵⁹³. The Zhejiang 14th FYP calls for accelerating the development of new material industries²⁵⁹⁴, focusing on key strategic materials such as advanced semiconductor materials and deploying future technologies such as third-generation semiconductors, brain-like chips and flexible electronics²⁵⁹⁵.

19.3.2.1.5. Hubei Province

Hubei Province's 14th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035 plans to promote the construction of "four major national strategic emerging industry clusters", including an industry cluster focused on ICs²⁵⁹⁶. It also seeks to promote the development of "four key industrial bases" including a national memory-chip industrial base²⁵⁹⁷.

²⁵⁹⁰ Jiangsu Provincial People's Congress. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Jiangsu Province, available at: <http://www.jiangsu.gov.cn/module/download/downloadfile.jsp?classid=0&filename=374bdc63eccc44bbb0319ec17fda14d1.pdf> (accessed 30 May 2023).

²⁵⁹¹ *Ibid.*, Part 3, Chap. 8, § 1, p. 25.

²⁵⁹² Zhejiang Provincial People's Congress. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Zhejiang Province, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dffzgh/202104/P020210408556620977681.pdf> (accessed on 30 May 2023).

²⁵⁹³ *Ibid.*, Part 3, p. 21.

²⁵⁹⁴ New materials refer to newly emergent materials with exceptional properties or special functions, or materials with significantly improved performance or new functions after the improvement of traditional materials. According to the *Classification of Strategic Emerging Industries* catalogue issued by the National Bureau of Statistics, the new material industry can be subdivided into advanced steel materials, advanced non-ferrous metal materials, advanced petrochemical new materials, advanced inorganic non-metallic materials, high-performance fibres and products and composite materials, cutting-edge new materials and new material related services. Zhejiang Provincial People's Congress. (2021). *Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Zhejiang Province*, Part 3, p. 23, available at: <https://www.ndrc.gov.cn/fggz/fzzlgh/dffzgh/202104/P020210408556620977681.pdf> (accessed on 30 May 2023).

²⁵⁹⁵ *Ibid.*

²⁵⁹⁶ Hubei Provincial People's Congress. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of Hubei Province, Chap. 3, § 2, available at: http://czt.hubei.gov.cn/bmdt/ztzl/dfzfzqzl_6968/xxpl/202110/P020211019555986886394.pdf (accessed on 31 May 2023).

²⁵⁹⁷ Hubei Daily. (2021, January 28). *Enhancing the resilience of industries is essential for building a strong manufacturing province*, available at: http://news.cnhubei.com/content/2021-01/28/content_13600479.html (accessed on 31 May 2023).

19.3.2.2. SECTOR-SPECIFIC SUB-NATIONAL 14TH FIVE YEARS PLANS AND ACTION PLANS

Further to their general 14th FYPs, many sub-national governments have issued their sector-specific plans to implement central-level plans and policy programs within their jurisdictions.

19.3.2.2.1. Sub-National 14th Five Years Plans on Informatisation

Certain sub-national governments in China have developed and issued their own 14th FYPs for Informatisation. For example, in June 2022, Guangzhou issued the 14th FYP for Industry and Informatisation Development in Guangzhou²⁵⁹⁸. In the same month, Hebei issued its 14th FYP for Informatisation²⁵⁹⁹, and in May 2022, Chengdu City of Sichuan issued its 14th FYP for Informatisation²⁶⁰⁰.

As an example, Guangzhou's plan seeks to build a core zone for IC development and further develop its IC design, manufacturing, packaging and testing, materials and equipment capabilities²⁶⁰¹. The plan discusses developing an industry cluster for semiconductors and ICs and providing special funds to support IC development²⁶⁰².

19.3.2.2.2. Sub-National 14th Five Years Plans on the Digital Economy

Several sub-national governments have also issued 14th FYPs on the digital economy. As an example, on 13 December 2021, Chongqing issued the 14th FYP for the Development of the Digital Economy in Chongqing (2021–2025)²⁶⁰³. One of the priorities mentioned in this plan is the development of an IC industry cluster. As part of this initiative, Chongqing will accelerate the building of a municipal manufacturing innovation centre and promote the development of major projects such as the 12-inch power semiconductor project of China Resources Microelectronics, as well as an R&D centre known as the CUMEC project²⁶⁰⁴. The plan indicates that Chongqing will also adopt specific approaches to developing the design, manufacturing, packaging and testing of ICs²⁶⁰⁵. In addition to Chongqing, other governments,

²⁵⁹⁸ Guangzhou People's Government. (2022). *14th FYP for Industry and Informatisation Development in Guangzhou* (2022, June 2), available at: https://www.gz.gov.cn/zwgk/fggw/sfbgtwj/content/post_8319334.html (accessed on 31 May 2023).

²⁵⁹⁹ Hebei Provincial Cybersecurity and Informatisation Commission. (2022). *14th FYP for Informatisation in Hebei*, available at: <http://www.caheb.gov.cn/system/2022/06/30/030174590.shtml> (accessed on 31 May 2023).

²⁶⁰⁰ Chengdu Cyberspace Administration. (2022). *14th FYP for Informatisation in Chengdu*, available at: <http://cddrc.chengdu.gov.cn/cdfgw/c147315/2022-06/16/35d226e663e84509a4c5bfa52654e473/files/26e5a973ac4247f6ae576e4db38f0793.pdf> (accessed on 31 May 2023).

²⁶⁰¹ Guangzhou People's Government. (2022). *14th Five-Year Plan for Informatisation in Guangzhou*, Art. 3.1.1, available at: https://www.gz.gov.cn/zwgk/fggw/sfbgtwj/content/post_8319334.html (accessed on 31 May 2023).

²⁶⁰² *Ibid.*

²⁶⁰³ Chongqing People's Government. (2021). *14th Five-Year Plan for Development of Digital Economy in Chongqing* (2021–2025), available at: https://fzggw.cq.gov.cn/zfxxgk/fdzdggknr/ghxx/zxgh/202112/t20211213_10156527.html (accessed on 31 May 2023).

²⁶⁰⁴ *Ibid.* Based on the information published on the website of CUMEC, it was established by the Chongqing municipal government. *Ibid.* See also CUMEC. *Company profile*, available at: http://www.cumec.cn/menu_18.html (accessed on 31 May 2023).

²⁶⁰⁵ *Ibid.*, Art. 5.1.

including Shanghai²⁶⁰⁶ and Zhejiang²⁶⁰⁷, have issued local 14th FYPs on the digital economy for their jurisdictions.

19.3.2.2.3. Sub-National 14th Five Years Plans on Strategic Emerging Industries

Many sub-national governments such as Hunan²⁶⁰⁸, Fujian²⁶⁰⁹, Shanghai²⁶¹⁰, Guangzhou²⁶¹¹ and Chongqing²⁶¹² issued their own 14th FYPs for Strategic Emerging Industries. As an example, Fujian's 14th FYP on Strategic Emerging Industries was issued in October 2021²⁶¹³. Under this plan, Fujian will focus on the development of high-performance ICs, as part of the new generation information technology industry²⁶¹⁴ and will develop IC innovation platforms and IC industry clusters²⁶¹⁵. By 2025, Fujian strives to achieve an added value of RMB 1 trillion (~EUR 131.2 billion) in strategic emerging industries, with the goal that these industries will represent 17% of the region's total economic output and 23% of the region's industrial output by that year²⁶¹⁶.

19.3.2.2.4. Sub-National Action Plans

Sub-national governments have also issued a series of '*action plans*' related to the development of the IC industry. For example, in October 2020, Guangdong issued the Action Plan for Fostering Semiconductor and IC-Related Strategic Emerging Industry Clusters (2021–2025)²⁶¹⁷

²⁶⁰⁶ The General Affairs Office of Shanghai Municipal People's Government. (2022). *14th Five-Year Plan for the Development of Digital Economy in Shanghai*, available at: http://new.tzxm.gov.cn/zckd/fzgh/202207/t20220715_1330797.shtml (accessed on 31 May 2023).

²⁶⁰⁷ The General Affairs Office of Zhejiang Provincial People's Government. (2021). *14th Five-Year Plan for the Development of Digital Economy in Zhejiang Province*, available at: https://www.zj.gov.cn/art/2021/6/29/art_1229019365_2306544.html (accessed on 31 May 2023).

²⁶⁰⁸ The General Affairs Office of Hunan Provincial People's Government. (2021). *14th Five-Year Plan for the Development of Strategic Emerging Industries in Hunan Province*, available at: http://www.hunan.gov.cn/hnszf/xxgk/wjk/szfbgt/202108/t20210825_20396613.html (accessed on 31 May 2023).

²⁶⁰⁹ Fujian Provincial People's Government. (2021). *14th FYP for Development of Strategic Emerging Industries in Fujian Province*, available at: <http://www.fujian.gov.cn/zwgk/ztzl/gjcjgxxg/zc/202110/P020211029381889347681.pdf> (accessed on 31 May 2023).

²⁶¹⁰ The General Affairs Office of Shanghai Municipal People's Government. (2021). *14th Five-Year Plan for the development of strategic emerging industries and leading industries in Shanghai*, available at: <https://www.shanghai.gov.cn/nw12344/20210721/d684ff525ead40d8a2dfa51e541a14e4.html> (accessed on 31 May 2023).

²⁶¹¹ The General Affairs Office of Guangzhou Municipal People's Government. (2022). *14th Five-Year Plan for the Development of Strategic Emerging Industries in Guangzhou*, available at: <https://www.gzdcia.org.cn/?zcfg/52.html> (accessed on 13 June 2023).

²⁶¹² The Chongqing Municipal People's Government. (2022). *14th Five-Year Plan for the Development of Strategic Emerging Industries in Chongqing (2021–2025)*, available at: http://www.cq.gov.cn/zwgk/zfxxgkml/wlzcxx/qyjf/wqszf/202203/t20220321_10531169.html (accessed on 31 May 2023).

²⁶¹³ *Ibid.*

²⁶¹⁴ *Ibid.*, chap. 3, sec. 1. at 15–20.

²⁶¹⁵ *Ibid.*, at 20.

²⁶¹⁶ *Ibid.* at 13.

²⁶¹⁷ Guangdong Provincial Department of Industry and Information Technology. (2020). *Action Plan for Fostering Semiconductor and IC-Related Strategic Emerging Industry Clusters in Guangdong Province (2021–2025)*, available at: http://www.gd.gov.cn/zwgk/jhgh/content/post_3097925.html (accessed on 31 May 2023).

(‘*Guangdong Action Plan*’). According to the plan, Guangdong aims by 2025 to increase the size and innovative capabilities of the IC industry, as well as improve the industry’s capabilities and layout²⁶¹⁸. Guangdong also seeks to achieve annual revenue of more than RMB 400 billion (~EUR 50,8 billion) for IC-related strategic emerging industries by 2025, with an annual growth rate of more than 20%²⁶¹⁹. Specifically, Guangdong seeks, among other things, to (i) achieve in the IC design sector annual revenue of more than RMB 200 billion (~EUR 25,4 billion); (ii) develop three or more design companies with annual revenue greater than RMB 10 billion (~EUR 1,3 billion) as well as a number of smaller design companies with annual revenue of more than RMB 1 billion (~EUR 127 million); (iii) achieve annual revenue of more than RMB 100 billion (~EUR 12,7 billion) in the IC manufacturing sector; (iv) significantly increase the number of ATP businesses; (v) achieve a leading national role with respect to the province’s manufacturing capacity in certain compound semiconductor materials and devices and (vi) facilitate the development of special equipment, parts and components²⁶²⁰. To achieve these goals, Guangdong Province plans to increase financial support for these activities. For example, the Provincial S&T Innovation Strategy Special Fund will invest at least RMB 1 billion (~EUR 127 million) to support technological innovation in the IC industry²⁶²¹. The Guangdong Action Plan also encouraged the creation of the Provincial Industrial Development Fund, the Innovation and Entrepreneurship Fund and related special funds to strengthen their support of the IC industry²⁶²².

Another example of a local action plan targeting growth in the IC sector is the Shenzhen Action Plan (2019–2023) for Further Promoting the Development of the Integrated Circuit Industry (‘*Shenzhen Action Plan*’) issued by the municipal government of Shenzhen on 15 May 2019²⁶²³. This plan stated that, by 2023, Shenzhen will build an IC industry cluster with international competitiveness, significantly increase the scale of the industry in Shenzhen to exceed 200 billion yuan in sales revenue as well as introduce or cultivate 10 ‘*backbone*’ enterprises with sales revenue of more than 2 billion yuan²⁶²⁴. In addition, the plan states that Shenzhen will prioritize the development of third-generation semiconductors and promote breakthroughs in key and core technologies²⁶²⁵.

19.3.3. OTHER RELEVANT POLICY FRAMEWORKS AND INITIATIVES

19.3.3.1. MADE IN CHINA 2025

²⁶¹⁸ *Ibid.*, Art. 2.

²⁶¹⁹ *Ibid.*

²⁶²⁰ *Ibid.*

²⁶²¹ *Ibid.*, Art. 5.2.

²⁶²² *Ibid.*, Art. 5.2.

²⁶²³ Shenzhen People’s Government. (2019). *Shenzhen Action Plan (2019-2023) for Further Promoting the Development of the Integrated Circuit Industry*, available at: http://www.sz.gov.cn/zfgb/2019/gb1100/content/post_5017853.html (accessed on 31 May 2023).

²⁶²⁴ *Ibid.*, Art. 2.

²⁶²⁵ *Ibid.*, Art. 3.3, 3.4.

ICs and IC equipment constitute a subcategory of the “*new generation information technology industry*” one of the 10 industries targeted for breakthroughs under Made in China 2025²⁶²⁶ (see Chapter 4.2.3).

According to the *Made in China 2025 Key Technology Roadmap*, a document issued to assist with the implementation of MIC 2025, the main purpose of developing the IC industry in China is to ensure that the country is able to achieve self-sufficiency and satisfy its national security needs²⁶²⁷. The *Key Technology Roadmap* establishes specific output value targets, and also set targets for satisfying certain levels of domestic demand—specifically 49% by 2020 and 75% by 2030²⁶²⁸. It further elaborates on the prioritisation of IC technologies and relevant materials and equipment and recommends employing national support policies to achieve the stated goals. This prioritisation is taken into account in the central and sub-central implementing policy measures (see Chapter 4).

19.3.3.2. NATIONAL MEDIUM- AND LONG-TERM SCIENCE AND TECHNOLOGY DEVELOPMENT PLAN (2006-2020)

In 2006, the State Council issued the S&T MLP²⁶²⁹, setting up a fifteen-year blueprint for technological innovation. The Outline establishes sixteen Major S&T Projects, which are broad-based initiatives that aim “*to achieve national goals and, through core technology breakthroughs and resource integration, to generate major strategic products, key common technologies and major projects . . . which are top priorities for China’s scientific and technological development*”²⁶³⁰. The State Council’s 13th Five Years National Science and Technology Innovation Plan, issued in 2016, extended the Major S&T Projects Program to 2030 and sought to accelerate the implementation of these projects²⁶³¹.

Among the sixteen Major S&T Projects established by the S&T MLP, two projects are directly related to the IC industry. One is the “*Core, High and Basic*” Project, which focuses on promoting technological innovation relating to “*core electronic devices, high-end general-purpose chips and basic software*”²⁶³². The second project is the “*Very Large Scale Integrated Circuit Manufacturing Equipment and Complete Set of Processes*” Project, which aims to (i) develop key IC manufacturing equipment and a complete set of advanced manufacturing

²⁶²⁶ State Council. (2015). *Made in China 2025*, Art. 3.6.1, available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 31 May 2023).

²⁶²⁷ National Manufacturing Strategy Advisory Committee. (2015). *Made in China 2025 Key Technology Roadmap*, Art. 1.1.1, p. 1, available at: <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 31 May 2023).

²⁶²⁸ *Ibid.*

²⁶²⁹ State Council. (2006). *Outline of the National Medium- and Long-Term Science and Technology Development Plan (2006–2020)*, available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 31 May 2023).

²⁶³⁰ State Council. (2006). *Outline of the National Medium- and Long-Term Science and Technology Development Plan (2006–2020)*, Chap. 4, available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 31 May 2023).

²⁶³¹ State Council. (2016). *13th Five-Year National Science and Technology Innovation Plan*, available at: http://www.gov.cn/zhengce/content/2016-08/08/content_5098072.htm (accessed on 31 May 2023).

²⁶³² State Council. (2006). *Outline of the National Medium- and Long-Term Science and Technology Development Plan (2006–2020)*, Chap. 4, available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 31 May 2023).

process with independent intellectual property rights; (ii) reduce dependencies on imports for China's high-end IC manufacturing; and (iii) develop equipment, materials, packaging and testing for 28–14 nanometre ICs and other large-scale ICs²⁶³³.

19.3.3.3. GUIDELINES TO PROMOTE NATIONAL INTEGRATED CIRCUIT INDUSTRY DEVELOPMENT (2014)

The *Guidelines to Promote National Integrated Circuit Industry Development* (the '2014 Guidelines') were enacted by the State Council in 2014 to accelerate the development of China's fledgling semiconductor industry; they were a central feature in China's efforts to catch up with leading economies in the sector²⁶³⁴. After the release of the 2014 Guidelines, the Government established the Big Fund (see Section 19.2.1.1)²⁶³⁵.

The 2014 Guidelines emphasise the strategic significance of the semiconductor industry to economic and social development in China and highlight policymakers' view that developing the industry was a national security priority²⁶³⁶. At the same time, the 2014 Guidelines reflect upon weaknesses identified in the domestic industry, including weak sustained innovation, insufficient market demand, an incomplete supply chain and low global competitiveness²⁶³⁷.

The 2014 Guidelines also set out goals for the development of the semiconductor industry in China. First, the Guidelines seek to establish a financing platform as well as a friendly policy environment by 2015²⁶³⁸. Second, the Guidelines seek to gradually close the gap in development between China's industry and the broader global market by 2020²⁶³⁹. Third, the Guidelines promote the adoption of advanced global standards in major areas of the semiconductor industrial chain, and the transformation of a number of domestic IC enterprises into first-tier global competitors by 2030²⁶⁴⁰.

The 2014 Guidelines also identify IC design, manufacturing, packaging and testing and key equipment and materials as development priorities²⁶⁴¹. The guidelines propose a series of approaches and measures to achieve these priorities, including:

²⁶³³ *Ibid.*; State Council Information Office. (2017). Press conference by Ministry of Science and Technology on very large scale integrated circuit manufacturing equipment and complete set of processes, available at: <http://www.scio.gov.cn/xwfbh/gbwxfbh/xwfbh/kjb/Document/1553307/1553307.htm> (accessed on 8 June 2023).

²⁶³⁴ State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*, available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 31 May 2023); see also Xinhua News. (2014, June 24). *State Council issued the Guidelines to Promote National Integrated Circuit Industry Development*, available at: http://www.gov.cn/xinwen/2014-06/24/content_2707281.htm (accessed on 31 May 2023).

²⁶³⁵ Xinhua News. (2014, October 14). *National Integrated Circuit Industry Investment Fund is formally founded*, available at: http://www.gov.cn/xinwen/2014-10/14/content_2764849.htm (accessed on 31 May 2023).

²⁶³⁶ State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*, p., available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 31 May 2023).

²⁶³⁷ *Ibid.*, §§ 1–2, pp. 1–2.

²⁶³⁸ *Ibid.*, § 2.3, p. 2.

²⁶³⁹ *Ibid.*

²⁶⁴⁰ *Ibid.*

²⁶⁴¹ *Ibid.*, § 3, pp. 2–3.

- Central Leadership (e.g., setting up the ‘*Leading Group for National IC Industry Development*’)²⁶⁴²;
- National Funding (e.g., the establishment of the Big Fund to absorb capital from large enterprises and financial institutions and gather private capital to provide support for the development of the semiconductor industry)²⁶⁴³;
- Other Financial Support (e.g., policy-oriented financing and commercial financing tools)²⁶⁴⁴;
- Tax Support Policies (e.g., preferential income tax, value-added tax, business tax and other tax policies)²⁶⁴⁵;
- Promotion and Application of Key IC products (e.g., government procurement)²⁶⁴⁶;
- Industrial Integration (e.g., encouraging collaboration between enterprises and research institutes and vertical integration in the industry)²⁶⁴⁷;
- Talent Cultivation and Recruitment²⁶⁴⁸; and
- Optimising the Environment for Foreign Investment²⁶⁴⁹.

To date, although there has been no government assessment of progress towards the objectives set out in the 2014 Guidelines, some public assessments have suggested that certain targets set forth in the 2014 Guidelines were reached in 2021 and 2022²⁶⁵⁰.

²⁶⁴² Pursuant to the 2014 Guidelines, the Leading Group for National IC Industry Development is responsible for performing overall planning and coordination, strengthening top-level design, integrating and mobilizing resources and solving major problems, in respect of the promotion of IC industry development. Public information about this Leading Group is quite limited. Based on online news reports and articles, this Leading Group was established in 2014 and supported by an expert advisory committee, and remained in existence at least until 2019. It is not clear whether it still exists. The first director of this Leading Group was Ma Kai, the then-Vice Prime Minister of China, and its then-deputy director was Miao Wei, the then-head of MIIT. The members of the Leading Group through the end of 2017 at least included the NDRC, Ministry of Finance, and Ministry of Science and Technology. See State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*, § 4.1, available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 31 May 2023); CENA. (2015, February 9). *Review and prospect on innovative development of safe and reliable software and hardware of China in 2014*, available at: <http://www.cena.com.cn/industrynews/20150209/62373.html> (accessed on 31 May 2023); National IC Design Shenzhen Industrial Center. (2019). *Notice on 2019 China (Shenzhen) integrated circuit summit*, available at: <https://www.szicc.net/html/201906/14238072.html> (accessed on 31 May 2023); SINA.cn. (2017, December 28). *Expert meeting of National IC Industry Development Consultation Committee was held in Beijing*, available at: <https://news.sina.cn/2017-12-28/detail-ifyqcsft7704716.d.html> (accessed on 31 May 2023).

²⁶⁴³ State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*, § 4.2, available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 31 May 2023).

²⁶⁴⁴ *Ibid.*, § 4.3, p. 3.

²⁶⁴⁵ *Ibid.*, § 4.4, p. 3.

²⁶⁴⁶ *Ibid.*, § 4.5, p. 3.

²⁶⁴⁷ *Ibid.*, § 4.6, pp. 3–4.

²⁶⁴⁸ *Ibid.*, § 4.7, p. 4.

²⁶⁴⁹ *Ibid.*, § 4.8, p. 4.

²⁶⁵⁰ For example, the 2014 Guidelines set numerical targets establishing that, by 2015, the sales revenue of the IC industry should exceed RMB 350 billion (~EUR 42.8 billion), and that by 2020, the average annual growth rate of sales revenue would exceed 20%. According to an industry report, by the end of March 2021 both goals had been achieved. See Quianzhan Industry Research Institute. (2021, April 12). *Collect! Prospects for the development of China’s integrated circuit industry during the ‘14th Five-Year Plan’- Focus on technology, research and development, and wide bandgap semiconductors*, available at:

19.3.3.4. POLICIES FOR ENCOURAGING THE DEVELOPMENT OF THE SOFTWARE INDUSTRY AND THE IC INDUSTRY (2000, 2011 AND 2020)

The State Council also issued a number of Circulars of the State Council on Several Policies for Encouraging the Development of the Software Industry and the Integrated Circuit Industry. These included circulars issued in 2000 ('2000 Circular')²⁶⁵¹, 2011 ('2011 Circular')²⁶⁵² and 2020 ('2020 Circular')²⁶⁵³. Each circular laid out several support measures designed to encourage the development of the semiconductor industry, including preferential financing and tax policies; investment and lending policies; R&D policies; import and export policies; and intellectual property, antitrust and talent policies²⁶⁵⁴.

The support measures, such as preferential taxation, investment supports, loan supports and talent incentives set out in these circulars have evolved over time, adapting to technological development and policymakers' shifting goals, but their importance in China's policy toolkit continue unabated.

19.3.3.5. CATALOGUE OF INDUSTRIES ENCOURAGING FOREIGN INVESTMENT

Several aspects of the semiconductor industry are treated as 'encouraged' under the *Catalogue of Industries Encouraging Foreign Investment*. They include:

- IC design;
- Manufacturing of large-scale digital ICs with line widths of 28 nm and below;
- Manufacturing of analogue and digital-analogue ICs of 0.11 micron and below;
- Manufacturing of MEMS and compound ICs;
- Advanced packaging and testing;
- Development and manufacturing of key equipment for Very Large Scale Integrated Circuit ('VLSI') manufacturing;
- Manufacturing of IC packaging and testing equipment;
- Manufacturing of compound semiconductor materials; and
- High-performance photoresist development and production²⁶⁵⁵.

²⁶⁵¹ <https://www.qianzhan.com/analyst/detail/220/210412-727ccb7a.html> (accessed on 2 June 2023). In addition, the 2014 Guidelines also set numerical targets establishing that the 32/28 nm and 16/14 nm manufacturing processes would achieve mass production by 2015 and 2020, respectively. Again, industry reports indicate that Shanghai announced in 2020 that the 14 nm advanced manufacturing process realized mass production. Global Semiconductor Watch. (2022, September 15). *The scale of the integrated circuit industry has reached 250 billion, and Shanghai-14nm advanced manufacturing process has achieved mass production*, available at: <https://www.esmchina.com/marketnews/40716.html> (accessed on 2 June 2023).

²⁶⁵² State Council. (2000). Circular of the State Council on Several Policies for Encouraging the Development of the Software Industry and the Integrated Circuit Industry, available at: http://www.gov.cn/gongbao/content/2000/content_60310.htm (accessed on 2 June 2023).

²⁶⁵³ State Council. (2011). Circular of the State Council on Several Policies for Encouraging the Development of the Software Industry and the Integrated Circuit Industry, available at: http://www.gov.cn/zwgg/2011-02/09/content_1800432.htm (accessed on 2 June 2023).

²⁶⁵⁴ State Council. (2020). Circular of the State Council on Several Policies for Encouraging the Development of the Software Industry and the Integrated Circuit Industry in the New Era, available at: https://www.miit.gov.cn/xwdt/szyw/art/2020/art_b5059afaa450422a820648c635d653f6.html (accessed on 2 June 2023).

²⁶⁵⁵ *Ibid.*, Arts. 1–7.

NDRC. (2022). *Catalogue of Industries Encouraging Foreign Investment (2021 Version)*, Arts. 330, 333, 334, 368, 369, available at: <http://images.mofcom.gov.cn/wzs/202210/20221028105849222.pdf> (accessed on 2 June 2023).

In the past, industries where foreign investment was encouraged, restricted, or prohibited were listed in a single catalogue²⁶⁵⁶. It has since been divided into a catalogue of encouraged industries, referenced above, and a negative list for foreign investment²⁶⁵⁷. The negative list does not currently include areas directly related to the semiconductor industry²⁶⁵⁸.

19.3.3.6. INDUSTRY STRUCTURE ADJUSTMENT

As early as 2005, China set as one of its economic development goals optimizing and upgrading the country's industrial structure, with Decision No. 40 (see Section 4.2.9) listing also the IC sector as one key area for development²⁶⁵⁹. The State Council further authorized NDRC to develop a Guidance Catalogue for Industrial Structure Adjustment to guide investment and empower government agencies to manage investment projects and formulate and implement policies on finance, taxation, credit loans, land supply and import and export. NDRC was also authorized to revise the Guidance Catalogue for Industrial Structure Adjustment to account for developments over time²⁶⁶⁰. NDRC first issued the Guidance Catalogue for Industrial Structure Adjustment in 2005, and revised it in 2011, 2019 and 2024 (see Section 4.2.9). Each revision continues to list several segments of the IC supply chain as encouraged areas.

19.4. STATE SUPPORT MEASURES / INCENTIVES

The Government employs a variety of policy measures to promote China's IC industry. These measures take the form of support by investment funds (such as the Big Fund), as well as industry-specific tax relief, grants and discounted lending²⁶⁶¹. Recipients of state support include not only large Chinese industry leaders, but also smaller firms. Indeed, through the Specialised and Sophisticated Enterprises Program (also known as the 'little giants' program, see (Section 2.3.2), the Government provides select Chinese small- and medium- sized enterprises in strategic industries like semiconductors with special government support²⁶⁶².

²⁶⁵⁶ NDRC. (2015). *Guiding Catalogue for Industries of Foreign Investment (2015 Version)*, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/201503/W020190905494968937613.pdf> (accessed on 2 June 2023).

²⁶⁵⁷ NDRC. (2021). *Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Version)*, available at: http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm (accessed on 2 June 2023).

²⁶⁵⁸ *Ibid.*

²⁶⁵⁹ State Council. (2005). *Decision of the State Council on Issuing and Implementing the Interim Regulations on Promoting Industry Structure Adjustment*, Arts. 6, 7, 12, available at: http://www.gov.cn/zhengce/content/2008-03/28/content_2020.htm (accessed on 2 June 2023).

²⁶⁶⁰ *Ibid.*

²⁶⁶¹ State Council. (2020). *Several Policies for Promoting High Quality Development of IC Industry and Software Industry in the New Era*, Arts. 1, 2.11, available at: http://www.gov.cn/zhengce/content/2020-08/04/content_5532370.htm (accessed on 2 June 2023); Shanghai People's Government. (2021). *Several Policies for Promoting High Quality Development of Shanghai's IC Industry and Software Industry in the New Era*, Arts. 13, 16, 18, 20, available at: <https://www.shanghai.gov.cn/202204zfwj/20220221/c3a8b23b2e464aaba758c5c9f0b8b80f.html> (accessed on 2 June 2023); Xinhua News. (2014, October 14). *Establishment of National IC Industry Investment Fund*, available at: http://www.gov.cn/xinwen/2014-10/14/content_2764849.htm (accessed on 2 June 2023).

²⁶⁶² MIIT. (2021). Notice of General Office of MIIT on Work Concerning Fostering of Third Batch of Specialised and Sophisticated 'Little Giant' Enterprises, available at: http://www.gov.cn/zhengce/zhengceku/2021-04/22/content_5601309.htm (accessed on 2 June 2023).

Such support measures include financial support, reduced taxation, credit and direct financing²⁶⁶³.

According to SIA, China's policy measures "have the potential to (1) artificially inflate market demand for China's indigenous semiconductor products; (2) gradually restrict or block market access for foreign semiconductor products as competing domestic products emerge; (3) force the transfer of technology and (4) grow non-market based domestic capacity, thereby disrupting the fabric of the global semiconductor value chain"²⁶⁶⁴.

19.4.1. GOVERNMENT GUIDANCE FUNDS

China operates three types of government-backed investment funds (see also Section 6.5) of relevance to the semiconductor industry: (i) government venture capital funds, (ii) government investment funds and (iii) government-funded industry investment funds. Each of these is described in greater detail below.

Government venture capital funds refer to venture capital funds jointly initiated and established by the central and sub-national governments, and in some cases, private capital, where the Government contributes capital from special funds such as industrial technology research and development funds²⁶⁶⁵. This type of fund can also refer to a situation in which the government participates in an existing venture capital fund by making contributions to and increasing the capital of that fund²⁶⁶⁶. These funds typically target supporting start-ups as well as smaller enterprises²⁶⁶⁷.

Government investment funds and government-funded industrial investment funds are established by governments at all levels through budgetary arrangements, with separate capital contributions or joint funding with private capital (see Section 6.5). These funds use market-oriented methods to guide private capital to invest in key areas of the economy and support the development of targeted industries and fields²⁶⁶⁸.

²⁶⁶³ Economic Information Daily. (2021, June 22). *Funding portfolio to support specialised and sophisticated medium-and-small enterprises*, available at: http://www.jckb.cn/2021-06/22/c_1310020664.htm (accessed on 2 June 2023); Nemeth, J. (2022). *Who are the little giants? Chinese tech SME program in the spotlight again*. US-China Business Council, available at: https://www.uschina.org/sites/default/files/who_are_the_little_giants_chinese_tech_sme_program_in_the_spotlight_again.pdf (accessed on 2 June 2023).

²⁶⁶⁴ Goodrich, J. (Vice President, Global Policy, Semiconductor Industry Association) (2016, April 26). *China's 13th Five-Year Plan -- Opportunities & challenges for the US semiconductor industry*, p. 6, available at: https://www.uscc.gov/sites/default/files/Jimmy%20Goodrich_Written%20Testimony%20042716.pdf (accessed on 2 June 2023).

²⁶⁶⁵ MOF. (2011). *Provisional Measures for Administration of Venture Capital Funds Participating in VC Programs in Emerging Industries*, Art. 2, para. 2, available at: http://www.gov.cn/zwggk/2011-09/09/content_1944275.htm (accessed on 2 June 2023).

²⁶⁶⁶ *Ibid.*

²⁶⁶⁷ *Ibid.*, Art. 8.

²⁶⁶⁸ MOF. (2015). *Provisional Measures for Administration of Government Investment Funds*, Art. 2, available at: http://www.gov.cn/gongbao/content/2016/content_5051233.htm (accessed on 2 June 2023); NDRC. (2017). *Interim Measures for Administration of Government-Funded Industrial Investment Funds*, Art. 2, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202006/P020200616534029012811.pdf> (accessed on 2 June 2023).

Although government guidance funds are required to be directed by market forces and can be driven by market considerations, they are simultaneously expected to reflect and carry out efforts of the Government to achieve national industrial policy goals. As an example, regulations governing government funds provide that such funds should operate independently—generally without government involvement in daily management²⁶⁶⁹—in accordance with a market-oriented approach and should be responsible for their own profits and losses²⁶⁷⁰. Nonetheless, such regulations also note that the funds should be guided by the Government to ensure that the policy objectives of the investment fund are achieved²⁶⁷¹. Applicable regulations also require that the general direction of the investment fund be in line with industrial policies, investment policies and other national macro-management policies of the Government²⁶⁷².

In practice, government-backed funds act in coordination with the Government to achieve broader national policy goals. Government and SOE investment in the semiconductor sector sends a signal to private investors, including retail investors, about the priorities of the Government and future prospects and profits in the industry, which helps to direct private

²⁶⁶⁹ MOF. (2011). *Provisional Measures for Administration of Venture Capital Funds Participating in VC Programs in Emerging Industries*, Art. 3, para. 2, available at: http://www.gov.cn/zwgg/2011-09/09/content_1944275.htm (accessed on 2 June 2023); Ministry of Finance. (2015). *Guiding Opinions on the Investment of Fiscal Funds into Government Investment Funds to Support Industrial Development*, Arts. 1.2, 3, available at: <http://mof.hainan.gov.cn/attachment/cmsfile/sczt/cytz/201607/daofile/1277W020160713551976144639.pdf> (accessed on 2 June 2023).

²⁶⁷⁰ MOF. (2011). *Provisional Measures for Administration of Venture Capital Funds Participating in VC Programs in Emerging Industries*, Art. 3, para. 1, available at: http://www.gov.cn/zwgg/2011-09/09/content_1944275.htm (accessed on 2 June 2023); Ministry of Finance. (2015). *Guiding Opinions on the Investment of Fiscal Funds into Government Investment Funds to Support Industrial Development*, Arts. 1.2, 1.3, 3, available at: <http://mof.hainan.gov.cn/attachment/cmsfile/sczt/cytz/201607/daofile/1277W020160713551976144639.pdf> (accessed on 2 June 2023).

²⁶⁷¹ MOF and NDRC. (2011). Notice of Issuing the Emerging Industry Venture Capital Plan of the Interim Measures for the Management of Equity Participating Venture Capital Funds, available at: http://www.gov.cn/zwgg/2011-09/09/content_1944275.htm (accessed on 2 June 2023); Ministry of Finance. (2015). *Guiding Opinions on the Investment of Fiscal Funds into Government Investment Funds to Support Industrial Development*, available at: <http://mof.hainan.gov.cn/attachment/cmsfile/sczt/cytz/201607/daofile/1277W020160713551976144639.pdf> (accessed on 2 June 2023); NDRC. (2016). *Interim Measures for Administration of Government-Funded Industrial Investment Funds*, Art. 13, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202006/P020200616534029012811.pdf> (accessed on 2 June 2023).

²⁶⁷² MOF and NDRC. (2011). Notice of Issuing the Emerging Industry Venture Capital Plan of the Interim Measures for the Management of Equity Participating Venture Capital Funds, available at: http://www.gov.cn/zwgg/2011-09/09/content_1944275.htm (accessed on 2 June 2023); Ministry of Finance. (2015). *Guiding Opinions on the Investment of Fiscal Funds into Government Investment Funds to Support Industrial Development*, available at: <http://mof.hainan.gov.cn/attachment/cmsfile/sczt/cytz/201607/daofile/1277W020160713551976144639.pdf> (accessed on 2 June 2023); NDRC. (2016). *Interim Measures for Administration of Government-Funded Industrial Investment Funds*, Art. 13, available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202006/P020200616534029012811.pdf> (accessed on 2 June 2023).

investment into Chinese semiconductor enterprises accordingly, including in equities traded on Shanghai's STAR Market²⁶⁷³.

19.4.1.1. THE BIG FUND

As described above in Section 19.2.1.1, the Big Fund was established in October 2014 under the guidance of the National IC Industry Development Leading Small Group after the release of the 2014 Guidelines²⁶⁷⁴. Set up to support the IC industry, the Big Fund is overseen by the MIIT and the MOF²⁶⁷⁵.

The purpose of setting up the Big Fund, as stated in the 2014 Guidelines, is to “*attract large enterprises, financial institutions and social funds; focus on supporting the development of integrated circuits and other industries; and promote industrial transformation and upgrading*”²⁶⁷⁶. The 2014 Guidelines also state that the Fund should “*implement market-oriented operations; focus on supporting integrated circuit manufacturing; take into account design, packaging and testing and equipment and materials; promote enterprises to improve production capacity levels; implement mergers and acquisitions; standardise corporate governance; and form a benign self-development capability*”²⁶⁷⁷. As described by the National Manufacturing Strategy Advisory Committee in National Integrated Circuit Industry Investment Fund: Implement National Strategy by Market-Driven Approach, the operation of the Big Fund is supposed to be guided by market forces²⁶⁷⁸. However, as Xu Tao, chief analyst of the Electronics Group of state-owned CITIC Securities²⁶⁷⁹, noted, “[t]he Big Fund's purpose is to support domestic IC projects, and its essence lies in supporting the industry rather than focusing entirely on investment returns [...]. National strategic arrangements, investment time

²⁶⁷³ See, e.g., Reuters. (2022, December 13). *Exclusive: China readying \$143 billion package for its chip firms in face of US curbs*, available at: <https://www.reuters.com/technology/china-plans-over-143-bln-push-boost-domestic-chips-compete-with-us-sources-2022-12-13/> (accessed on 2 June 2023) (noting that, upon the announcement of a potential new USD 143 billion support package for the semiconductor sector, stocks of Chinese chipmakers jumped).

²⁶⁷⁴ VerWey, J. (2019). *Chinese semiconductor industrial policy: past and present*. United States International Trade Commission Journal of International Commerce and Economics, available at: https://www.usitc.gov/publications/332/journals/chinese_semiconductor_industrial_policy_past_and_present_jice_july_2019.pdf (accessed on 2 June 2023). (‘USITC Report 2019’).

²⁶⁷⁵ Xinhua News. (2014, October 14). *National Integrated Circuit Industry Investment Fund is formally founded*, available at: http://www.gov.cn/xinwen/2014-10/14/content_2764849.htm (accessed on 2 June 2023).

²⁶⁷⁶ State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*. § 4.2, p. 3, available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 2 June 2023).

²⁶⁷⁷ *Ibid.*

²⁶⁷⁸ National Manufacturing Strategy Advisory Committee. (2017). *National Integrated Circuit Industry Investment Fund: Implement National Strategy by Market-Driven Approach*, available at: <http://www.cm2025.org/uploadfile/2017/1219/20171219094926627.pdf> (accessed on 2 June 2023).

²⁶⁷⁹ The largest shareholder of CITIC Securities is CITIC Corp. Ltd. (中国中信有限公司), a wholly-owned subsidiary of CITIC Ltd. (中国中信股份有限公司), which was established under the instructions of the State Council and remains under its ultimate control. See: CITIC Ltd. (2021). *2020 annual report of CITIC Limited*, available at: <https://www1.hkexnews.hk/listedco/listconews/sehk/2021/0421/2021042100516.pdf> (accessed on 2 June 2023);

sequence, market response, etc. will generally be considered when determining the recovery period”²⁶⁸⁰.

Capital for the Big Fund has been raised from both public and private entities²⁶⁸¹. The original founders of the Big Fund include the MOF, CDB Capital Co. Ltd., China Tobacco Corp., Beijing E-town International Investment Development Ltd., China Mobile Group, Shanghai Guosheng (Group) Ltd., China Electronics Technology Group (‘CETC’), Beijing Unigroup Communications Technology Group and SINO-IC Capital Co., Ltd.²⁶⁸². These nine founders were later joined by another seven entities, including Wuhan Financial Holding, China Telecom, China Unicom, China Electronics, Datang Telecom, Summitview Capital and Cybernaut Investment Group²⁶⁸³.

The Big Fund is owned by the National Integrated Circuit Industry Investment Fund Co. Ltd.²⁶⁸⁴ and operates as a general corporation making equity investments in enterprises to support companies’ international competitiveness²⁶⁸⁵. The investment strategy of the Big Fund is to focus on investing money in large ‘backbone’ enterprises within each segment of the industrial chain (that is, design, fabrication and ATP)²⁶⁸⁶. As a practical matter, this generally translates into investments in the top companies in each segment²⁶⁸⁷.

The Big Fund is able to invest using various tools available in the primary and secondary markets, including private equity, fund investment and mezzanine investments (i.e., investments structured in a company’s capital structure between senior debt and common

²⁶⁸⁰ East Money. (2019, December 24). *National IC Fund invests in Shanghai Precision Measurement Semiconductor Technology, Inc.*, available at: <http://fund.eastmoney.com/a/201912241334415016.html> (accessed on 2 June 2023).

²⁶⁸¹ MOF. (2015). *Smooth Operation of National Integrated Circuit Industry Investment Fund*, available at: http://www.gov.cn/xinwen/2015-09/11/content_2929586.htm (accessed on 5 June 2023).

²⁶⁸² Sino IC Leasing Co., Ltd. (2021). *Prospectus of Sino IC Leasing Co., Ltd. on first series of super short-term commercial paper in 2021*, p. 43, available at: <http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/BOND/2021/2021-6/2021-06-11/15967345.PDF> (accessed on 5 June 2023).

²⁶⁸³ SINA Finance. (2019, March 13). *GF Securities: Analysis of phase I investment of the National Integrated Circuit Industry Investment Fund*, available at: <https://finance.sina.com.cn/stock/hyyj/2019-03-13/doc-ihxncvh2157328.shtml> (accessed on 5 June 2023).

²⁶⁸⁴ Shanghai Guosheng. (2021). *Prospectus of corporate bonds (2nd Instalment) of Shanghai Guosheng Group Co., Ltd. publicly issued to professional investors in 2021*, p. 75, available at: <http://www.sse.com.cn/disclosure/bond/announcement/company/c/2021-09-23/4297953739440126329250911.pdf> (accessed on 5 June 2023).

²⁶⁸⁵ China Electronics News Agency. (2014, December 30). *First overseas M&A transaction by the Big Fund*, available at: <http://www.cena.com.cn/industrynews/20141230/60643.html> (accessed on 5 June 2023); see also National Manufacturing Strategy Advisory Committee. (2017). *National Integrated Circuit Industry Investment Fund: Implement National Strategy by Market-Driven Approach*, available at: <http://www.cm2025.org/uploadfile/2017/1219/20171219094926627.pdf> (accessed on 5 June 2023).

²⁶⁸⁶ Semi Insights. (2021). *Review of investment results of phase I of the Big Fund*, available at: http://www.semiinsights.com/s/electronic_components/23/41742.shtml (accessed on 5 June 2023).

²⁶⁸⁷ According to Mr. Wang Zhanfu, former chairman of the Big Fund, the Big Fund’s investments in the top three companies in each segment of the industry account for more than 70% of the total investments made by it in each segment. See People’s Posts and Telecommunications News. (2017, December 21). *Big Fund Chairman Wang Zhanfu: Increase the competitiveness of the whole IC industry chain*, available at: <http://www.eepw.com.cn/article/201712/373324.htm> (accessed on 5 June 2023).

equity)²⁶⁸⁸. SINO-IC Capital Co., Ltd., is the sole fund manager of the Big Fund, and China Development Bank, China's primary policy bank, is the custodian bank²⁶⁸⁹. The Fund is also able to withdraw its investments through buy-backs, equity transfers and IPOs²⁶⁹⁰.

19.4.1.1.1. Scale of Investment

The Big Fund is large in scale. Out of the eleven Chinese government-backed funds the US Chamber of Commerce has identified as targeting MIC 2025 industries, the Big Fund is the second largest, behind the more general Special Constructive Fund²⁶⁹¹.

The Big Fund has so far undergone two phases of investment. Founded in 2014, Phase I of the Big Fund had registered capital of more than RMB 98 billion (~EUR 12,5 billion)²⁶⁹² and ultimately raised a total of RMB 138,72 billion (~EUR 19,6 billion), exceeding the target of RMB 120 billion (~EUR 17 billion)²⁶⁹³. Phase I invested in 23 companies publicly and 29 companies privately, with a total of about 70 effective investment projects²⁶⁹⁴. IC manufacturing (fabrication) was the major focus of Phase I²⁶⁹⁵. About 67% of total investment in Phase I went to semiconductor manufacturing firms, 17% went to chip design firms, 10% went to ATP firms, and 6% went to equipment and materials firms²⁶⁹⁶. The Big Fund also drove investment from non-government capital. Phase I of the Big Fund further raised approximately RMB 514,5 billion (~EUR 67,5 billion) of private capital (including equity financing; corporate bonds; and banks, trusts and other financial institution loans), achieving a follow-up investment ratio as high as 1:5²⁶⁹⁷.

²⁶⁸⁸ GF Securities. (2019). *Analysis of investments of phase I of the National Integrated Circuit Industry Fund*, p. 6, available at: http://pg.jrj.com.cn/acc/Res/CN_RES/INDUS/2019/3/8/b61dee56-0988-4daf-8a30-bdac1a229c35.pdf (accessed on 5 June 2023).

²⁶⁸⁹ Shanghai Guosheng. (2021). Prospectus of corporate bonds (2nd Instalment) of Shanghai Guosheng Group Co., Ltd. publicly issued to professional investors in 2021, pp. 74–75, available at: <http://www.sse.com.cn/disclosure/bond/announcement/company/c/2021-09-23/4297953739440126329250911.pdf> (accessed on 5 June 2023).

²⁶⁹⁰ *Ibid.*, pp. 76–77.

²⁶⁹¹ US Chamber of Commerce. (2017). *Made in China 2025*, pp. 63–64, available at: https://www.uschamber.com/assets/documents/final_made_in_china_2025_report_full.pdf (accessed on 5 June 2023).

²⁶⁹² Lihua, W. (2018, May 3). *Phase II of the Big Fund is raising funds*. Economic Information Daily, available at: http://www.jjckb.cn/2018-05/03/c_137152424.htm (accessed on 5 June 2023).

²⁶⁹³ Caijing Magazine. (2022, July 31). *Investigation into Ding Wenwu, General Manager of the Big Fund*, available at: <http://m.caijing.com.cn/article/268397?target=blank> (accessed on 5 June 2023).

²⁶⁹⁴ CSET Report 2021, p. 19.

²⁶⁹⁵ Shanghai Guosheng. (2021). Prospectus of corporate bonds (2nd Instalment) of Shanghai Guosheng Group Co., Ltd. publicly issued to professional investors in 2021, p. 75, available at: <http://www.sse.com.cn/disclosure/bond/announcement/company/c/2021-09-23/4297953739440126329250911.pdf> (accessed on 5 June 2023).

²⁶⁹⁶ GF Securities. (2019). *Analysis of investments of phase I of the National Integrated Circuit Industry Fund*, p. 1, available at: http://pg.jrj.com.cn/acc/Res/CN_RES/INDUS/2019/3/8/b61dee56-0988-4daf-8a30-bdac1a229c35.pdf (accessed on 5 June 2023).

²⁶⁹⁷ Leading Industry Research. (2021). The development and investment distribution of the Big Fund and the statistics of the first and second phases of foreign investment projects, available at: <http://www.leadingir.com/trend/view/5840.html> (accessed on 5 June 2023).

Phase II of the Big Fund was established in October 2019 with registered capital of RMB 204 billion (~EUR 26,8 billion)²⁶⁹⁸. Phase II, which is scheduled to conclude in 2024, has 27 shareholders, with the top five shareholders including the Ministry of Finance (11,02%), China Development Bank Capital (10,78%), Optics Valley Financial Holding Group (7,35%), Chongqing Strategic Emerging Industry Equity Investment Fund Partnership (7,35%) and China Tobacco (7,35%)²⁶⁹⁹. The new investment focus during Phase II leans toward IC design and key building blocks of the sector, such as advanced semiconductor manufacturing equipment and materials²⁷⁰⁰. As of 6 April 2022, Phase II had invested in at least thirty-nine projects, covering publicly listed companies, subsidiaries of listed companies and private companies²⁷⁰¹, including Hefei Peyton Storage²⁷⁰², Unisoc²⁷⁰³, SMIC²⁷⁰⁴, SMIC's Beijing subsidiary²⁷⁰⁵, SMIC's Southern subsidiary²⁷⁰⁶ and Hangzhou Changchuan Smart Manufacturing (whose businesses include semiconductor manufacturing equipment)²⁷⁰⁷. Phase II of the Big Fund is still underway as of writing of this Report, such that the full impact of this phase has yet to be determined. However, reporting from the second half of 2022 suggests that investment activity associated with Phase II has slowed as a result of audits of the Big Fund and companies in which it has invested²⁷⁰⁸.

²⁶⁹⁸ Shanghai Guosheng. (2021). Prospectus of corporate bonds (2nd Instalment) of Shanghai Guosheng Group Co., Ltd. publicly issued to professional investors in 2021, p. 49, available at: <http://www.sse.com.cn/disclosure/bond/announcement/company/c/2021-09-23/4297953739440126329250911.pdf> (accessed on 5 June 2023).

²⁶⁹⁹ *Ibid.*, pp. 86–87.

²⁷⁰⁰ Economic Information Daily. (2018, May 3). *Phase II of the Big Fund is raising funds and focuses on the IC industry chain*, available at: http://www.jjckb.cn/2018-05/03/c_137152424.htm (accessed on 5 June 2023).

²⁷⁰¹ Chip Thought. (2022, April 3). *Investment map of Big Fund phase II*. Semi Insights, available at: http://www.semiinsights.com/s/electronic_components/23/45216.shtml (accessed on 5 June 2023); see also Shanghai Stock Exchange. (2022). *Announcement of Beijing E-Town international investment and development Co., Ltd. on progress concerning loss of actual control over Beijing Jidian Holding Co., Ltd.*, available at: http://www.sse.com.cn/disclosure/bond/announcement/company/c/new/2022-04-06/188683_20220406_1_Mw2bRw4c.pdf (accessed on 5 June 2023).

²⁷⁰² Shenzhen Great Wall Development Technology Co., Ltd. (2021). *Announcement on increase of capital of Shenzhen Payton and Hefei Payton Storage*, p. 2, available at: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2021/2021-6/2021-06-04/7301966.PDF (accessed on June 2023).

²⁷⁰³ Jieman News. (2020, May 11). *UNISOC became the first project invested by phase II of the Big Fund*, available at: <https://www.jieman.com/article/4358936.html> (accessed on 5 June 2023).

²⁷⁰⁴ Shanghai Stock Exchange. (2020). *Announcement of SMIC concerning IPO and public listing on STAR market*, p. 28, available at: http://static.sse.com.cn/disclosure/listedinfo/bulletin/star/c/688981_20200706_2.pdf (accessed on 5 June 2023).

²⁷⁰⁵ Shanghai Stock Exchange. (2021). *2020 annual report of SMIC*, p. 33, available at: http://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2021-04-01/688981_20210401_4.pdf (accessed on 8 June 2023).

²⁷⁰⁶ *Ibid.*

²⁷⁰⁷ CNINFO. (2020, December 19). *Board resolution of the 21st board meeting of Changchuan technology*, available at: <http://www.cninfo.com.cn/new/disclosure/detail?orgId=9900031824&announcementId=1208941177&announcementTime=2020-12-19> (accessed on 5 June 2023).

²⁷⁰⁸ See Financial Times. (2022, September 28). *China's Big Fund corruption probe casts shadow over chip sector*, available at: <https://www.ft.com/content/8358e81b-f4e7-4bad-bc08-19a77035e1b4> (accessed on 22 December 2022).

19.4.1.1.2. Investment Cycle

For each investment phase, the Big Fund set up an investment period of five years and a recovery period of five years²⁷⁰⁹. In addition, the duration of the Fund may be extended for an additional five years, if necessary, subject to the approval of the General Meeting of Shareholders²⁷¹⁰. While some projects may have investment payback periods that are shorter than the maximum five-year period, heavy asset projects such as those in manufacturing, packaging and testing and equipment usually have a longer investment payback period²⁷¹¹.

In 2019, Phase I of the Big Fund entered the investment recovery period, during which the Fund began to withdraw from investment projects²⁷¹². In June 2021, the RMB 138.7 billion (~EUR 18,1 billion) investment cost of the Big Fund had recovered approximately RMB 15 billion (~EUR 1,97 billion)²⁷¹³, and as of 16 June 2021, the floating profit of the shares held by the Big Fund has reportedly exceeded RMB 64 billion (~EUR 8,40 billion)²⁷¹⁴.

19.4.1.2. SUBNATIONAL IC INVESTMENT GUIDANCE FUNDS

The 2014 Guidelines also supports “*the establishment of local integrated circuit industry investment funds [and] encourage[d] all kinds of private capital and equity investment funds to enter the field of integrated circuits*”²⁷¹⁵. In addition to the national Big Fund, sub-national governments have also established various local semiconductor funds, which are organised, managed and run in similar ways. Specifically:

Beijing announced the establishment of a local semiconductor fund – the Beijing Integrated Circuit Industry Development Fund – in December 2013, with a total registered capital of RMB 30 billion (~EUR 3,67 billion)²⁷¹⁶. This fund has invested in the acquisition of Silex, a Swedish MEMS foundry, and in Epitop Optoelectronic Co. Ltd., a Chinese company specialising in LED epitaxial wafers and chips²⁷¹⁷.

²⁷⁰⁹ Shanghai Guosheng. (2021). Prospectus of corporate bonds (2nd Instalment) of Shanghai Guosheng Group Co., Ltd. publicly issued to professional investors in 2021, p. 76, available at: <http://www.sse.com.cn/disclosure/bond/announcement/company/c/2021-09-23/4297953739440126329250911.pdf> (accessed on 5 June 2023).

²⁷¹⁰ This was explicitly mentioned as to Phase II of the Big Fund. *Ibid.*, p. 89.

²⁷¹¹ East Money. (2019, December 24). *National IC Fund invests in Shanghai precision measurement semiconductor technology, Inc*, available at: <http://fund.eastmoney.com/a/201912241334415016.html> (accessed on 5 June 2023).

²⁷¹² Economic Observer. (2022, August 4). *Anti-corruption in semiconductor, shock for the Big Fund*, available at: <http://m.eeo.com.cn/2022/0804/546830.shtml> (accessed on 5 June 2023).

²⁷¹³ Yicai. (2022, January 23). *Low loss and high return on semiconductor investment, how does the Big Fund consider the financial returns?*, available at: <https://www.yicai.com/news/101298712.html> (accessed on 5 June 2023).

²⁷¹⁴ Sina Finance. (2021, June 17). *High returns on the investments made by phase I of the Big Fund*, available at: <http://finance.sina.com.cn/money/fund/jjyj/2021-06-17/doc-ikqcfnc1620497.shtml> (accessed on 5 June 2023); see also Leading Industry Research. (2022). *The Big Fund is an Important Tool for the IC Industry Development, Phase II Focuses on Semiconductor Equipment, Materials and Other Upstream Sectors*, available at: <http://www.leadingir.com/hotspot/view/3390.html> (accessed on 5 June 2023).

²⁷¹⁵ State Council. (2014). *Guidelines to Promote National Integrated Circuit Industry Development*, § 4.2, p. 3, available at: <http://www.csemi.com/uploads/soft/190223/chanyeguihua/3.pdf> (accessed on 5 June 2023).

²⁷¹⁶ Chip Manufacturing. (2018, May 15). *Summary of IC Industry Investment Funds in China*, available at: <http://www.chipmanufacturing.org/h-nd-260.html> (accessed on 5 June 2023).

²⁷¹⁷ *Ibid.*

Shanghai established its semiconductor fund – the Shanghai Integrated Circuit Industry Investment Fund – in 2016, with a total registered capital of RMB 50 billion (~EUR 6,8 billion). Shanghai allocated RMB 10 billion of the total capital for equipment and materials, RMB 10 billion for IC design-related M&A deals and RMB 30 billion for IC manufacturing (~EUR 1,36 billion for equipment and materials, ~EUR 1,36 billion for IC design-related M&A deals and ~EUR 4,08 billion for IC manufacturing). In its second phase, it invested in an IC wafer foundry project with HLMC, a subsidiary of Huahong Group²⁷¹⁸.

Hubei announced the establishment of its semiconductor fund – Hubei Integrated Circuit Industry Investment Fund – in 2015 with a total registered capital of RMB 30 billion (~EUR 4,31 billion); it has invested in the second phase of the Wuhan Xinxin Project, which is run by Wuhan Xinxin Semiconductor Manufacturing Co., Ltd., a subsidiary of SMIC²⁷¹⁹.

Shenzhen established a semiconductor fund with a total registered capital of RMB 20 billion (~EUR 2,87 billion) in 2015, which has invested in Sanecips Technology Co. Ltd., a leading communication IC design company in China²⁷²⁰.

Nanjing established a local fund in 2016 with a total of RMB 60 billion (~EUR 8,16 billion)²⁷²¹.

Guangdong set up its local fund in 2016 with a total of around RMB 15 billion (~EUR 2,04 billion) invested²⁷²².

19.4.2. TAX RELIEF

The Government often provides tax incentives as a means to promote the domestic semiconductor industry²⁷²³. As another mechanism for reducing dependence on foreign chips and technologies and encouraging domestic production, China introduced a series of tax breaks and exemptions for the domestic semiconductor industry beginning in 2000²⁷²⁴. Generally, IC enterprises enjoy several common tax and tariff benefits, including:

- an exemption or reduction in the EIT rate for a certain period of time²⁷²⁵;

²⁷¹⁸ *Ibid.*

²⁷¹⁹ *Ibid.*, see also XMC. *About us*, available at: <https://www.xmcwh.com/en/site/company> (accessed on 5 June 2023).

²⁷²⁰ Chip Manufacturing. (2018, May 15). *Summary of IC Industry Investment Funds in China*, available at: <http://www.chipmanufacturing.org/h-nd-260.html> (accessed on 5 June 2023).

²⁷²¹ *Ibid.*

²⁷²² *Ibid.*

²⁷²³ State Council. (2000). *Several Policies on Encouraging the Development of Software Industry and IC Industry*, Recital, available at: http://www.gov.cn/gongbao/content/2000/content_60310.htm (accessed on 5 June 2023); State Council. (2020). *Several Policies for Promoting High Quality Development of IC Industry and Software Industry in the New Era*, Recital, available at: http://www.gov.cn/zhengce/content/2020-08/04/content_5532370.htm (accessed on 5 June 2023).

²⁷²⁴ State Council. (2000). *Several Policies on Encouraging the Development of Software Industry and IC Industry*, Recital, Art. 40, available at: http://www.gov.cn/gongbao/content/2000/content_60310.htm (accessed on 5 June 2023); Deloitte. (2020). *Fiscal and Tax Measures to Promote High Quality Development of IC and Software Industries*, p. 1, available at: <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/tax-newsflash/deloitte-cn-tax-taxnewsflash-bilingual-201231.pdf> (accessed on 5 June 2023).

²⁷²⁵ State Council. (2020). *Several Policies for Promoting High Quality Development of IC Industry and Software Industry in the New Era*, Art. 1, available at: http://www.gov.cn/zhengce/content/2020-08/04/content_5532370.htm (accessed on 5 June 2023).

- exemption from tariffs for imports of key equipment and materials²⁷²⁶;
- deduction of up to 100% of R&D expenses from taxable income when calculating EIT²⁷²⁷; and
- accelerated or shortened depreciation of fixed assets, which gives rise to additional tax benefits²⁷²⁸.

19.4.2.1. ENTERPRISE INCOME TAX

China provides qualifying IC enterprises with reductions in the rate of EIT²⁷²⁹. For certain periods of time after qualifying enterprises become profitable, such reductions and discounts may be as much as 12,5 or 15% points, or may even include a complete exemption from EIT²⁷³⁰. Thus, rather than pay the 25% EIT rate that normally applies to resident enterprises in China²⁷³¹, qualifying IC enterprises could benefit from reduced EIT rates of 0%, 10% or 12,5%²⁷³².

The State Council has issued several notices promoting the development of the IC and software industries using preferential tax mechanisms. In particular, three State Council notices – namely the 2000 Circular, 2011 Circular and 2020 Circular mentioned above in Section 19.3.3 – included provisions on preferential EIT treatment for IC enterprises. Following the issuance of each of these circulars, central government agencies issued implementing regulations to clarify issues related to EIT reduction, including eligibility criteria²⁷³³.

²⁷²⁶ *Ibid.*, Arts. 1.6, 1.7, 1.8.

²⁷²⁷ NDRC. (2022). Notice on Relevant Requirements for Preparation of List of IC Companies or Projects and Software Companies Eligible for Preferential Tax Treatment in 2022, Annex 1, available at: http://www.gov.cn/zhengce/zhengceku/2022-03/16/content_5679297.htm (accessed on 5 June 2023); Ministry of Finance. (2015). Notice on Improving Policies for Pre-Tax Deduction of R&D Expense, available at: <http://www.chinatax.gov.cn/n810341/n810755/c1878881/content.html> (accessed on 5 June 2023); Ministry of Finance. (2022). Announcement on Further Increasing the Pre-Tax Deduction Ratio Concerning R&D Expenses of Small and Medium Technology Companies, available at: http://sh.mof.gov.cn/tongzhitonggao/202206/t20220608_3816533.htm (accessed on 5 June 2023); Ministry of Finance. (2021). Announcement on Further Improving Policies for Pre-Tax Deduction of R&D Expenses, Art. 1, available at: http://www.gov.cn/zhengce/zhengceku/2021-04/07/content_5598193.htm (accessed on 5 June 2023).

²⁷²⁸ MOF and State Taxation Administration. (2012). *Notice on EIT Policies for Further Encouraging Development of Software Industry and IC Industry*, Art. 8, available at: <http://www.chinatax.gov.cn/n810341/n810765/n812151/n812421/c1083639/content.html> (accessed on 5 June 2023).

²⁷²⁹ Deloitte. (2020). Fiscal and Tax Measures to Promote High Quality Development of IC and Software Industries, p. 1, available at: <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/tax-newsflash/deloitte-cn-tax-taxnewsflash-bilingual-201231.pdf> (accessed on 5 June 2023).

²⁷³⁰ *Ibid.*, p. 1, 3.

²⁷³¹ *Ibid.*, p. 3.

²⁷³² MOF and State Taxation Administration. (2012). *Notice on EIT Policies for Further Encouraging Development of Software Industry and IC Industry*, Arts. 1, 4, available at: <http://www.chinatax.gov.cn/n810341/n810765/n812151/n812421/c1083639/content.html> (accessed on 5 June 2023).

²⁷³³ See, e.g., MOF. (2012). Circular Caishui [2012] No. 27 on Enterprise Income Tax Policies for Further Encouraging the Development of Software and Integrated Circuit Industries, available at: http://www.gov.cn/zwggk/2012-05/03/content_2128844.htm (accessed on 5 June 2023). See also Ministry of Finance. (2020). *Announcement on the Enterprise Income Tax Policies for Promoting the High Quality Development of the Integrated Circuit Industry and the Software Industry*, available at: http://www.gov.cn/zhengce/zhengceku/2020-12/17/content_5570401.htm (accessed on 5 June 2023).

IC enterprises and projects entitled to preferential EIT treatment under multiple preferential taxation programs may choose which they wish to apply²⁷³⁴. These EIT benefits are briefly described in the following sections.

19.4.2.1.1. Key IC Design Enterprises²⁷³⁵

- Beginning in the first profitable year of the eligible enterprise or project:
 - EIT will be exempted from the first year to the fifth year²⁷³⁶; and
 - EIT will be levied at a discounted rate of 10% after the fifth year²⁷³⁷.

In order to be eligible for this treatment, an enterprise must, among other things, be a Chinese entity focused on integrated circuit design, electronic design automation tool development or intellectual property core design; have at least twenty employees who meet certain qualifications; have an annual IC design sales income that accounts for no less than 70% of total income and spend no less than 6% of total annual sales income on R&D²⁷³⁸.

19.4.2.1.2. IC Manufacturing Enterprises or Projects (Established Before 31 December 2017, and Profitable Before 31 December 2019)²⁷³⁹

Beginning in the first profitable year, IC manufacturers or projects that manufacture ICs with a line width of up to 0.8 micrometres shall be exempt from EIT in the first and second years and be subject to EIT at half of the statutory rate of 25% in the third to fifth years²⁷⁴⁰.

In addition, IC manufacturers or projects that have a business duration/term of greater than 15 years, and that manufacture ICs with a line width of up to 0.25 micrometres, or with an investment amount of over RMB 8 billion (~EUR 1,02 billion), shall be exempt from EIT in

²⁷³⁴ MOF. (2020). Announcement on the Enterprise Income Tax Policies for Promoting the High Quality Development of the Integrated Circuit Industry and the Software Industry, Art. 6, available at: http://www.gov.cn/zhengce/zhengceku/2020-12/17/content_5570401.htm (accessed on 5 June 2023).

²⁷³⁵ State Council. (2020). Notice of the State Council on Issuing the Several Policies to Promote the High Quality Development of the Integrated Circuits Industry and Software Industry in the New Era, Art. 1.3, available at: http://www.gov.cn/zhengce/content/2020-08/04/content_5532370.htm (accessed on 5 June 2023).

²⁷³⁶ *Ibid.*

²⁷³⁷ *Ibid.*

²⁷³⁸ NDRC. (2022). Notice on Relevant Requirements for Formulating the 2022 List of Integrated Circuit Enterprises or Projects and Software Enterprises Subject to Preferential Tax Policies, available at: http://www.gov.cn/zhengce/zhengceku/2022-03/16/content_5679297.htm (accessed on 5 June 2023); NDRC. (2022). *Annex 1: Criteria of Enterprise and Standards of Projects for Being subject to the Preferential Tax Policies*, Art. 2, available at <http://www.gov.cn/zhengce/zhengceku/2022-03/16/5679297/files/db820797b1424334862630b188069aae.PDF> (accessed on 5 June 2023).

²⁷³⁹ State Taxation Administration. (2022). *Summary of Guidelines for Preferential Taxation Policies for Software Enterprises and IC Enterprises*, pp. 20, 22–23, available at <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5175486/5175486/files/%E8%BD%A%E4%BB%B6%E4%BC%81%E4%B8%9A%E5%92%8C%E9%9B%86%E6%88%90%E7%94%B5%E8%B7%AF%E4%BC%81%E4%B8%9A%E7%A8%8E%E8%B4%B9%E4%BC%98%E6%83%A0%E6%94%BF%E7%AD%96%E6%8C%87%E5%BC%95%E6%B1%87%E7%BC%96.pdf> (accessed on 5 June 2023).

²⁷⁴⁰ MOF. (2018). *Notice on Issues Concerning EIT Policies for IC Manufacturing Enterprises*, Art. 6, available at: <http://www.chinatax.gov.cn/n810341/n810755/c3372721/content.html> (accessed on 5 June 2023).

the first to fifth years and shall be subject to EIT at half of the statutory rate of 25% in the sixth to tenth years²⁷⁴¹.

19.4.2.1.3. IC Manufacturing Enterprises or Projects (Newly Established and Invested in after 1 January 2018, Which Became Profitable Before 31 December 2019, and Whose Business Duration/Term Is More than 15 Years)²⁷⁴²

Beginning in the first profitable year, IC manufacturing enterprises or projects with an investment of more than RMB 15 billion (~EUR 1,92 billion) will be exempt from EIT from the first to fifth years and will be subject to EIT levied at half of the 25% statutory tax rate from the sixth to the tenth years²⁷⁴³.

19.4.2.1.4. IC Manufacturing Enterprises or Projects (since 1 January 2020)²⁷⁴⁴

- Beginning in the first profitable year:
 - IC enterprises or projects that manufacture ICs with line width 28 nanometres or less and that have been operating for more than 15 years will be exempt from EIT from the first to the tenth years²⁷⁴⁵;
 - IC enterprises or projects that manufacture ICs with line width between 65 and 28 nanometres and that have been operating for more than 15 years will be exempt from EIT from the first to the fifth years, and will be subject to EIT levied at half of the 25% statutory tax rate from the sixth to the tenth years²⁷⁴⁶; and
 - IC enterprises or projects that manufacture ICs with line width between 130 and 65 nanometres and that have been operating for more than 10 years will be exempt from EIT for the first to the second year and will be subject to EIT levied at half of the 25% statutory tax rate from the third to the fifth years²⁷⁴⁷.

²⁷⁴¹ Ibid., Art. 5.

²⁷⁴² State Taxation Administration. (2022). *Summary of Guidelines for Preferential Taxation Policies for Software Enterprises and IC Enterprises*. pp. 27–28, available at: <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5175486/5175486/files/%E8%BD%AF%E4%BB%B6%E4%BC%81%E4%B8%9A%E5%92%8C%E9%9B%86%E6%88%90%E7%94%B5%E8%B7%AF%E4%BC%81%E4%B8%9A%E7%A8%8E%E8%B4%B9%E4%BC%98%E6%83%A0%E6%94%BF%E7%AD%96%E6%8C%87%E5%BC%95%E6%B1%87%E7%BC%96.pdf> (accessed on 5 June 2023).

²⁷⁴³ MOF. (2018). *Notice on Issues Concerning EIT Policies for IC Manufacturing Enterprises*, Art. 2, available at: <http://www.chinatax.gov.cn/n810341/n810755/c3372721/content.html> (accessed on 5 June 2023).

²⁷⁴⁴ State Taxation Administration. (2022). *Summary of Guidelines for Preferential Taxation Policies for Software Enterprises and IC Enterprises*, p. 30, available at: <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5175486/5175486/files/%E8%BD%AF%E4%BB%B6%E4%BC%81%E4%B8%9A%E5%92%8C%E9%9B%86%E6%88%90%E7%94%B5%E8%B7%AF%E4%BC%81%E4%B8%9A%E7%A8%8E%E8%B4%B9%E4%BC%98%E6%83%A0%E6%94%BF%E7%AD%96%E6%8C%87%E5%BC%95%E6%B1%87%E7%BC%96.pdf> (accessed on 5 June 2023).

²⁷⁴⁵ MOF. (2020). *Announcement on EIT Policies for Promoting High Quality Development of IC Industry and Software Industry*, Art. 1, available at: http://www.gov.cn/zhengce/zhengceku/2020-12/17/content_5570401.htm (accessed on 5 June 2023).

²⁷⁴⁶ Ibid.

²⁷⁴⁷ Ibid.

19.4.2.1.5. IC Design, Equipment, Materials, Packaging and Testing Enterprises²⁷⁴⁸

Beginning in the first profitable year:

- EIT will be exempted for the first and second years²⁷⁴⁹; and
- EIT will be levied at half of the 25% statutory tax rate from the third to the fifth year²⁷⁵⁰.

19.4.2.1.6. Preferential EIT Rates for Qualifying High- and New-Tech Enterprises

IC companies that do not qualify for the IC industry-targeted preferential EIT rates described above may nevertheless benefit from preferential EIT tax policies that target companies in a broader range of high-tech industries through the HNTTE Program. China has been providing a preferential EIT rate of 15% to HNTTEs since 1991, but this preferential treatment was not uniformly provided by legislation until the promulgation of the *Law of the People's Republic of China on Enterprise Income Tax* in 2008²⁷⁵¹.

According to Article 2 of the *Administrative Measures on the Accreditation of High- and New-Tech Enterprises*, 'high-and new-tech enterprises' are resident enterprises that (i) engage in continuous R&D and application of technological achievements in the fields prescribed in the list of *High-and -New-Tech Fields with Key Support of the State* and (ii) develop core independent intellectual property rights and conduct their business operations on the basis of these intellectual property rights²⁷⁵². An attachment to the *Administrative Measures*, the *High-Tech Fields with Key Support of the State*, identifies eight fields supported by the state: electronic information, biology and new medicine, aerospace, new materials, high-tech services, new energy and energy saving, resources and environment and advanced manufacturing and automation. While the IC industry is not named as one of the eight fields or their subfields, IC-related technologies are listed as examples of specific technologies under several subfields. The examples under the 'microelectronics' sub-field are largely related to the IC industry²⁷⁵³.

19.4.2.2. TRADE-RELATED TAX

Domestic enterprises that import necessary key parts and components or raw materials for manufacturing key IC equipment supported by the Government are exempt from customs

²⁷⁴⁸ *Ibid.*, Art. 3.

²⁷⁴⁹ *Ibid.*

²⁷⁵⁰ *Ibid.*

²⁷⁵¹ State Council. (1991). *Provisions of the Tax Policy for the National High-and-New-Tech Industrial Development Zones*, Art. 4, available at: <http://www.elinklaw.com/zsglmobile/lawView.aspx?id=5032> (accessed on 13 June 2023); National People's Congress. (2008). *Law of the People's Republic of China on Enterprise Income Tax*, Art. 28, available at: http://www.gov.cn/flfg/2007-03/19/content_554243.htm (accessed on 6 June 2023).

²⁷⁵² Ministry of Science and Technology. (2016). *Administrative Measures on the Accreditation of High-and New-Tech Enterprises*, Art. 2, available at: http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 6 June 2023).

²⁷⁵³ Ministry of Science and Technology. (2016). *High-Tech Fields with Key Support of the State*, available at: <https://www.dlhitech.gov.cn/resources/news/newsConstantImages/20210126183848590.pdf> (accessed on 6 June 2023).

duties, tariffs and import value-added tax²⁷⁵⁴. To qualify, the IC enterprises must manufacture key equipment or products listed in the *Catalogue of Key Technological Equipment and Products Whose Development Are Supported by the State (2021)*²⁷⁵⁵.

For eligible IC enterprises, the Circular of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Import Tax Policies for Supporting the Development of Integrated Circuit Industry and Software Industry applies an import tax exemption to imported self-use raw materials, consumables, special building materials for clean rooms, supporting systems and spare parts for IC production equipment²⁷⁵⁶.

19.4.3. GRANTS AND SUBSIDIES

There are a number of programs that provide grants to enterprises or projects in the IC industry both at the national level and at the local level. At the national level, grant programs include two Major S&T Projects that relate to ICs. These include the “Core, High and Basic” Project and the “Very Large Scale Integrated Circuit Manufacturing Equipment and Complete Set of Processes” Project²⁷⁵⁷. Additional national grant programs include the Industrial Transformation and Upgrading Funds (Made in China 2025)²⁷⁵⁸ and the SEI Special Funds²⁷⁵⁹. Sub-national governments also offer grants through a variety of programs. Some examples of past and present programs include the:

- Jiangsu Provincial Special Fund for Industrial and Information Industry Transformation and Upgrading²⁷⁶⁰;

²⁷⁵⁴ MOF. (2019). *Notice on Adjusting the Catalogue of Import Tax Policies for Major Technical Equipment*, , available at: <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5140651/content.html> (accessed on 6 June 2023).

²⁷⁵⁵ MIIT. (2021). *Notice on Adjusting the Catalogue of Import Tax Policies for Major Technical Equipment*, available at: http://www.gov.cn/zhengce/zhengceku/2021-12/19/content_5661949.htm (accessed on 6 June 2023); MIIT (2021). *Catalogue of Key Technological Equipment and Products Whose Development Are Supported by the State (2021)*, available at; <http://www.gov.cn/zhengce/zhengceku/2021-12/19/5661949/files/22b8431835bb4885a921bf76e3a44bfd.pdf> (accessed on 6 June 2023).

²⁷⁵⁶ MOF. (2020). Circular of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Import Tax Policies for Supporting the Development of Integrated Circuit Industry and Software Industry, available at: http://www.gov.cn/zhengce/zhengceku/2021-03/29/content_5596564.htm (accessed on 6 June 2023). This circular replaced and invalidated the Circular of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Import Tax Policies for Supporting the Development of Integrated Circuit Industry and Software Industry, which in turn replaced and invalidated the Exemption of Tariffs and Import VAT for Imported Raw Materials and Consumables for Eligible Integrated Circuits Manufacturing Enterprises.

²⁷⁵⁷ State Council. (2006). *Outline of the National Medium- and Long-Term Science and Technology Development Plan (2006-2020)*, Chap. 4, available at: http://www.gov.cn/gongbao/content/2006/content_240244.htm (accessed on 6 June 2023).

²⁷⁵⁸ MOF. (2016). *Industrial Transformation and Upgrading Funds (Made in China 2025)*, available at: http://jjs.mof.gov.cn/zxzyzf/gyzxsjzj/201702/t20170214_2534902.htm (accessed on 6 June 2023).

²⁷⁵⁹ MOF. (2012). *Provisional Measures for Administration of Special Funds for Development of Strategic Emerging Industry*, available at: http://www.gov.cn/gongbao/content/2013/content_2376208.htm (accessed on 8 November 2022).

²⁷⁶⁰ Jiangsu Provincial Industry and Information Technology Department, Jiangsu Provincial Finance Department. (2020). Notice of Jiangsu Provincial Industry and Information Technology Department and Jiangsu Provincial Finance Department on Issuing the Administration Measures for the Special Fund of the Transformation and Upgrading of Jiangsu’s Industrial and Information Industry, available at: http://www.js.gov.cn/art/2020/12/22/art_64797_9611822.html (accessed on 6 June 2023).

- Jiangsu Provincial Special Fund for the Transformation of Science and Technology Achievements²⁷⁶¹;
- Shanghai Special Fund for Industry Transformation and Upgrading Development²⁷⁶²;
- Shanghai Special Fund for Promoting High Quality Industrial Development (Provisional)²⁷⁶³;
- Shanghai Special Supporting Fund for Software and IC Industry Development²⁷⁶⁴;
- Shanghai Special Supporting Fund for First Round Tape-out of IC Design Enterprise Engineering Products²⁷⁶⁵;
- Beijing Special Fund for the Development of High-tech, Precision and Advanced Industries²⁷⁶⁶;

²⁷⁶¹ Jiangsu Provincial Science and Technology Department, Jiangsu Provincial Finance Department. (2020). Notice of Jiangsu Provincial Science and Technology Department and Jiangsu Provincial Finance Department on Issuing the Administration Measures for the Special Fund for the Transformation of Scientific and Technological Achievement, available at: http://jsstyj.jiangsu.gov.cn/art/2020/6/5/art_78433_9198419.html; also Jiangsu Provincial Science and Technology Department, Jiangsu Provincial Finance Department. (2021) 2021 Project Guidelines for Provincial Special Fund for the Transformation of Scientific and Technological Achievements, available at: <http://www.jsai.org.cn/uploads/2021/02/%E9%99%84%E4%BB%B61%EF%BC%9A2021%E5%B9%B4%E7%9C%81%E7%A7%91%E6%8A%80%E6%88%90%E6%9E%9C%E8%BD%AC%E5%8C%96%E8%B5%84%E9%87%91%E9%A1%B9%E7%9B%AE%E6%8C%87%E5%8D%97.pdf> (accessed on 6 June 2023).

²⁷⁶² Shanghai Municipal Commission of Economy and Information Technology. (2015). *Measures for Administration of Special Funds for Industrial Transformation, Upgrading and Development in Shanghai*, available at: <https://app.sheitc.sh.gov.cn/sjwxgwj/666015.htm> (accessed on 6 June 2023). On 19 February 2020, Shanghai Municipal Commission of Economy and Information Technology and Shanghai Municipal Finance Bureau issued notice to extend the validity of this measure to 25 August 2020. Shanghai Municipal Commission of Economy and Information Technology, Shanghai Municipal Finance Bureau. (2020). *Notice of Shanghai Municipal Commission of Economy and Information Technology and Shanghai Municipal Finance Bureau on Extending the Validity of the Measures for Administration of Special Funds for Industrial Transformation, Upgrading and Development in Shanghai*, available at: <http://www.sheitc.sh.gov.cn/cyfz/20200220/0020-684999.html> (accessed on 6 June 2023). After that date, there is no further information about further extending the validity of this measure.

²⁷⁶³ Shanghai Municipal Commission of Economy and Information Technology. (2020). *Shanghai Municipal Measures for the Administration of Special Funds for Promoting High Quality Industrial Development*, available at: <https://app.sheitc.sh.gov.cn/sjwxgwj/687110.htm> (accessed on 6 June 2023). On 26 October 2022, Shanghai Municipal Commission of Economy and Information Technology and Shanghai Municipal Finance Bureau issued notice to extend the validity of this measure to 22 October 2024. Finance Bureau of the Shanghai Municipal Commission of Economy and Informatization. (2022, 26 October). *Notice Extending the Validity Period of the 'Shanghai Municipal Measures for the Administration of Special Funds for Promoting High Quality Industrial Development (Provisional)'*, available at: <https://app.sheitc.sh.gov.cn/sjwxgwj/693759.htm> (accessed on 6 June 2023).

²⁷⁶⁴ Shanghai Municipal Commission of Economy and Information Technology. (2017). *Detailed Implementation Rules for Special Support for Software and Integrated Circuit Industry Development*, available at: http://service.shanghai.gov.cn/XingZhengWenDangKuJyh/XZGFDetails.aspx?docid=REPORT_NDOC_002078 (accessed on 6 June 2023). According to Art. 24, this document expired on 31 December 2020.

²⁷⁶⁵ Shanghai Municipal Commission of Economy and Information Technology. (2017). *Shanghai Integrated Circuit Design Enterprise Engineering Products Special Support Measures for the First Round of Films*, available at: <https://www.sh-italent.com/Article/201905/201905310045.shtml> (accessed on 6 June 2023).

²⁷⁶⁶ Beijing Municipal Bureau of Economy and Information Technology. (2022). *2022 Guidelines for the Implementation of Beijing High-Tech Industrial Development Funds*, available at: http://www.ncsti.gov.cn/zcfg/zcwj/202201/t20220131_58034.html (accessed on 6 June 2023).

- Shenzhen Special Supporting Plan for IC²⁷⁶⁷; and
- Hangzhou Special Funds for IC Industry Development²⁷⁶⁸.

Companies benefit enormously from such programs. For example, SMIC received government subsidies totalling RMB 1,024 billion (~EUR 134 million) in 2017, RMB 1,107 billion (~EUR 142 million) in 2018 and RMB 2,039 billion (~EUR 264 million) in 2019²⁷⁶⁹. These subsidies accounted for about 82%, 148% and 114% of SMIC's net profit during the respective periods, which suggests that SMIC would have suffered losses in 2018 and 2019 without these subsidies²⁷⁷⁰. This is an example of how companies' bottom lines in this industry can be deeply dependent on government support.

In another example, it was announced in December 2018 that Guowei Technology successfully applied for funding for its "*Development and Application of EDA System in the Whole Process of Chip Design*" sub-project under the government Major S&T Projects program, and would be receiving RMB 200 million (~EUR 25,6 million) from the central Government and RMB 200 million (~EUR 25,6 million) from the Shenzhen Municipal government, totalling approximately RMB 400 million (~EUR 51,2 million)²⁷⁷¹. As of the date of the announcement, the company had received the first tranche of this funding, amounting to approximately RMB 75 million (~EUR 9,6 million)²⁷⁷².

19.4.4. BELOW MARKET LENDING AND PREFERENTIAL LOANS

The Government uses preferential financing tools, including below market rate bank loans and policy-based loan guarantees, to support IC companies²⁷⁷³. This support manifests in a variety of ways depending on local policy implementation.

Beijing provides subsidized loan interest to local enterprises for the construction of approved IC projects²⁷⁷⁴. Through this program, an approved project may receive, for no more than three

²⁷⁶⁷ Shenzhen Bureau of Industry and Information Technology. (2019). Operating Procedures for the Special Support Program for Integrated Circuits of Shenzhen Bureau of Industry and Information Technology, available at: http://gxj.sz.gov.cn/xxgk/xxgkml/zcfgjzcjd/gvgh/content/post_2019779.html (accessed on 6 June 2023).

²⁷⁶⁸ Hangzhou City Municipal People's Government. (2018). Notice of General Office of Hangzhou Municipal People's Government on Printing and Distributing the Special Policy for Further Encouraging the Accelerated Development of the Integrated Circuit Industry, available at: https://www.hangzhou.gov.cn/art/2018/8/8/art_1496071_4388.html (accessed on 6 June 2023).

²⁷⁶⁹ Caijing Magazine. (2020, July 16). *Will SMIC become another PetroChina?*, available at: <http://m.caijing.com.cn/api/show?contentid=4682500> (accessed on 6 June 2023).

²⁷⁷⁰ *Ibid.*

²⁷⁷¹ PR Newswire. (2018, December 27). *Guowei Technology successfully applied for the National Major S&T Special Funds*, available at: <https://www.prnasia.com/story/232923-1.shtml> (accessed on 6 June 2023).

²⁷⁷² *Ibid.*

²⁷⁷³ See, e.g., Wuhan People's Government. (2020). *Several Policies of Wuhan for Accelerating the High Quality Development of IC Industry*, Arts. 7–9, available at: http://fgw.wuhan.gov.cn/zfxgk/zfxgk_1/zc/202012/t20201201_1523420.html (accessed on 6 June 2023).

²⁷⁷⁴ Beijing Municipal Bureau of Economy and Information Technology. (2014). Notice of the Beijing Municipal People's Government on Issuing Several Policies for Further Promoting the Development of the Software Industry and Integrated Circuit Industry in Beijing, Art. 18, available at: http://www.beijing.gov.cn/zhengce/zfwj/zfwj/szfwj/201905/t20190523_72690.html (accessed on 6 June 2023).

years, discounted interest rate loans during the construction period of the project. Interest rates may be discounted by 1,5% and, in certain areas, up to 2%²⁷⁷⁵.

Until October 2022, the Jiangsu provincial government provided loan interest subsidies to newly-approved and completed IC manufacturing projects. The loan interest subsidies were provided to support fixed asset purchases made during the construction period of a project²⁷⁷⁶. The Jiangsu government also offered loan interest subsidies to support technology upgrades in the software and IC design industries. The amount of the subsidies is not specified²⁷⁷⁷.

In addition, some of the funds discussed earlier also provide support to the IC industry through subsidised loans, such as the central Industrial Transformation and Upgrading Funds (Made in China 2025)²⁷⁷⁸, Shanghai Special Fund for Industry Transformation and Upgrading Development²⁷⁷⁹, Shanghai Special Fund for Promoting High Quality Industrial

²⁷⁷⁵ See Beijing Municipal People's Government. (2001). Implementation Opinions on Implementing the Several Policies of State Council for Encouraging the Development of Software Industry and IC Industry, Art. 32, available at: https://www.beijing.gov.cn/zhengce/zfwj/zfwj/szfwj/201905/t20190523_72336.html (accessed on 13 June 2023).

²⁷⁷⁶ Jiangsu Provincial People's Government. (2001). Notice of Jiangsu Provincial Government on Printing and Distributing Several Policies of Jiangsu to Encourage the Development of Software Industry and Integrated Circuit Industry, Art. 34, available at: <http://www.js.gov.cn/xxgk/project/P0201606/P020160620/P020160620568385628245.pdf> (accessed on 6 June 2023). On 28 October 2022, Jiangsu Provincial People's Government issued the Decision on Abolishing and Amending Some Administrative Normative Documents, which invalidated this document. People's Government of Jiangsu Province. (2022). Decision of the People's Government of Jiangsu Province on Abolishing and Amending Some Administrative Regulatory Documents, available at: http://www.jiangsu.gov.cn/art/2022/11/7/art_46143_10655484.html (accessed on 6 June 2026).

²⁷⁷⁷ Standing Committee of Jiangsu Provincial People's Congress. (2007). *Jiangsu Software Industry Promotion Regulations*, Arts. 41, 47, available at: <https://flk.npc.gov.cn/detail2.html?NDAyOGFiY2M2MTI3Nzc5MzAxNjEyN2M1ZmM2YjA2Y2E> (accessed on 6 June 2023).

²⁷⁷⁸ MOF. (2016). *Measures for Administration of Industrial Transformation and Upgrading (Made in China 2025) Fund*, available at: http://jjs.mof.gov.cn/zxzyzf/gyzxsxjzj/201702/t20170214_2534902.htm (accessed on 6 June 2023).

²⁷⁷⁹ Shanghai Municipal Commission of Economy and Information Technology. (2015). *Measures for Administration of Special Funds for Industrial Transformation, Upgrading and Development in Shanghai*, available at: <https://app.sheitc.sh.gov.cn/sjxwxgwj/666015.htm> (accessed 26 October 2022). On 19 February 2020, Shanghai Municipal Commission of Economy and Information Technology and Shanghai Municipal Finance Bureau issued notice to extend the validity of this measure to 25 August 2020. Shanghai Municipal Commission of Economy and Information Technology. (2020, August 25). *Notice Regarding the Extension of Measures for Administration of Special Funds for Industrial Transformation, Upgrading and Development in Shanghai*, available at: <http://www.sheitc.sh.gov.cn/cyfz/20200220/0020-684999.html> (accessed on 6 June 2023). After that date, there is no further information about further extending the validity of this measure.

Development²⁷⁸⁰ and Beijing Special Fund for the Development of High-tech, Precision and Advanced Industries²⁷⁸¹.

China's policy banks (see Chapter 6) – such as the CDB and Export-Import Bank of China ('EXIM') – also provide low interest rate loans to IC enterprises²⁷⁸². For example, in 2014, EXIM provided a loan of RMB 70 million (~EUR 8,57 million) at an interest rate of 2,65% to Bengbu 3E Semiconductor Co., Ltd. for chip manufacturing²⁷⁸³. Further, EXIM reportedly signed loan contracts with Wuxi Shennan²⁷⁸⁴ in 2014 and 2018 and provided the enterprise with a loan totalling RMB 720.47 million (~EUR 92,3 million), at an interest rate that was 5% below the benchmark rate²⁷⁸⁵. The EXIM Shenzhen Branch also reportedly signed a loan contract with Shennan Circuits Co., Ltd. ('*Shennan Circuits*') in 2018 and provided it with a loan of RMB 200 million (~EUR 25,6 million) at the benchmark interest rate²⁷⁸⁶. In 2015, CDB provided a low-interest loan of RMB 20 billion (~EUR 2,9 billion) to Sanan Optoelectronics²⁷⁸⁷, including at least RMB 140 million (~EUR 20 million) at an interest rate of 1,2%²⁷⁸⁸. In the same year, CDB provided several low-interest loans (1,2%) totalling RMB 1,67 billion (~EUR 240 million) to SMIC and its subsidiaries²⁷⁸⁹. In 2019, CDB provided JCET²⁷⁹⁰ with a line of credit

²⁷⁸⁰ Shanghai Municipal Commission of Economy and Information Technology. (2020). *Shanghai Municipal Measures for the Administration of Special Funds for Promoting High Quality Industrial Development*, available at: <http://www.jsjt.org.cn/Upload/ueditor/file/20221028/1666938485572083.pdf> (accessed on 6 June 2023). On 26 October 2022, Shanghai Municipal Commission of Economy and Information Technology and Shanghai Municipal Finance Bureau issued notice to extend the validity of this measure to 22 October 2024. Shanghai Municipal Commission of Economy and Information Technology. (2020, August 25). *Notice Regarding the Extension of Measures for Administration of Special Funds for Industrial Transformation, Upgrading and Development in Shanghai*, available at: <https://app.sheitic.sh.gov.cn/sjxwxgwj/693759.htm> (accessed on 6 June 2023).

²⁷⁸¹ Beijing Municipal Bureau of Economy and Information Technology. (2022). *2022 Guidelines for the Implementation of Beijing High-Tech Industrial Development Funds*, available at: http://www.ncsti.gov.cn/zcfg/zcwj/202201/t20220131_58034.html (accessed on 6 June 2023).

²⁷⁸² State Council. (2015). *Made in China 2025*, Art. 4.3, available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 6 June 2023).

²⁷⁸³ Securities Times (STCN). (2020). *Response of Elec-Tech International Co., Ltd. to Shenzhen Stock Exchange's inquiry about the 2019 annual report*, available at: http://epaper.stcn.com/paper/zqsb/html/2020-06/20/content_1482184.htm (accessed on 8 June 2023).

²⁷⁸⁴ Wuxi Shennan is a subsidiary of Shennan Circuits, an IC company headquartered in Shenzhen, China. See Shennan Circuits. *About Shennan Circuits*, available at: <https://www.scc.com.cn/scc/en/gysn/index.html> (accessed 26 October 2022); see also Shennan Circuits. (2020). *Announcement No. 2020-024: Announcement on provision of guarantees for subsidiaries*, available at: https://pdf.dfcfw.com/pdf/H2_AN202003191376703881_1.pdf (accessed on 6 June 2023).

²⁷⁸⁵ Kangda Law Firm. (2019). *Supplemental legal opinion of Kangda Law Firm on Shennan Circuits' public offering of convertible bonds*, pp. 4-3-47, 4-3-48. Cninfo, available at: <http://static.cninfo.com.cn/finalpage/2019-12-20/1207179755.PDF> (accessed on 6 June 2023).

²⁷⁸⁶ *Ibid.*, p. 4-3-48.

²⁷⁸⁷ Sanan Optoelectronics is a semiconductor company publicly listed on the Shanghai Stock Exchange. See Sanan. *About the group*, available at: <https://www.sanan-e.com/about.html> (accessed on 6 June 2023).

²⁷⁸⁸ CMS. (2015). *CMS's study report on Sanan Optoelectronics*, p. 1, available at: http://pdf.dfcfw.com/pdf/H3_AP201510150011054878_1.pdf (accessed on 6 June 2023).

²⁷⁸⁹ Shanghai Stock Exchange. (2016). *Prospectus of Semiconductor Manufacturing International Corporation*, p. 1-1-79, available at: <http://static.sse.com.cn/bond/bridge/information/c/201701/b62c89ed9b8347a184de867a13a51388.pdf> (accessed on 6 June 2023).

²⁷⁹⁰ JCET is a leading IC company in China, and its revenue in 2020 exceeded RMB 26 billion. See JCET. *About JCET*, available at: <https://www.jcetglobal.com/cn> (accessed on 6 June 2023); JCET. (2020). *2020*

amounting to RMB 16 billion (~EUR 2,1 billion) at a rate of 3%²⁷⁹¹. Finally, according to a supplemental legal opinion issued in 2019 by Kangda Law Firm, CDB signed a loan contract with Shennan Circuits in 2016 and provided it with a loan of RMB 230 million (~EUR 31,3 million) at a rate of 1,2% for its purchase of imported machinery equipment²⁷⁹², and CDB Jiangsu Branch signed a loan contract with Wuxi Shennan in 2019 and provided it with a loan of RMB 400 million (~EUR 51,7 million) at a rate to be adjusted according to a benchmark interest rate below the prevailing commercial rate²⁷⁹³.

19.4.5. GOVERNMENT-DIRECTED AND SUPPORTED OVERSEAS ACQUISITIONS

Policy directives issued by the Government have prompted a wave of foreign, often state-backed, acquisitions within the semiconductor industry²⁷⁹⁴. This has been seen by policymakers as a way for China to reduce the technology gap between China and countries with more mature semiconductor industries. A marked increase in Chinese acquisitions of foreign semiconductor firms occurred beginning in 2014²⁷⁹⁵. Before 2014, Chinese companies engaged in fewer than 10 M&A transactions involving US-based semiconductor firms²⁷⁹⁶. By 2016, the number of transactions increased to acquisitions involving 34 US companies. Likewise, the value associated with such acquisitions increased from USD 213,8 million (~EUR 161 million) before 2014 to an estimated USD 11 billion (~EUR 9,8 billion) by the end of 2017²⁷⁹⁷.

Although the ownership structures of Chinese semiconductor firms are relatively complex, the involvement of government guidance in these cross-border M&A efforts appears significant. The principal source of government facilitation of such acquisitions is direct capital from the State itself. Examples of this include the acquisition of several US-based semiconductor companies by Beijing E-Town, an SOE owned by the Beijing municipal government; Beijing NavTech's acquisition of a Swedish foundry, Silex Microsystems, made possible through financial backing from the Big Fund and its Beijing sister fund and JCET's acquisition of Singapore-based STATS ChipPAC, which was fully backed by the CDB and the Big Fund²⁷⁹⁸. In fact, according to the US Trade Representative, many of these Chinese firms pursuing

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- ²⁷⁹¹ annual report, available at: <https://www.jcetglobal.com/uploads/&e6&b1&9f&e8&8b&8f&e9&95&bf&e7&94&b5&e7&a7&91&e6&8a&80&e8&82&a1&e4&bb&bd&e6&9c&89&e9&99&90&e5&85&ac&e5&8f&b82020&e5&b9&b4&e5&b9&b4&e5&ba&a6&e6&8a&a5&e5&91&8a.pdf> (accessed on 6 June 2023).
- ²⁷⁹² Tianfeng Securities. (2019). *JCET*, p. 26, available at: https://pdf.dfcfw.com/pdf/H3_AP201905281332513167_1.pdf?1601214722000.pdf (accessed on 6 June 2023).
- ²⁷⁹³ Kangda Law Firm. (2019). *Supplemental legal opinion of Kangda Law Firm on Shennan Circuits' public offering of convertible bonds*. Cninfo, available at: <http://static.cninfo.com.cn/finalpage/2019-12-20/1207179755.PDF> (accessed on 6 June 2023).
- ²⁷⁹⁴ *Ibid.*
- ²⁷⁹⁵ USITC Report 2019, p. 13.
- ²⁷⁹⁶ *Ibid.*
- ²⁷⁹⁷ *Ibid.*, p. 15
- ²⁷⁹⁸ *Ibid.*
- ²⁷⁹⁸ *Ibid.*, p. 16; see also US Trade Representative. (2018). Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 6 June 2023).

acquisitions acknowledge adhering to state guidance in these transactions²⁷⁹⁹, suggesting that non-market forces remain strong within the Chinese semiconductor industry and impact the industry globally.

Moreover, the increase in Chinese M&A activity coincided with a renewed Government push to develop China's semiconductor industry and the creation of national investment funds targeting the industry, including the Big Fund, which is described in detail in Section 19.2.1.1 above. Indeed, the Big Fund was created as an explicit means “*to promote industry upgrades*” through the utilisation of ‘*mergers and regroupings*’ in order to ‘*encourage domestic [Chinese] integrated circuit companies to strengthen international cooperation, integrate international resources and open up international markets*’²⁸⁰⁰.

Chinese firms’ outbound investments extend far beyond US industry, with other advanced economies with established semiconductor industries reporting similar spikes in acquisitions led by Chinese investors. Below is an overview of relevant examples of Chinese acquisitions of foreign semiconductor companies.

²⁷⁹⁹ Beijing E-Town’s stated goal through international acquisitions is to “*effect technology transfer, and in doing so, achieve the government’s stated objective of reducing China’s reliance on IC imports*”. *Ibid.*, p. 116. Further, ‘Beijing E-Town seeks to integrate government leadership and market operations in building a system of funds . . .’. *Ibid.*, p. 115. In addition, Goldstone Investment Co., Ltd., an investment fund involved in Seagull International’s acquisition of US-based semiconductor firm OmniVision, stated in a regulatory filing that the outbound acquisition of OmniVision satisfies the company’s objective of advancing the development of China’s national IC industry. *Ibid.*, p. 119.

²⁸⁰⁰ State Council. (2014). *The National Outline of the Development of the Integrated Circuit Industry Officially Announced*, available at: http://www.gov.cn/xinwen/2014-06/24/content_2707281.htm (accessed on 6 June 2023); see The Ministry of Industry and Information Technology. (2014) . ‘*National Integrated Circuit Industrial Development Promotion Outline*’ officially announced, available at: https://www.gov.cn/xinwen/2014-06/24/content_2707522.htm (accessed on 13 June 2023).

Examples of Chinese Acquisitions of Foreign Companies

Beijing E-Town/iML

Exar Corp., a California-based firm, sold its subsidiary Integrated Memory Logic Ltd. ('iML'), a leading provider of analogue and mixed-signal IC's for flat-panel displays, to China-based Beijing E-Town Chipone Technology Co., Ltd. ('*Beijing E-Town*') in June 2016²⁸⁰¹. The sale was valued at USD 136 million (~EUR 122,9 million)²⁸⁰². Beijing E-Town was established as an SOE by the Beijing Municipal government in 2009. It is owned and controlled by the Beijing Economic-Technological Development Zone State Asset Management Office, a development and investment initiative created by the Beijing Municipal government²⁸⁰³.

Jianguang Asset Management/Freescale Semiconductor

In May 2015, Chinese government-owned Jianguang Asset Management Co. Ltd. acquired Freescale Semiconductor from Netherlands-based NXP Semiconductors for USD 1,8 billion (~EUR 1,6 billion)²⁸⁰⁴.

CDB/STATS ChipPAC

In August 2015, financed by the Big Fund and CDB, JCET acquired STATS ChipPAC, a Singapore-based packaging and testing company²⁸⁰⁵.

Uphill Investment Co./Integrated Silicon Solutions

In June 2015, California-based Integrated Silicon Solutions ('ISSI') was acquired by Uphill Investment Co. ('*Uphill*'), a Chinese investment group comprising state-backed funds including SummitView Capital, eTown MemTek, Hua Capital and Huaqing Jiye Investment Management Co. Ltd.²⁸⁰⁶. Boosted by a wave of state support and funding, Uphill was able to outbid a US-based company, Cypress Semiconductor Corp., with the winning bid price reaching USD 23 per share – much higher than the initial price proposed by ISSI of USD 18,19 per share²⁸⁰⁷.

NavTech/Silex Microsystems

In 2016, the Swedish foundry Silex Microsystems was acquired by the Chinese firm Beijing NavTech Integration Co. Ltd., an acquisition that was made possible through financial backing from the Big Fund and its Beijing sister fund²⁸⁰⁸. After the acquisition, NavTech announced that it had established a new plant that employed Silex's technology in one of Beijing's state-run industrial parks²⁸⁰⁹.

Seagull/Omnivision

In January 2016, OmniVision Technologies, Inc., a US-based primary developer in advanced digital imaging solutions²⁸¹⁰, was acquired by Seagull International Ltd. and Seagull Acquisition Corp. ('*Seagull*') for roughly USD 1.9 billion (~EUR 1,7 billion). Seagull is composed of several investment funds that are fully backed by the State and operate in pursuit of state objectives²⁸¹¹. These funds include Hua Capital, CITIC Capital Holdings Ltd. and Goldstone Investment Co., Ltd.²⁸¹².

Nexperia/Newport Wafer Fab

In July 2021, Nexperia, a subsidiary of the Chinese firm Wingtech, acquired Newport Wafer Fab ('NWF') for USD 87 million (~EUR 73,6 million)²⁸¹³. NWF is one of the United Kingdom's largest producers of silicon chips²⁸¹⁴. Wingtech is largely backed by a number of stakeholders with direct links to the Government, including Wuxi Guolian Industrial Investment Co. Ltd. and Kunming Industrial Development Equity Investment Fund Partnership²⁸¹⁵.

Midea/Kuka

- 2801 US Trade Representative. (2018). Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974, pp. 114–115, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 6 June 2023).
- 2802 *Ibid.*
- 2803 *Ibid.*
- 2804 Perlman, M. (2015, May 28). *NXP sheds unit to Chinese asset firm in \$1.8B deal*. Law 360, available at: <https://www.law360.com/articles/660887/nxp-sheds-unit-to-chinese-asset-firm-in-1-8b-deal> (accessed on 26 October 2022).
- 2805 i-Micro News. (2015, September 1). *JCET completes acquisition of STATS ChipPAC to ascend to a leading OSAT player globally*, available at: <https://www.i-micronews.com/better-technology-stronger-together/?cn-reloaded=1> (accessed 26 October 2022).
- 2806 US Trade Representative. (2018). Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974, p. 117, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 7 June 2023).
- 2807 *Ibid.*
- 2808 OECD Report 2019, p. 45.
- 2809 *Ibid.*
- 2810 Several of OmniVision's products include highly integrated, single-chip complementary metal-oxide semiconductor (CMOS) image sensors for consumer and commercial applications.
- 2811 The fund consortium is composed of Hua Capital Management Co., Ltd., CITIC Capital Holdings Limited and GoldStone Investment Co., Ltd.; see at <https://www.sec.gov/Archives/edgar/data/1106851/000104746915005341/a2225031zdefm14a.htm>
- 2812 US Trade Representative. (2018). Findings of the investigation into China's acts, policies and practices related to technology transfer, intellectual property and innovation under Section 301 of the Trade Act of 1974, p. 119, available at: <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF> (accessed on 7 June 2023).
- 2813 See Sweney, M. (2021, July 5). *Chinese-owned firm acquires UK's largest semiconductor manufacturer*. The Guardian, available at: <https://www.theguardian.com/business/2021/jul/05/chinese-owned-firm-acquires-uks-largest-semiconductor-manufacturer> (accessed on 7 June 2023); see also Shead, S. (2021, July 7). *The Chinese firm behind the acquisition of the UK's largest chip plant is state backed, analysis shows*. CNBC, available at: <https://www.cnbc.com/2021/07/07/nexperia-owner-wingtech-is-backed-by-chinese-government-analysis-says.html> (accessed on 7 June 2023).
- 2814 See Sweney, M. (2021, July 5). *Chinese-owned firm acquires UK's largest semiconductor manufacturer*. The Guardian, available at: <https://www.theguardian.com/business/2021/jul/05/chinese-owned-firm-acquires-uks-largest-semiconductor-manufacturer> (accessed on 7 June 2023); see also Shead, S. (2021, July 7). *The Chinese firm behind the acquisition of the UK's largest chip plant is state backed, analysis shows*. CNBC, available at: <https://www.cnbc.com/2021/07/07/nexperia-owner-wingtech-is-backed-by-chinese-government-analysis-says.html> (accessed on 7 June 2023).
- 2815 *Ibid.*

In December 2016, following approval from the Committee on Foreign Investment in the US, China-based Midea Group Co. Ltd. acquired German robot-maker Kuka AG for USD 5 billion (~EUR 4,5 billion)²⁸¹⁶.

Cross-border acquisitions by Chinese investors have abated to some degree since the surge in 2015-2016²⁸¹⁷. There was a substantial reduction in the number of M&A deals reported between 2017 and 2018²⁸¹⁸. Reasons cited for this decline include the imposition by Chinese authorities of restrictions on capital outflows in response to downward pressure on the RMB and declining Chinese foreign currency reserves resulting from external pressures, such as additional US tariffs²⁸¹⁹.

In addition, an increase in scepticism among countries concerning any foreign investment in sectors deemed to be strategic or economically sensitive, such as the semiconductor sector, has also been cited by research institutes such as the Peterson Institute for International Economics as a potential explanation for the decline in acquisitions²⁸²⁰. In particular, cross-border acquisitions by Chinese firms have been subject to increased scrutiny in the foreign investment national security review mechanisms of the US and other economies in recent years due to concerns about the potential role of the State in such deals. While acquisitions are ostensibly undertaken in pursuit of commercial interests, Chinese authorities have indicated that they intend to continue to advance the Chinese semiconductor industry through overseas acquisitions of foreign technology and leveraging joint ventures with established global leaders in order to facilitate technology transfer²⁸²¹.

19.4.6. GOVERNMENT SUPPORT FOR IMPORTATION OF FOREIGN TECHNOLOGIES

The Government encourages the acquisition of foreign technologies and equipment through the elimination of tariffs and ‘*import interest subsidies*’, which are subsidies for a portion of the interest charged on loans associated with imports of eligible technologies and/or equipment²⁸²².

²⁸¹⁶ The 2016 deal has since raised concerns among German policymakers for fear that key technology is falling into the hands of the Chinese government. See USITC Report 2019, p. 16; see also Basu, P. (2017). *Midea completes acquisition of German robot maker Kuka*. S&P Global, available at: <https://www.spglobal.com/marketintelligence/en/news-insights/trending/gjozjwvrkhepx0jql2sshw2> (accessed on 26 October 2022).

²⁸¹⁷ See Hanemann, T., Gao, C., and Lysenko, A. (2019, January 13). *Net Negative: Chinese Investment in the US in 2018*. Rhodium Group, available at: <https://rhg.com/research/chinese-investment-in-the-us-2018-recap> (accessed on 7 June 2023).

²⁸¹⁸ *Ibid.*

²⁸¹⁹ Harada, I., Kitazume, K., & Manabe, K. (2019, August 18). *China allows weaker yuan but still fights downward pressures*. Nikkei Asia, available at: <https://asia.nikkei.com/Spotlight/Datawatch/China-allows-weaker-yuan-but-still-fights-downward-pressures> (accessed on 7 June 2023).

²⁸²⁰ Peterson Institute for International Economics. (2022, September 1). *US security scrutiny of foreign investment rises, but so does foreign investment*, available at: <https://www.piie.com/blogs/realtime-economic-issues-watch/us-security-scrutiny-foreign-investment-rises-so-does-foreign> (accessed on 7 June 2023) (noting that while investment in the United States has increased generally, Chinese investment in the United States “fell by nearly two-thirds . . . in 2020, as China limited outbound investment and CFIUS came to be perceived as a brick wall for Chinese investors”).

²⁸²¹ Ernst, D. (2015). From catching up to forging ahead: China’s policies for semiconductors. *East-West Center*, p. 24, available at: <http://dx.doi.org/10.2139/ssrn.2744974> (accessed on 7 June 2023).

²⁸²² NDRC. (2016). *Catalogue of Technologies and Products Encouraged for Import (2016 Edition)*, available at: <http://www.gov.cn/xinwen/2016-11/10/5131002/files/fc2f507838534b9fb0ee2a459fb47c12.pdf> (accessed on 7 June 2023).

For IC manufacturers, MOF stipulates that for “*imported equipment and its supporting technologies, accessories and spare parts [...] customs duties will [...] be exempted within the scope of the original regulations*”²⁸²³. In addition, as discussed in Section 19.4.6 above, the *Catalogue of Technologies and Products Encouraged for Import* actively promotes importation of technologies and products listed in it, by exempting such imports from customs duties, tariffs and import value-added tax. Further, if technologies purchased from abroad are listed in the *Catalogue of Technologies and Products Encouraged for Import*, software and IC enterprises that license or purchase such technologies from foreign enterprises can also apply for import interest subsidies²⁸²⁴.

Sub-national governments also follow the national policy and sometimes provide further support for certain imports. For example, the Shanghai government provides funding from its budget to IC design enterprises that purchase technology use rights or ownership from overseas enterprises for technologies included in the *Catalogue of Technologies and Products Encouraged for Import* stipulated by the State²⁸²⁵.

Guangdong provincial government policy also calls for “*mak[ing] good use of the national import interest subsidies*” and actively promoting the importation of technologies and products listed in the national catalogue²⁸²⁶. The policy provides for provincial special funds to support prioritized imports. Guangdong’s *Supplementary Catalogue of Technologies and Products Encouraged for Import* further specifies advanced technologies, key components, and other resources that are in short supply in the province, with a particular focus on energy-saving and environmentally-friendly products²⁸²⁷.

19.5. MARKET DISTORTIONS

19.5.1. MARKET DISTORTIONS IN A TRANSNATIONAL VALUE CHAIN

As described in Section 19.1.2, the semiconductor supply chain is globally interconnected and interdependent²⁸²⁸. Indeed, transnational divisions of labour have supported high levels of economic efficiency and innovation in the industry and have contributed to the success of the semiconductor value chain²⁸²⁹. As a result, distortions in one segment of the supply chain have the potential to cause cross-border distortions throughout other segments of the supply chain as

²⁸²³ MOF. (2021). Circular [2021] No. 4 on Import Tax Policies to Support the Development of the Integrated Circuit Industry and Software Industry, available at: http://www.gov.cn/zhengce/zhengceku/2021-03/29/content_5596564.htm (accessed on 7 June 2023).

²⁸²⁴ NDRC. (2016). *Catalogue of Technologies and Products Encouraged for Import (2016 Edition)*, available at: <http://www.gov.cn/xinwen/2016-11/10/5131002/files/fc2f507838534b9fb0ee2a459fb47c12.pdf> (accessed on 7 June 2023).

²⁸²⁵ Shanghai Government. (2017). *Several Policies on Further Encouraging the Development of Software Industry and Integrated Circuit Industry in Shanghai*, Art. 9, available at: https://www.shanghai.gov.cn/nw41430/20200823/0001-41430_52159.html (accessed on 7 June 2023).

²⁸²⁶ See General Office of the People’s Government of Guangdong Province. (2011). *Several Opinions on Promoting Imports, Arts., 4, 14*, available at: http://www.gd.gov.cn/gkmlpt/content/0/140/post_140146.html (accessed on 7 June 2023).

²⁸²⁷ *Ibid.*

²⁸²⁸ MERICS Report 2021, pp. 2, 7.

²⁸²⁹ *Ibid.*

well, and the effects of such distortions may in fact be magnified as they ripple throughout other segments of the supply chain. As described by the OECD²⁸³⁰:

[T]he provision of large amounts of support by one country may still cause significant trade distortions that are a serious concern for others. The semiconductor industry relies today on a complex web of supply chains that span multiple jurisdictions, firms, and universities, and for which the 'grease' remains the cross-border movement of parts, machines, talent and technology. This implies that any trade distortion will be magnified and transmitted across many companies and markets.

Consistent with this principle, the fact that Chinese state involvement continues at a level that “*may significantly distort China’s semiconductor sector*”²⁸³¹ has important implications for segments of the value chain that exist in other countries, including with respect to the allocation of capital and labour and the potential for future distortions.

19.5.2. DISTORTIONS IN RESOURCE ALLOCATION IN THE ECONOMY

The 14th National FYP identifies technological independence as an objective and specifically recognizes the semiconductor industry as a critical sector in which such self-reliance is key²⁸³². To achieve this objective, China has consistently employed state industrial policies that provide an artificial advantage to beneficiaries of those policies in a manner that distorts markets and blurs distinctions between private and state actors and interests.

19.5.2.1. DISTORTIONS IN CAPITAL ALLOCATION

Using equity investments, tax relief, grants and the other mechanisms described in Section 19.4 above, the Government has drastically increased the availability of public funding in the semiconductor sector. At the same time, China’s implementation of regulatory and industrial policies has also distorted the availability of capital in other sectors, including in ‘soft’ technologies such as consumer-oriented internet platforms and services.

The origins of these distortions are two-fold. First, China’s strong emphasis on building capacity and self-sufficiency in the semiconductor sector and provision of benefits to achieve that aim have encouraged private investors to divert capital investments away from alternative sectors, including the soft technology sector, where such benefits are less available²⁸³³. Coupled with these increased financial incentives, Chinese authorities have also actively discouraged investments in ‘*soft technology*’ through regulatory actions. Most notably, China launched a domestic regulatory crackdown against the soft technology sector in 2021 (see also Section 2.3.1), levying fines and imposing legislative restrictions that increased penalties for antitrust

²⁸³⁰ OECD Report 2019, p. 98.

²⁸³¹ MERICS Report 2021, p. 19.

²⁸³² State Council. (2021). Outline of the 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035 of the People’s Republic of China (March 2021), Recital of Part 2, available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 7 June 2023).

²⁸³³ Lee, Y. N. (2021, June 19). *China has gone ‘too far’ in clamping down on big tech—that will hurt economic growth, says analyst*. CNBC, available at: <https://www.cnbc.com/2021/06/30/chinas-crackdown-on-tech-firms-will-hurt-economic-growth-says-analyst.html> (accessed on 7 June 2023).

and data privacy violations and targeted some of the largest technology firms in China²⁸³⁴. In fact, the Government has cited investments in some consumer-oriented ‘*soft tech*’ internet sectors, such as gaming and video streaming, as examples of the ‘*disorderly expansion of capital*’ that should be curbed²⁸³⁵.

As China’s crackdown on Chinese soft technology firms became apparent, entrepreneurs and venture firms pivoted away from internet businesses²⁸³⁶. These investors sought out new opportunities, finding them in hard technologies such as semiconductors and robotics, where Chinese government policies were clearly more favourable.

Qiming Venture Partners is a prime example of the influx of capital into the semiconductor industry and others, with deep technology start-ups now accounting for an estimated 40% of the firm’s portfolio, up dramatically from 10% in 2014²⁸³⁷. Several media outlets reported in early 2022 that Chinese semiconductor start-ups, including chip makers, IC designers and others, received USD 8,8 billion (~EUR 8,1 billion) in funding in 2021, more than six times the amount invested in comparable companies in the US²⁸³⁸ and four times the amount allocated for comparable European companies in the EU’s newly proposed ‘*Chips Act*’²⁸³⁹. As further evidence of the shift in capital towards the semiconductor sector over the course of 2021, the US Patent and Trademark Office recorded a 30% rise in semiconductor-related filings by applicants based in China from 2020 to 2021²⁸⁴⁰.

Meanwhile, state investment in the semiconductor industry called for under the 2014 Guidelines is estimated to be valued at USD 150 billion (~EUR 138,3 billion) in the aggregate, and the

²⁸³⁴ Forbes. (2022, July 13). *Alibaba and Tencent fined in China tech crackdown*, available at: <https://www.forbes.com/sites/qai/2022/07/13/alibaba-and-tencent-fined-in-china-tech-crackdown/?sh=627fetc33dac> (accessed on 26 October 2022); Zhai, K. (2022, January 19). *China notifies firms of tougher investment rules for big tech*. Wall Street Journal, available at: <https://www.wsj.com/articles/china-notifies-firms-of-tougher-investment-rules-for-big-tech-11642581909> (accessed on 8 March 2022).

²⁸³⁵ Central Economic Work Conference. (2020). *The Central Economic Work Conference was held in Beijing Xi Jinping Li Keqiang delivered an important speech*, available at: http://www.gov.cn/xinwen/2020-12/18/content_5571002.htm (accessed on 7 June 2023). See also Goldman Sachs. (2021). *Is China investable?*, available at: <https://www.goldmansachs.com/insights/pages/gs-research/is-china-investable/report.pdf> (accessed on 7 June 2023).

²⁸³⁶ See CSIS, available at: <https://www.csis.org/blogs/new-perspectives-asia/beijings-tech-sector-crackdown-sends-clear-warning-companies-going> (accessed on 7 June 2023); Weiland, D. (2021, November 8). *Xi Jinping’s crackdown on Chinese tech firms will continue*. The Economist, available at: <https://www.economist.com/the-world-ahead/2021/11/08/xi-jinpings-crackdown-on-chinese-tech-firms-will-continue> (accessed on 7 June 2023).

²⁸³⁷ Bloomberg. (2022, January 10). *China venture funding hits record US \$131 billion despite crackdown, as start-ups pivot to hard tech*. South China Morning Post, available at: <https://www.scmp.com/tech/article/3162764/china-venture-funding-hits-record-us131-billion-despite-crackdown-start-ups> (accessed on 26 October 2022).

²⁸³⁸ *Ibid.*

²⁸³⁹ The EU introduced the ‘*Chips Act*’ on 8 February 2022. For more details, see European Commission. (2022, February 8). *Digital sovereignty: Commission proposes Chips Act to confront semiconductor shortages and strengthen Europe’s technological leadership* [Press release], available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_729 (accessed on 7 June 2023); see also Lomas, N. (2022, February 8). *Europe’s Chips Act to bake in up to €2BN in funding support for startups and scale-ups*. Tech Crunch, available at: <https://techcrunch.com/2022/02/08/eu-chips-act/> (accessed on 7 June 2023).

²⁸⁴⁰ MERICS Report 2021, p. 18.

industry is seen as a principal beneficiary of the State's allocation of USD 1,4 trillion (~EUR 1,3 trillion) in its 14th FYP to '*strategic industries*'²⁸⁴¹. The effect of the twin policies of making large state contributions and diverting private investment to the semiconductor sector has been to significantly impact the allocation of capital across technology industries, distorting the capital allocations that would otherwise exist in a free market.

19.5.2.2. DISTORTIONS IN THE LABOUR MARKET

Government policies designed to encourage development of the semiconductor sector have also resulted in distortions in China's labour market. In response to the 14th FYP's prong to attract foreign talent to work in the semiconductor industry, sub-national governments have established various incentive programs, including grant and tax relief programs, to encourage qualified personnel to accept positions in China.

Given the broader financial support offered by the central and sub-national governments, Chinese semiconductor firms are not only able to pay more for highly-qualified researchers and engineers, but are also able to hire substantially more than foreign competitors without comparable financial support. For example, in 2017, prominent Chinese state-backed firms SMIC and Tsinghua Unigroup were able to successfully recruit a former CEO from UMC, as well as leading researchers from TSMC, two of Taiwan's leading foundries²⁸⁴². Chinese state-backed financial support has attracted more than 1 300 senior engineers from Taiwan since 2014, lured by substantial pay raises and subsidised living arrangements²⁸⁴³. The combination of direct state financial support and government policies and investments encouraging the flow of private capital into the domestic semiconductor industry enables domestic firms to offer salaries for engineers, researchers and managers that are several times higher than those offered by competing foreign companies²⁸⁴⁴.

²⁸⁴¹ Ezell, S. (2021). *Moore's Law under attack: The impact of China's policies on global semiconductor innovation*. Information Technology and Innovation Foundation, available at: <https://itif.org/publications/2021/02/18/moores-law-under-attack-impact-chinas-policies-global-semiconductor/> (accessed on 7 June 2023); Wong, D. (2020). *How can foreign technology investors benefit from China's new infrastructure plan?* China Briefing from Dezan Shira and Associates, available at: <https://www.china-briefing.com/news/how-foreign-technology-investors-benefit-from-chinas-new-infrastructureplan/> (accessed on 8 November 2022).

²⁸⁴² See Lee, Y. (2022, March 4). *China lures chip talent from Taiwan with fat salaries and perks*. Reuters, available at: <https://www.reuters.com/article/us-china-semiconductors-taiwan-insight/china-lures-chip-talent-from-taiwan-with-fat-salaries-perks-idUSKCN1LK0H1> (accessed on 7 June 2023).

²⁸⁴³ The vice chairman and president of Novatek Microelectronics, a Taiwanese integrated chip designer, stated that it would be difficult to match offers from Chinese rivals, also noting that a percentage of Novatek's employees had left the firm for higher offers in China over the last two years. See Lee, Y. (2022, March 4). *China lures chip talent from Taiwan with fat salaries and perks*. Reuters, available at: <https://www.reuters.com/article/us-china-semiconductors-taiwan-insight/china-lures-chip-talent-from-taiwan-with-fat-salaries-perks-idUSKCN1LK0H1> (accessed on 7 June 2023); see also USITC Report 2019, p. 17.

²⁸⁴⁴ See Foreign Policy. (2021, February 16). *Semiconductors and the U.S.-China innovation race*, available at: <https://foreignpolicy.com/2021/02/16/semiconductors-us-china-taiwan-technology-innovation-competition/> (accessed on 7 June 2023) ("[China] remains dependent on foreign talent for technical know-how and has used its resources to aggressively attract employees from top firms. Chinese companies offer double or triple existing salaries of chip experts in Taiwan"); WTW. (2022). *Semiconductor industry will continue to lead the pay trend in 2022 across Asia Pacific*, available at: <https://www.wtco.com/en->

19.5.2.3. POTENTIAL FOR FUTURE EXCESS CAPACITY

Despite the recent global shortage of semiconductor products, China's industrial policies and increased financing for the development of the sector raise the potential risk of future overcapacity in the sector, especially in light of past experiences with China creating overcapacities through industrial policies (see Chapters 14 and 15). The rapid expansion of China's semiconductor industry resulting from China's industrial policies and the associated resource misallocation has the potential to lead to substantial over-investment, coupled with a reduction in financial viability and increased credit risk for firms operating in the sector²⁸⁴⁵. Furthermore, the implementation of industrial policies by sub-national governments has the potential to spark a competitive race between provinces and municipalities in China focused on boosting local growth, rather than industrial synergies on a national scale²⁸⁴⁶. This fragmented implementation of industrial policies has the potential to lead to duplicative investments²⁸⁴⁷.

Between January and October 2020, an estimated 58 000 semiconductor firms were created in China, with the majority of these firms being small-to medium-sized²⁸⁴⁸. This fast-paced growth in the number of firms has led to speculation that “[p]otential overcapacity will likely expose these small companies to high price volatility, low profit margin and operational inefficiencies”²⁸⁴⁹. In particular, smaller domestic semiconductor companies that receive less government support may face high credit risk from large debts and rising overcapacity in low-end logic chips²⁸⁵⁰. Further, in August 2021, Moody's Investor Service published a report projecting that the manufacturing (i.e., fabrication) segment of the industry is of particular concern due to the large amounts of capital spending needed to establish and operate fabrication plants²⁸⁵¹.

Moreover, the potential for future overcapacity in certain segments of the semiconductor supply chain is also of concern. Chinese polysilicon, a key element used in the fabrication process of certain types of ICs and the manufacture of solar cells²⁸⁵², has been the subject of several anti-

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- [HK/Insights/2022/07/semiconductor-industry-will-continue-to-lead-the-pay-trend-in-2022-across-asia-pacific#:~:text=China's%202021%20semiconductor%20salary%20increase,rate%20in%20the%20High%20Tech](https://www.hk-sar.gov.hk/Insights/2022/07/semiconductor-industry-will-continue-to-lead-the-pay-trend-in-2022-across-asia-pacific#:~:text=China's%202021%20semiconductor%20salary%20increase,rate%20in%20the%20High%20Tech) (accessed on 8 June 2023) (“In 2022 [in the Asia Pacific region], 77% of semiconductor companies increased the starting salary of fresh graduates. Among those, the starting salary of master's and doctoral graduates in China went up by 10%, which is higher than the salary increase rate of the overall market.”)
- 2845 Moody's Investor Service. (2021). *Semiconductor self-reliance will support tech growth but pose overcapacity risk*, available at: http://testtoo1.oss-cn-hangzhou.aliyuncs.com/pdf/20210802/20210802092915_32270.pdf (accessed on 7 June 2023) (“Moody's Report”).
- 2846 Ernst, D. (2015). From catching up to forging ahead: China's policies for semiconductors. *East-West Center*, pp. 49–50, available at: <http://dx.doi.org/10.2139/ssrn.2744974> (accessed on 7 June 2023).
- 2847 *Ibid.*, pp. 27, 50.
- 2848 Mozur, P. (2021, July 19). *The failure of China's microchip giant tests Beijing's tech ambitions*. New York Times, available at: <https://www.nytimes.com/2021/07/19/technology/china-microchips-tsinghua-unigroup.html> (accessed on 26 October 2022).
- 2849 Moody's Report, p. 7.
- 2850 *Ibid.*
- 2851 *Ibid.*
- 2852 Polysilicon is a high-purity form of silicon and is used as an input material in the solar and semiconductor industries. See Zhu, X., et al. (2021). *A high power-conversion-efficiency voltage boost converter with MPPT for wireless sensor nodes*. Multidisciplinary Digital Publishing Institute, available at:

subsidy investigations, led by the US and the EU²⁸⁵³. Although China is currently unable to produce high-purity semiconductor-grade polysilicon, the Government is currently advancing state-led investments and policies that seek to develop these capabilities in the near term²⁸⁵⁴.

A past example demonstrates the potential degree of the concern. A 2012 Commission investigation into Chinese subsidisation of silicon photovoltaic modules, including cells and wafers, found that Chinese production capacity represented 150% of global consumption, which amounted to roughly over 55 gigawatts²⁸⁵⁵. The Commission estimated Chinese excess production capacity to be 27 gigawatts, or 90% of global demand, and noted that this was almost twice the entire EU's demand of 15 gigawatts in that year²⁸⁵⁶.

19.5.3. GOVERNMENT INTERVENTIONS DISTORTING THE MARKET FOUND IN PAST TRADE DEFENCE INVESTIGATIONS

As noted in the preceding section, the Government is pursuing the capability to produce high-purity polysilicon for the manufacture of semiconductor wafers. The findings of various trade defence proceedings in multiple jurisdictions—described in further detail below—regarding polysilicon and other products for the solar energy industry may be relevant.

In *Crystalline Silicon Photovoltaic Modules and Key Components*²⁸⁵⁷, the Commission found that the Chinese banking system from which firms operating in the photovoltaic ('PV') industry obtained loans was under substantial state influence. Further, the Commission found that the Government maintains a policy to provide direct preferential lending to the PV industry, enabling Chinese banks to offer firms in the industry below-market interest rates²⁸⁵⁸. The Commission's investigation determined that many Chinese producers in the PV sector received substantial preferential treatment in the form of preferential policy loans, grant programs, direct tax exemptions, import tariff relief and provision of goods and services for LTAR. The Commission concluded that in total, Chinese state-owned banks control more than two-thirds of the Chinese banking market²⁸⁵⁹.

In the US, the Department of Commerce in the investigation on *Crystalline Silicon Photovoltaic Cells*²⁸⁶⁰ found subsidisation on the basis of the following alleged subsidy programs in China, including:

-
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8401396/> (accessed on 7 June 2023) (describing PV cell use in complementary metal-oxide-semiconductor ('CMOS') technology).
- ²⁸⁵³ See Section 19.5.3 below.
- ²⁸⁵⁴ MERICS Report 2021, p. 46.
- ²⁸⁵⁵ European Commission. (2013, June 4). *Memo: EU imposes provisional anti-dumping duties on Chinese solar panels* [Press Release], available at: http://europa.eu/rapid/press-release_MEMO-13-497_en.htm (accessed on 7 June 2023).
- ²⁸⁵⁶ *Ibid.*
- ²⁸⁵⁷ See Council Implementing Regulation (EU) No 1239/2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China; *OJ L* 325, 5.12.2013, p. 66–213.
- ²⁸⁵⁸ *Ibid.*, recital 170.
- ²⁸⁵⁹ *Ibid.*, recital 161, as well as Chapter 6.
- ²⁸⁶⁰ China did not participate in this investigation. See US Department of Commerce. (2012). *Crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China: Final affirmative countervailing duty determination and final affirmative critical circumstances determination*,

Preferential Lending:

1. Policy Loan
2. Preferential Export Financing from the Export-Import Bank of China
3. Preferential Loans to SOEs

Income Tax Programs:

1. ‘*Two Free, Three Half*’ Program for FIEs
2. Preferential Tax Program for HNTE
3. *Enterprise Income Tax Law*, R&D Program

Other Tax Programs:

1. Tariff Exemption for Imported Equipment
2. VAT Rebates on FIE Purchases of Chinese-made Equipment

Government Provision of Goods and Services for LTAR:

1. Provision of Land for LTAR
2. Provision of Polysilicon for LTAR
3. Provision of Electricity for LTAR

Grants:

1. Golden Sun Demonstration Program
2. Direct Government Grants from Provincial and Local Governments
3. Bonus for Employees from Government

In *Crystalline Silicon Photovoltaic Products*²⁸⁶¹, the US found that Chinese producers enjoyed benefits under many subsidy schemes, including:

Preferential Lending:

1. Policy Loans
 - i. *Renewable Energy Law*²⁸⁶²
 - ii. *Medium and Long-Term Development Plan for Renewable Energy*
 - iii. *The Interim Measures for the Administration of the Financial Subsidy Fund for Renewable and Energy-Saving Building Materials*
2. Preferential Export Financing from the Export-Import Bank of China

Income Tax Programs:

1. Tax Offsets for R&D under the *Enterprise Income Tax Law*²⁸⁶³

77 Fed. Reg. 63788, available at: <https://www.govinfo.gov/app/details/FR-2012-10-17/2012-25564> (accessed on 7 June 2023).

²⁸⁶¹ See US Department of Commerce. (2014). Countervailing duty investigation of certain crystalline silicon photovoltaic products from the People's Republic of China: Final affirmative countervailing duty determination, 79 Fed. Reg. 76962, available at: <https://www.federalregister.gov/documents/2014/12/23/2014-30071/countervailing-duty-investigation-of-certain-crystalline-silicon-photovoltaic-products-from-the> (accessed on 7 June 2023).

²⁸⁶² The law provides financial incentives, such as national funding, preferential loans and tax preferences for the development of renewable energy projects. See *ibid*.

²⁸⁶³ The law allows enterprises that are engaged in R&D in hi-tech sectors to deduct certain expenditures that are listed in ‘hi-tech sectors with primary support of the State and the guideline of the latest key priority developmental areas in the High Technology Industry’. See *ibid*.

2. Preferential Tax Program for HNTEs²⁸⁶⁴

Government Provision of Goods and Services for LTAR:

1. Provision of Land for LTAR
2. The Provision of Inputs for LTAR
 - i. Polysilicon for LTAR²⁸⁶⁵
 - ii. Aluminium extrusions for LTAR
 - iii. Electricity for LTAR
 - iv. Solar glass for LTAR

Grants: Golden Sun Demonstration Program

19.6. CHAPTER SUMMARY

The Government has issued numerous plans, directives and other documents pertaining to the semiconductor industry – at the national, regional and municipal levels. Taken together, these policies show the high degree of government intervention in the sector. Through these and other instruments, the Government exercises substantial direction and control over the development and functioning of the sector (Section 19.3). China's domestic market is served in large part by large SOEs or nominally private firms in which government-backed investments play a substantial financial role, together accounting for a dominant share of Chinese production capacity in the semiconductor industry (Section 19.1.2).

The most substantial tools employed by the Government to develop and manage the semiconductor industry are government-backed investment funds. Of these funds, the Big Fund is the largest in terms of scale. Through this Fund, as well as other smaller sister funds established at the provincial and municipal levels, the Government has expanded its ownership share in domestic semiconductor firms. Utilizing government-backed investment funds set up by state agencies, ostensibly as limited partnership financiers that provide fresh capital and heavily impact investment decision-making, the State has increased its ownership of semiconductor assets while providing substantial injections of capital²⁸⁶⁶. Through such public investments as well as government regulatory and industrial policies, the State has diverted capital from other sectors, in particular seeking to incentivise the movement of private investment and talent from soft technology sectors, such as consumer internet services, toward hard technology sectors, including semiconductors²⁸⁶⁷.

Beyond development plans and government-backed investment funds, the Government's intervention in the sector has taken shape, *inter alia*, through preferential lending programs, tax

²⁸⁶⁴ Several of the Chinese companies found to have benefited from this program saw their income tax rates reduced from 25% to 15% for tax returns filed within the period of investigation. *Ibid*.

²⁸⁶⁵ Polysilicon is an important component used in the manufacturing process of semiconductors.

²⁸⁶⁶ Luong, N., Arnold, Z., & Murphy, B. (2021). *Understanding Chinese government guidance funds: An analysis of Chinese-language sources*. CSET, p. 5, available at: <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf> (accessed on 7 June 2023).

²⁸⁶⁷ Goldman Sachs. (2021). *Is China investable?*, available at: <https://www.goldmansachs.com/insights/pages/gs-research/is-china-investable/report.pdf> (accessed on 7 June 2023).

relief programs and other direct financial support measures – in each case, implemented at both the national level and sub-national levels—designed to encourage firms to undertake projects in the IC industry²⁸⁶⁸. In addition, China also implements trade-related measures and VAT rebate policies designed to decrease imports of goods also produced in China, while facilitating imports of key technologies for which there is little domestic supply. Lastly, several trade defence investigations have established that the Government has consistently granted different types of state support measures to producers of materials that are also used in the semiconductor supply chain (Section 19.5.3).

²⁸⁶⁸ SIA Whitepaper 2021, p. 3.

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20.1. INTRODUCTION

The railway industry is multifaceted, involving a wide array of goods and services. The main functional segments of this industry include:

- component manufacturers that make rolling stock, signalling equipment and electrical components;
- construction businesses that build infrastructure such as tracks and stations;
- technical service providers, including engineers and designers²⁸⁶⁹;
- system integrators that assemble the component rail supplies into functioning rail systems²⁸⁷⁰;
- railway operators that drive trains, manage goods or passengers, and collect fares²⁸⁷¹; and
- infrastructure managers that own and maintain the tracks, energy systems and stations²⁸⁷².

²⁸⁶⁹ Ecorys. (2019). *Study on the competitiveness of the Rail Supply Industry*. European Commission, p. 17 ('EC Study 2019').

²⁸⁷⁰ European Commission. (2019). *Report of the expert group on competitiveness of the European rail supply industry* ('Commission 2019 Railway Report'), p. 17; available at: <https://ec.europa.eu/docsroom/documents/37829> (accessed on 14 June 2023).

²⁸⁷¹ *Ibid.*

²⁸⁷² *Ibid.*

The railway industry can also be segmented by the type of rail transit involved: passenger or freight²⁸⁷³. Passenger rail is further categorised into urban rail (including light and metro rail), conventional rail and high-speed rail²⁸⁷⁴.

This chapter provides an overview of Chinese policies pertinent to the railway industry as a whole, with a focus on component manufacturers, and in particular the following three developments: innovation in the high-speed rail segment, China's emergence as the world's leading manufacturer of rolling stock and continued competition in the signalling equipment industry.

The chapter consists of five sections. Following this introduction, Section 20.2 outlines the Chinese railway industry, detailing the various component manufacturing segments that are the focus of this chapter, China's position in the global market and the key SOEs in this industry. Section 20.3 provides a comprehensive overview of several Chinese national and sub-national policies, plans and strategies that bear on the industry. Section 20.4 explores how China actively steers and intervenes into the market for the railway industry, and Section 20.5. concludes the chapter with a summary.

20.2. CHINESE RAILWAY INDUSTRY

China has strategically cultivated SOEs across the railway industry's individual segments and helped these SOEs capitalise on the rapid growth of China's domestic market. In recent years, Chinese policy has looked beyond the domestic market and pushed the SOEs to become global players in the railway industry.

20.2.1. MAIN INDUSTRY SEGMENTS AND ASSOCIATED SOEs

China relies heavily on SOEs to execute its national strategies, and the railway industry is a prime example of the government's strategic division of SOEs across industry segments²⁸⁷⁵ (see also Section 5.4). This section first details the component manufacturers among the SOEs – CRRC Corporation Limited ('CRRC') and China Railway Signal & Communication Corporation ('CRSC'). It proceeds with an overview of China State Railway Group Co., Ltd. ('China Railway'), which not only serves as the principal railway operator in the country, but also plays an important role in the supervision of the railway industry as a whole. This section concludes with a note on China Railway Construction Corporation Limited ('CRCC') and China Railway Engineering Corporation ('CREC'), the SOEs primarily responsible for

²⁸⁷³ International Energy Agency. (2019). *The future of rail: Opportunities for energy and the environment*, pp. 20–21.

²⁸⁷⁴ International Energy Agency. (2019). *The future of rail: Opportunities for energy and the environment*, p. 21. The International Union of Railways defines high-speed rail as 'systems of rolling stock and infrastructure that regularly operate at or above 250 kph on new tracks or 200 kph on existing tracks.' Cory, N. (2021). *Heading off track: The impact of China's mercantilist policies on global high-speed rail innovation*. Information Technology & Innovation Foundation, p. 5 ('ITIF Heading off track 2021').

²⁸⁷⁵ Huang, D. (2018). Top-level design and fragmented decision-making: A case study of an SOE merger in China's high-speed rail industry. *Journal of Contemporary China*, 27(101), 152. <https://doi.org/10.1080/10670564.2017.1363027> (accessed on 22 May 2023).

infrastructure construction and maintenance – segments not within the focus of this chapter but nonetheless important to understanding the scale of the industry.

20.2.2. COMPONENT MANUFACTURING

CRRC is China's largest manufacturer of conventional and high-speed rail rolling stock and locomotives, while CRSC is the country's leading producer of signalling equipment.

20.2.2.1. CRRC – ROLLING STOCK & HIGH-SPEED RAIL

China created its national champion in rolling stock in 2015, when the Government ordered the country's two largest rolling stock producers, state-owned China Northern Rail Group ('CNR') and state-owned China Southern Rail Group ('CSR') to merge. The new entity, CRRC, immediately became a leading global producer of rolling stock, '*especially to the developing world, with superior economies of scale due to their protected domestic market and strong pricing power*'²⁸⁷⁶. The merger was justified in part to avoid competition between CNR and CSR in overseas markets, after CSR submitted a bid for a rail project in Argentina, a region that CNR considered to be part of its constituency²⁸⁷⁷. CSR was criticised '*for harming the national interest through its vicious competition with CNR*' and '*damag[ing] the overall interests of related enterprises in the overseas market for its own private interests*'²⁸⁷⁸.

CRRC primarily manufactures rolling stock, including for high-speed rail, urban and metro rail, and related components²⁸⁷⁹. In 2021, CRRC produced 86% of China's rolling stock and nearly 100% of its high-speed rail rolling stock due to '*the strong informal preference for local players*' of China Railway, the country's '*main rail operator and equipment purchaser*'²⁸⁸⁰.

China's conventional rail rolling stock and locomotive production peaked in 2015 at 1 979 units and trended downward through 2020²⁸⁸¹. The COVID-19 pandemic led to a pause in manufacturing in January and February of 2020, though production resumed in March²⁸⁸². That year, manufacturing volume fell to 1 060 units from 1 319 in 2019²⁸⁸³. 2021 saw manufacturing levels rebound to 1 105 units²⁸⁸⁴, and it was expected that with the end of COVID-19 pandemic, the production would go back to the initial figures²⁸⁸⁵.

²⁸⁷⁶ Commission 2019 Railway Report, p. 157.

²⁸⁷⁷ Huang, D. (2018). Top-level design and fragmented decision-making: A case study of an SOE merger in China's high-speed rail industry. *Journal of Contemporary China*, 27(101), 152, 154. <https://doi.org/10.1080/10670564.2017.1363027> (accessed on 22 May 2023).

²⁸⁷⁸ *Ibid.*

²⁸⁷⁹ MarketLine. (2022). *Company profile: CRRC Corporation Limited*, p. 16; CRRC. *Products services*. <https://www.crrcgc.cc/en/g5129.aspx> (accessed on 22 May 2023).

²⁸⁸⁰ Kratz, A., & Oertel, J. (2021). *Home advantage: How China's protected market threatens Europe's economic power*. European Council on Foreign Relations, p. 13.

²⁸⁸¹ Shi, J. (2021, October 8). *Analysis on the 2021 China railway locomotives market and research and development*. Prospective Economist. <https://www.qianzhan.com/analyst/detail/220/211008-88bf7868.html> (accessed on 22 May 2023).

²⁸⁸² *Ibid.*

²⁸⁸³ *Ibid.*

²⁸⁸⁴ China Industry Research Institute. (2022, January 24). *Statistics and analysis on the National Railway Locomotives manufacturing volume data in 2021*. AskCI.com. <https://www.askci.com/news/data/chanxiao/20220124/1004421733217.shtml> (accessed on 22 May 2023).

²⁸⁸⁵ Data for January through August 2022 shows 624 units manufactured, see *ibid.*

The production of high-speed locomotives began declining in 2016 due to reduced market demands stemming from overcapacity and the completion of planned railway construction²⁸⁸⁶. This trend continued as well as due to the impact of the COVID-19 pandemic²⁸⁸⁷.

CRRC's revenues have declined commensurately from approximately RMB 41 billion (~EUR 5,4 billion)²⁸⁸⁸ in 2021 to RMB 29 billion (~EUR 4,1 billion) in 2022²⁸⁸⁹.

CRRC Group Co., Ltd. is a 100% state-owned entity that owns 50.73% of CRRC's publicly listed shares²⁸⁹⁰.

As of February 2022, CRRC had established over 100 overseas subsidiaries or institutions and 18 overseas R&D centres²⁸⁹¹. Subsidiary CRRC Zhuzhou Electronic Locomotives Co. Ltd. ('CRRC ZELC') has established manufacturing subsidiaries in Turkey, Malaysia and South Africa²⁸⁹². CRRC has also won contracts to build subway cars for the US cities of Boston, Chicago, and Los Angeles²⁸⁹³. In Europe, CRRC has continued to expand its operations. For example, CRRC ZELC completed its acquisition of German company Vossloh AG's locomotives business in 2020 and delivered an order of electronic locomotives for Rail Cargo Hungaria in 2022²⁸⁹⁴.

²⁸⁸⁶ Liu, H. (2023, July 7). *The market supply and demand situation of China's railway conventional rolling stock and locomotives and high-speed locomotives manufacturing industry in 2023: the inventory tends to be stable, and the demand for railway conventional rolling stock and locomotives still maintains an upward trend compared with high-speed locomotives*. Prospective Economist. <https://ecoapp.qianzhan.com/details/230714-16bbc393.html> (accessed on 1 August 2023); Zhiyan Consultant. (2020). *Analysis of the current situation and trend of China's railway locomotives market in 2019: Chinese standards boost China's high-speed railway*. <https://www.chyxx.com/industry/202005/868052.html> (accessed on 1 August 2023).

²⁸⁸⁷ CRRC. (2021). *2020 annual report of CRRC*. <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900005127&stockCode=601766&announcementId=1209486803&announcementTime=2021-03-31> (accessed on 1 August 2023). Production declined from 3 474 units in 2016 to 1 021 in 2021, and only 345 units were produced from January 2022 through August 2022. Qianzhan Industry Research Institute. (2022). *2022 Foresee: Understanding the market size, competition structure, and development of China railway locomotives and high-speed locomotives manufacturing in 2022*. Forward Industry Research Institute. <https://bg.qianzhan.com/trends/detail/506/221009-c58e7b10.html> (accessed on 22 May 2023).

²⁸⁸⁸ Throughout the chapter, conversions to EUR are based on the average exchange rate during the timeframe referenced, using the exchange rate calculator publicly available on the European Central Bank's website. European Central Bank. (2023). *Euro foreign exchange reference rates*. https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html (accessed on 22 May 2023).

²⁸⁸⁹ CRRC. (2021). *2021 annual report of CRRC*. <https://www.crrcgc.cc/Portals/71/Uploads/Files/2022/4-1/637844017201521768.pdf> (accessed on 22 May 2023); CRRC. (2022). *2022 annual report of CRRC*. <https://www.crrcgc.cc/Portals/71/Uploads/Files/2023/5-4/638188140477510592.pdf> (accessed on 22 May 2023).

²⁸⁹⁰ Orbis. (2023). *CRRC Corporation Limited*, p. 100.

²⁸⁹¹ Cao, Y. (2022, February 28). *The pillars of a great power - The internationalization of CRRC emphasizes more on the cooperation*. Tencent News. <https://new.qq.com/rain/a/20220228A0315700> (accessed on 22 May 2023).

²⁸⁹² *Ibid.*

²⁸⁹³ Kerr, M. (2017). *China's high-speed rail diplomacy*. U.S.-China Economic and Security Review Commission, p. 3.

²⁸⁹⁴ Vossloh. (2020). *Vossloh completes the sale of its locomotive business*. https://www.vossloh.com/en/press/press-releases/detail/pressdetail_34432.html (accessed on 8 June 2023);

20.2.2.2. CRSC – SIGNALLING EQUIPMENT

CRSC is the world's largest maker of train control systems²⁸⁹⁵, primarily manufacturing signal products for dispatching and monitoring trains; communication products, including wireless communication systems, video surveillance, and train service information systems; emergency response equipment; and railway disaster prevention, mitigation, and detection systems²⁸⁹⁶.

In 2022, CRSC reported a decline in production amid construction- and pandemic-related reduced market demand²⁸⁹⁷. It reported approximately RMB 40 billion (~EUR 5,7 billion) in total revenue that year, with RMB 29 billion (~EUR 4,1 billion) stemming from its railway transportation control system business²⁸⁹⁸.

The Government wholly owns China Railway Signal & Communication Corporation, a holding company which in turn owns 62.69% of the publicly listed shares of CRSC²⁸⁹⁹. CRSC established a joint venture in China with Alstom in 1986 to form CASCO Signal Ltd. to produce signal system products²⁹⁰⁰. CRSC owns 51% of the company's shares, while Alstom controls 49%²⁹⁰¹. CASCO Signal Ltd. earned USD 594 million (~EUR 520 million) in operating revenue in 2020, the last year with available financial data as of writing of this Report²⁹⁰². The joint venture sells products and railway signal systems in Australia, Bangladesh, Egypt, Ethiopia, Djibouti, India, Korea, Laos, Mexico, Nigeria, Pakistan, Thailand and Uzbekistan, among others²⁹⁰³.

20.2.3. RAILWAY SUPERVISION, OPERATION & INFRASTRUCTURE MANAGEMENT – CHINA RAILWAY

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- Railway Gazette. (2022, September 20). *Hungarian hybrid is ready to roll*. <https://www.railwaygazette.com/traction-and-rolling-stock/hungarian-hybrid-is-ready-to-roll/62599.article> (accessed on 8 June 2023).
- ²⁸⁹⁵ Abe, S. (2015, August 14). *After IPO, China Railway Signal & Communication aims for global expansion*. <https://asia.nikkei.com/Business/After-IPO-China-Railway-Signal-Communication-aims-for-global-expansion> (accessed on 8 June 2023).
- ²⁸⁹⁶ CRSC. *Product center*. <http://www.crsc.cn/1108.html> (accessed on 22 May 2023).
- ²⁸⁹⁷ CRSC (2022). *2022 annual report of CRSC*. http://www.sse.com.cn/disclosure/listedinfo/announcement/c/new/2023-03-24/688009_20230324_BTU4.pdf (accessed on 22 May 2023); CRSC. (2021). *2021 annual report of CRSC*. http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-28/7919723.PDF (accessed on 30 May 2023).
- ²⁸⁹⁸ It produced 1 957 units of train control and interlocking system equipment (down from 2 700 in 2021), 570 000 signal relays (up from 460 000 in 2021), 15 339 switch conversion equipment units (down from 28 731 in 2021) and 30 445 transponder devices (in line with the 30 317 produced in 2021). CRSC. (2022). *2022 annual report of CRSC*. http://www.sse.com.cn/disclosure/listedinfo/announcement/c/new/2023-03-24/688009_20230324_BTU4.pdf (accessed on 22 May 2023).
- ²⁸⁹⁹ Orbis. (2023). *CRSC Corporation Limited*, p. 156.
- ²⁹⁰⁰ Orbis. (2023). *CASCO Signal Ltd.*, pp. 3, 23; CASCO. *A full range of rail traffic control system integrators*. <https://www.casco.com.cn/about/Default.aspx> (accessed on 22 May 2023).
- ²⁹⁰¹ *Ibid*, p. 23.
- ²⁹⁰² *Ibid*, p. 6.
- ²⁹⁰³ CASCO. *About us*. <https://www.casco.com.cn/about/event.aspx> (accessed on 8 June 2023).

China Railway is the world's largest operator of passenger and freight rail²⁹⁰⁴ and also engages in railway construction²⁹⁰⁵. China Railway is wholly state-owned and plays an important role in the overall supervision and operation of the railway industry in China²⁹⁰⁶ (see also Section 20.3.4). China Railway enjoys enormous buying power and has a documented history of excluding non-Chinese products in its role as the issuer of public procurement tenders (see Section 20.4.3). In 2022, China Railway reported RMB 1,1 trillion (~EUR 155,4 billion) in revenue²⁹⁰⁷.

China Railway is also responsible for the uniform control and command of railway transport, allocation of transport capacity within the railway network, public welfare transport specified by national regulations, and railway revenue clearing and income management²⁹⁰⁸.

20.2.3.1. HISTORICAL BACKGROUND OF CHINA RAILWAY

Prior to 2013, the Ministry of Railways was the regulatory agency governing the railway industry. In March 2013, the NPC began a reorganisation of the industry, including dissolving the Ministry of Railways and reallocating its functions²⁹⁰⁹. The result was the separation of railway operations from regulatory and inspection functions²⁹¹⁰.

A key component of the 2013 railway reforms was the establishment of two new entities: the National Railway Administration under the Ministry of Transport²⁹¹¹ and China Railway Corporation – the entity that would eventually become China State Railway Group Co., Ltd., or China Railway (see Section 20.2.3.2).

The National Railway Administration created by this reform took over the administrative duties of the Ministry of Railways and responsibility for technical standards, railway work safety, and service and engineering quality²⁹¹². The Ministry of Transport is responsible for promulgating the overall development plans and policies of the railway sector²⁹¹³.

China Railway Corporation was established to fulfil the corporate duties of the Ministry of Railways²⁹¹⁴. It was responsible for the uniform dispatching of railway transport, operating passenger and freight rail, undertaking designated and special transport tasks related to public

²⁹⁰⁴ Fortune. (2022). *Global 500*. <https://fortune.com/ranking/global500/> (accessed on 8 June 2023); China Railway. *Introduction of China State Railway Group Co., Ltd.* <http://www.china-railway.com.cn/gsjj/gsjj/> (accessed on 22 May 2023).

²⁹⁰⁵ China Railway. *Industrial manufacturing*. <http://www.china-railway.com.cn/zyyw/dyjj/gyzz/> (accessed on 22 May 2023).

²⁹⁰⁶ Orbis. (2023). *China State Railway Group Company Limited*, p. 17.

²⁹⁰⁷ China Railway. (2023, April 29). *China Railway publishes the final accounts of the year of 2022 and the first quarter of 2023*. http://www.china-railway.com.cn/xwzx/zxw/202304/t20230429_127571.html#:~:=%E2%80%98 (accessed on 8 June 2023).

²⁹⁰⁸ China Railway. *Introduction of China State Railway Group Co., Ltd.* <http://www.china-railway.com.cn/gsjj/gsjj/> (accessed on 22 May 2023).

²⁹⁰⁹ Xinhua News Agency. (2013, March 15). *State Council institutional reform and function transformation plan*. http://www.gov.cn/2013lh/content_2354443.htm (accessed on 22 May 2023).

²⁹¹⁰ *Ibid.*

²⁹¹¹ *Ibid.*

²⁹¹² *Ibid.*

²⁹¹³ *Ibid.*

²⁹¹⁴ *Ibid.*

welfare, taking charge of railway construction and assuming primary responsibilities for railway safety²⁹¹⁵.

20.2.3.2. REORGANISATION INTO CHINA RAILWAY

In November 2017, 18 railway bureaus affiliated with China Railway Corporation reorganised into China Railway²⁹¹⁶, a wholly state-owned company managed by the Government²⁹¹⁷. China initiated this reorganisation as part of broader SOE reforms to introduce more robust corporate governance into these entities²⁹¹⁸ (see also Section 5.2). As a matter of fact, prior to 2017, China Railway Corporation was considered an enterprise owned by ‘*the whole people*’, and as a result, it did not have many of the functions associated with the corporate form, such as shareholder meetings and a board of directors²⁹¹⁹.

20.2.4. INFRASTRUCTURE CONSTRUCTION AND MAINTENANCE – CRCC AND CREC

CRCC is one of the largest railway construction groups in the world and has taken part in the construction of nearly all domestic railway projects²⁹²⁰. It alone has constructed 34 000 kilometres of rail, which accounts for more than 50% of the railways built since the founding of the PRC in 1949²⁹²¹. CRCC also provides track maintenance services and the manufacture of equipment in support of track construction and maintenance²⁹²². China Railway Construction Group Corporation, a wholly owned SOE, owns 51,13% of the publicly listed shares of CRCC²⁹²³. The company generated USD 156,5 billion (~EUR 148,6 billion) in operating revenue in 2022²⁹²⁴.

CREC – principally through its largest, publicly listed, subsidiary, China Railway Group Limited²⁹²⁵ – provides infrastructure support for the railway industry, including through R&D, design, manufacturing, installation and technical support for large railway construction machinery, including for bridges, railway turnouts, tunnel boring equipment²⁹²⁶. CREC is

²⁹¹⁵ *Ibid.*

²⁹¹⁶ Xinhua News Agency. (2017, November 20). *The 18 railway bureaus have converted to China State Railway Group Co., Ltd.* http://www.gov.cn/guowuyuan/2017-11/20/content_5240920.htm (accessed on 22 May 2023).

²⁹¹⁷ China Railway. *Introduction of China State Railway Group Co., Ltd.* <http://www.china-railway.com.cn/gsj/gsjj/> (accessed on 22 May 2023).

²⁹¹⁸ Xinhua News Agency. (2023, February 1). *What changes have been brought about by the three-year reform of state-owned enterprises?* https://www.gov.cn/xinwen/2023-02/01/content_5739479.htm (accessed on 8 June 2023).

²⁹¹⁹ Wang Jong/Central Broadcasting Network. (2019, June 20). *Farewell to ‘China Railway Corporation’! These changes are coming to the newly restructured China State Railway Group.* https://www.thepaper.cn/newsDetail_forward_3725350 (accessed on 8 June 2023).

²⁹²⁰ CRCC. *Railway.* <https://english.crcc.cn/col/col21594/index.html> (accessed on 22 May 2023); Fortune. (2022, August 3). *China railroad construction.* <https://fortune.com/company/china-railway-construction/global500/> (accessed on 8 June 2023).

²⁹²¹ CRCC. *Railway.* <https://english.crcc.cn/col/col21594/index.html> (accessed on 22 May 2023).

²⁹²² *Ibid.*

²⁹²³ Orbis. (2023). *China Railway Construction Corporation Limited*, p. 124.

²⁹²⁴ *Ibid.*, p. 7.

²⁹²⁵ Orbis. (2023). *China Railway Engineering Corporation (CREC)*, p. 110.

²⁹²⁶ CRHIC. *About us.* <http://en.crhic.cn/about.aspx?TypeId=1&FId=t1:1:1> (accessed on 22 May 2023).

wholly state-owned²⁹²⁷. The company had revenues of RMB 560,6 billion (~EUR 79,2 billion) that year²⁹²⁸.

20.2.5. CHINA'S POSITION IN THE GLOBAL MARKET

According to the Commission 2019 Railway Report, China was the largest producer of rail components in the world, followed by the EU, the United States, Japan, India, Russia and Korea²⁹²⁹. China overtook the EU as the largest producer of rolling stock and locomotives in 2009²⁹³⁰. The country became a net exporter (i.e., exports exceeding imports) of rail products, including locomotives, rolling stock and signalling systems, the following year²⁹³¹. Chinese companies accounted for more than one quarter of global rolling stock revenues between 2017 and 2019, 67% of all high-speed rail length and nearly half of all rolling stock in operation²⁹³². China, the EU, and Japan each have about 20% of global urban passenger rail activity, according to a 2019 report issued by the International Energy Agency²⁹³³.

In the 2010s, China experienced rapid growth in rolling stock manufacturing to satisfy domestic consumption needs, particularly for high-speed rail, even as China's export intensity for rail components (i.e., exports divided by production) lagged behind the United States, Japan, the EU and India²⁹³⁴. Over that same time, Chinese companies had not achieved comparable market share in the manufacture of signalling and electrification products, with Siemens, Thales and Bombardier composing 79% of the global market in 2017²⁹³⁵. China also led the world in patents in the railway industry over the same period²⁹³⁶.

The COVID-19 pandemic brought quarantine restrictions and reduced rail passenger traffic that, along with the completion of much of the country's planned high-speed railway, contributed to a downturn in demand for high-speed rail construction and rolling stock²⁹³⁷. Investments in railway construction '*slowed amid concerns over lower returns on infrastructure and property investments and debt risks*'²⁹³⁸. As pandemic-related restrictions eased, total fixed-asset railway investment rebounded in the first quarter of 2023, increasing 6.6% compared to the first quarter of 2022 as China focused on new railway construction in

²⁹²⁷ Orbis. (2023). *China Railway Engineering Corporation (CREC)*, p. 20.

²⁹²⁸ China Railway Group Limited. *Investor relations*. <http://www.crecg.com/zgztzywz/10199156/10203367/10203370/index.html> (accessed on 22 May 2023).

²⁹²⁹ Commission 2019 Railway Report, p. 10. <https://ec.europa.eu/docsroom/documents/37829>

²⁹³⁰ Commission 2019 Railway Report, p. 10; EC Study 2019, p. 90.

²⁹³¹ ITIF Heading off track 2021, p. 13.

²⁹³² Kratz, A., Oertel, J. (2021). *Home advantage: How China's protected market threatens Europe's economic power*. European Council on Foreign Relations, p. 30.

²⁹³³ International Energy Agency (2019). *The future of rail: Opportunities for energy and the environment*, p. 15.

²⁹³⁴ Commission 2019 Railway Report, pp. 91-92, 95.

²⁹³⁵ *Ibid.*, p. 109.

²⁹³⁶ *Ibid.*, p. 124.

²⁹³⁷ Guo, Y., Li, R. (2023, January 8). *China's railway investment falls for a third straight year*. NikkeiAsia. <https://asia.nikkei.com/Spotlight/Caixin/China-s-railway-investment-falls-for-a-third-straight-year> (accessed on 22 May 2023); UBS. (2023). *China Railway Equipment: Beneficiaries of China's reopening; CRRC-H is our top pick in 2023*, p. 5.

²⁹³⁸ Guo, Y., Li, R. (2023, January 8). *China's railway investment falls for a third straight year*. NikkeiAsia. <https://asia.nikkei.com/Spotlight/Caixin/China-s-railway-investment-falls-for-a-third-straight-year> (accessed on 22 May 2023).

Xinjiang and Tibet²⁹³⁹. The component manufacturing segment, too, appears primed to rebound. China Railway procured 92 sets and 574 electric multiple unit trains (‘EMUs’)²⁹⁴⁰ and locomotives in 2022, up from 30 sets and 450 units in 2021, while CRRC reported in September 2022 that its new orders rose 21% year-over-year²⁹⁴¹.

20.3. REGULATORY AND POLICY FRAMEWORK

Since the 1991 Railway Law permitted national, local, industrial and private railways²⁹⁴², China’s regulatory and policy framework for its railway industry has targeted both domestic and foreign markets. Broadly, China has been seeking to enhance the competitiveness of its railway industry through investing in railway construction, establishing research laboratories to leverage local and natural resources for technological development, increasing manufacturing capacity for railway components (especially high-speed rail cars), and identifying local industry players for development. In addition to these efforts, China invested EUR 519 billion in its railway industry from 2016 to 2019²⁹⁴³.

China’s efforts at developing its domestic industry are intertwined with its international goals. For one, it has been translating international standards in the railway industry into Chinese standards to broaden the market of Chinese companies and make their products more competitive. In 2019, China outlined a plan to not only encourage domestic transportation companies to participate in construction projects, but also attract foreign investment into China’s transportation industries.

On the other hand, several policies emphasise increasing railway component exports and investments abroad, building on the ‘go out’ policy’s mission of encouraging Chinese companies to enter foreign markets and the BRI’s related goal of using foreign projects to alleviate overcapacity in the domestic market.

20.3.1. THE 14TH FYP FOR NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT

The 14th FYP (see Section 4.2.5) sets three goals pertaining to China’s railway industry. The 14th FYP sets out to enhance the competitiveness of the supply chain supporting the development of high-speed rail and major technical equipment, including through promoting ‘the R&D and the application of the CR450 high-speed-grade Chinese standard EMUs’ and

²⁹³⁹ Zuo, M. (2023, April 10). *China’s railway investment hits highest level since 2013 as infrastructure focus shifts to border regions, defence*. myNEWS. <https://www.scmp.com/economy/china-economy/article/3216562/chinas-railway-investment-hits-highest-level-2013-infrastructure-focus-shifts-border-regions-defence> (accessed on 8 June 2023).

²⁹⁴⁰ [EMUs are electric multiple unit trains consisting of multiple railcars powered by electricity that do not require separate engines or locomotives. See Primidi. What is electric multiple unit? https://www.primidi.com/what-is-electric-multiple-unit#:~:text=Electric%20Multiple%20Unit%20An%20electric%20multiple%20unit%20or,within%20one%20or%20a%20number%20of%20the%20carriages](https://www.primidi.com/what-is-electric-multiple-unit#:~:text=Electric%20Multiple%20Unit%20An%20electric%20multiple%20unit%20or,within%20one%20or%20a%20number%20of%20the%20carriages) (accessed on 8 June 2023).

²⁹⁴¹ UBS. (2023). *China Railway Equipment: Beneficiaries of China’s reopening; CRRC-H is our top pick in 2023*, p. 2.

²⁹⁴² World Bank Group. (2017). *Railway reform: Toolkit for improving rail sector performance*, pp. 394–395.

²⁹⁴³ Commission 2019 Railway Report, p. 157.

‘genealogical Chinese standard subway trains’²⁹⁴⁴. The 14th FYP also seeks to ‘foster advanced manufacturing clusters’ and ‘promote the innovation and development of industries such as [...] advanced rail transit equipment’²⁹⁴⁵. The 14th FYP promotes the construction of ‘smart railway’ using digital technology²⁹⁴⁶.

20.3.2. PROVINCIAL AND MUNICIPAL FIVE YEARS PLANS

Several of China’s provincial and municipal governments included plans for developing the railway industry in their own 14th FYPs. These subnational plans build on the national 14th FYP by linking specific cities and local SOEs to national plans and targets. In the railway industry, the local plans are an important mechanism to achieve national goals and targets, including with respect to the promotion of rail equipment exports and more sophisticated research laboratories and R&D centres. Local plans may empower research laboratories – typically housed or co-located with a state-owned rail manufacturer (including entities owned by local or provincial governments) – to leverage local and national resources and help with expanding their presence overseas.

20.3.2.1. CHANGCHUN

A good example is the 14th FYP for National Economic and Social Development and the Long-Range Objectives through the Year 2035 for Changchun in the Jilin province, already an important centre for the manufacture of railway vehicles, that seeks to enhance the city’s status as a centre of advanced rail transit manufacturing²⁹⁴⁷. In addition to explicitly targeting an annual production capacity of 1 000 high-speed EMUs²⁹⁴⁸, the plan promotes Chinese rail exports by explicitly supporting the efforts of CRRC Changchun Railway Vehicles Co., Ltd. (‘CRRC Changchun Railway’)²⁹⁴⁹ to establish production, sales, maintenance, and service bases in other countries and to expand international cooperation on urban rail transit equipment²⁹⁵⁰. The plan also links CRRC Changchun Railway to national R&D efforts by supporting the company’s role as host of the National Engineering Laboratory of System Integration of High-speed Rail Cars and the National Level Enterprise Technology Center²⁹⁵¹.

20.3.2.2. QINGDAO

²⁹⁴⁴ [China’s ‘CR’ series of EMUs are high-speed trains, with the number in the series referring to the top speed of the model \(e.g., the CR450 can reach a top speed of 450 kph\)](https://i.ifeng.com/c/8O7GbQTMxNe). See IT house. (2023, March 13). *The first CR450 unit of China’s 400km-per-hour high-speed train has been painted and delivered smoothly*. <https://i.ifeng.com/c/8O7GbQTMxNe> (accessed on 8 June 2023); See Shangfangwen. (2021, February 6). *Breaking News! The CR450 Fuxing bullet train is under development this year with a speed of 400 kilometers per hour*. <https://news.mydrivers.com/1/733/733347.htm> (accessed on 8 June 2023).

²⁹⁴⁵ 14th FYP, Article VIII, Section 3.

²⁹⁴⁶ *Ibid.*, Article XVIII, Table 9.

²⁹⁴⁷ Changchun Municipal People’s Congress. (2021). *Changchun 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. http://zwgk.changchun.gov.cn/szf_3410/bgtxxgkml/202104/P020210812372866904043.pdf (accessed on 22 May 2023).

²⁹⁴⁸ *Ibid.*

²⁹⁴⁹ *Ibid.*

²⁹⁵⁰ *Ibid.*

²⁹⁵¹ *Ibid.*

Qingdao, a city in Shandong, includes in its 14th FYP for National Economic and Social Development and The Long-Range Objectives through the Year 2035 targets for innovation and developing new technologies in the high-speed rail industry²⁹⁵². It seeks to build major science and technology innovation platforms including the National High-Speed Train Technology Innovation Centre and achieve breakthroughs on cutting-edge technologies such as high-speed maglev, intelligent rail transit, and autonomous train operation systems²⁹⁵³. The plan also focuses on developing an internationally competitive advanced manufacturing industrial base that includes AI-driven traction, braking, and network control systems for high-speed rail²⁹⁵⁴.

20.3.2.3. NANJING, LUOYANG, ZHUZHOU AND TANGSHAN

Under its 14th FYP, the city of Nanjing plans to build independent supply chains across five industries, including the railway equipment sector, by the end of 2025²⁹⁵⁵. The Luoyang, Zhuzhou and Tangshan 14th FYPs also promote the development of railway equipment supply chains along with related R&D efforts and technical services²⁹⁵⁶.

20.3.3. SECTORAL FIVE YEARS PLANS RELATED TO THE RAILWAY INDUSTRY

In addition to the national 14th FYP and related subnational plans, China has implemented sectoral plans targeting the railway industry during the 14th FYP period.

20.3.3.1. 14TH FYP FOR RAILWAY SCIENCE AND TECHNOLOGY INNOVATION

In 2021, the National Railway Administration promulgated the 14th Five Years Plan for Railway Science and Technology Innovation that set goals across the railway industry, including developing a high-speed rail capable of reaching 400 km/h, promoting an independent and world-leading railway technology standards system, and building more than 50 railway science and technology innovation bases by the end of 2025²⁹⁵⁷. The plan outlines several measures to accomplish these goals, including increasing R&D efforts for advanced carrier equipment technology to develop faster freight trains that carry more tonnage, promoting innovation in

²⁹⁵² Qingdao Municipal People's Congress. (2021). *Qingdao 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. http://www.qingdao.gov.cn/zwgk/xxgk/bgt/gkml/gwfg/202112/t20211208_3928622.shtml (accessed on 22 May 2023).

²⁹⁵³ *Ibid.*

²⁹⁵⁴ *Ibid.*

²⁹⁵⁵ Nanjing Municipal People's Congress. (2021). *Nanjing 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. http://jxw.nanjing.gov.cn/njsjhxhwyh/202104/t20210422_2892484.html (accessed on 22 May 2023).

²⁹⁵⁶ Luoyang Municipal People's Congress. (2021). *Luoyang 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. <https://www.henan.gov.cn/2021/12-31/2375119.html>; Zhuzhou Municipal People's Congress. (2021). *Zhuzhou 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. <http://cwc.hnhgzy.com/c/2021-09-09/563936.shtml>; Tangshan Municipal Committee of Communist Party of China. (2020). *Proposal for the Tangshan 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035*. <https://www.tsvtc.edu.cn/col/1681348558496/2023/04/10/1681377169036.html> (accessed on 22 May 2023).

²⁹⁵⁷ National Railway Administration. (2021). *14th Five-Year Plan for Railway Science and Technology Innovation*. http://www.gov.cn/zhengce/zhengceku/2021-12/24/content_5664357.htm (accessed on 22 May 2023).

intelligent railways systems and other key, core technologies and developing ballast-less track structures complying with safety and comfort requirements²⁹⁵⁸. The plan also connects to the national ‘Go Out’ policy and promotes the export of railway equipment, technology, standards and services²⁹⁵⁹.

20.3.3.2. 14TH FYP FOR THE DEVELOPMENT OF A MODERN COMPREHENSIVE TRANSPORTATION SYSTEM

The 14th Five Years Plan for the Development of a Modern Comprehensive Transportation System, implemented by NDRC, emphasises the development of more advanced high-speed rail technology, including through smart railways and expanding China’s railway system such that over 95% of cities with populations greater than 500 000 will be served by rail capable of reaching 250 km/h or more, to improve China’s high-speed rail network²⁹⁶⁰.

The Ministry of Transport has issued several documents to implement this plan. The Notice of the General Affairs Office of the Ministry of Transport on Issuing the Work Plan for Solidly Promoting the Implementation of Major Transportation Projects in the 14th Five Years Plan²⁹⁶¹ lists the major transportation projects to be constructed during this period, such as the construction of Sichuan-Tibet Railway, as well as some of the tools to support these projects, including accelerating the review and approval process of major projects and seeking out financial support from central budget funds, local fiscal money and bonds. The Standard System for Comprehensive Transportation²⁹⁶² guides standards development in China’s transportation industries, including by promoting the coordination and integration of standards across the railway, highway, waterways, civil aviation and postal services industries.

20.3.4. STRONG TRANSPORTATION POWERHOUSE STRATEGY

In 2017, the 19th Party Congress (see Section 2.2.4) adopted a strategic decision to build the country into a ‘*transportation powerhouse*’²⁹⁶³. Subsequently, in September 2019, the Central Committee of the CCP and the State Council jointly issued the *Building a Powerful*

²⁹⁵⁸ *Ibid.*

²⁹⁵⁹ *Ibid.*

²⁹⁶⁰ National Development and Reform Commission (‘NDRC’). (2022). *14th Five-Year Plan for the Development of Modern Comprehensive Transportation System*. https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/202203/t20220325_1320208.html (accessed on 22 May 2023).

²⁹⁶¹ General Affairs Office of MOT. (2022). *Notice of the General Affairs Office of the Ministry of Transport on Issuing the Work Plan for Solidly Promoting the Implementation of Major Transportation Projects in the 14th Five-Year Plan*. https://www.gov.cn/zhengce/zhengceku/2022-05/20/content_5691467.htm (accessed on 1 August 2023).

²⁹⁶² General Affairs Office of MOT. (2022). *Notice of the General Affairs Office of the Ministry of Transport on Issuing the Standard System for Comprehensive Transportation (2022)*. https://www.gov.cn/zhengce/zhengceku/2022-09/24/content_5711662.htm (accessed on 1 August 2023).

²⁹⁶³ XinhuaNet. (2017, October 27). *Xi Jinping: Decisive victory in building a moderately prosperous society in all respects and winning the great victory of socialism with Chinese characteristics in the new era-Report made at the 19th National Congress of the Communist Party of China*. http://www.xinhuanet.com/politics/19cpcnc/2017-10/27/c_1121867529.htm (accessed on 22 May 2023).

*Transportation Country plan*²⁹⁶⁴. The plan divides goals and tasks for turning China into a ‘*transportation powerhouse*’ into two phases: the first from 2021 to 2035 and the second from 2036 to mid-century²⁹⁶⁵. Under this plan, China intends to develop advanced high-speed rail and innovate in related technologies, including 600 km/h maglev systems and 400 km/h high-speed rail systems²⁹⁶⁶. The ambitions for the development of the railway transportation network are global in nature, with the outline calling for (i) domestic companies to participate in the construction of transportation enterprises to connect countries along the Silk Road Economic Belt and (ii) attracting foreign investment into China’s transportation industries²⁹⁶⁷.

Since 2021, the overall strategy has been complemented by several policies issued by the CCP, the State Council and the Ministry of Transport. The National Plan for a Comprehensive Three-dimensional Transportation Network, for example, targets the development of railways, with the goal of reaching 200 000 kilometres of railway, including 70 000 kilometres of high-speed railway, by 2035²⁹⁶⁸. The Medium and Long-term Development Plan for Science and Technology Innovation in the Field of Transportation (covering goals for 2021 through 2035) and the Five Years Action Plan for Accelerating the Construction of a Powerful Transportation Country (covering goals for 2023 through 2027) focus on R&D efforts²⁹⁶⁹.

20.3.5. MADE IN CHINA 2025

Advanced rail equipment is one of the ten strategic sectors covered by Made in China 2025²⁹⁷⁰ (see Section 4.2.3). The Made in China 2025 Roadmap lists the key products for the strategy targets, including high-speed rail locomotives and associated equipment²⁹⁷¹.

By 2019, the railway industry was among the industries that displayed the highest growth in competitiveness – evaluated through each industry’s participation in global value chains and

²⁹⁶⁴ CPC Central Committee and State Council’s *Plan on Building a powerful transportation country*, September 2019. http://www.gov.cn/zhengce/2019-09/19/content_5431432.htm (accessed on 22 May 2023).

²⁹⁶⁵ *Ibid.*

²⁹⁶⁶ *Ibid.*

²⁹⁶⁷ *Ibid.*

²⁹⁶⁸ Central Committee of Communist Party of China & State Council. (2021). *National Plan for Comprehensive Three-dimensional Transportation Network*. http://www.gov.cn/gongbao/content/2021/content_5593440.htm (accessed on 22 May 2023).

²⁹⁶⁹ Ministry of Transport. (2022). *Medium and Long-term Development Plan for Science and Technology Innovation in the Field of Transportation*. http://www.gov.cn/zhengce/zhengceku/2022-04/06/content_5683595.htm (accessed on 22 May 2023); Ministry of Transport. (2023). *Interpretation of the ‘Five-Year Action Plan for Accelerating the Construction of a Powerful Transportation Country (2023–2027)’*. http://www.gov.cn/zhengce/2023-04/23/content_5752770.htm (accessed on 22 May 2023).

²⁹⁷⁰ Preziosi, N., et al. (2019). *China: Challenges and prospects from an industrial and innovation powerhouse*. Publications Office of the European Union, p. 13. <https://op.europa.eu/en/publication-detail/-/publication/c89434b2-88cd-11e9-9369-01aa75ed71a1/language-en> (accessed on 22 May 2023); State Council. (2015). *Notice of the State Council on Issuing the ‘Made in China 2025’*. http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 22 May 2023).

²⁹⁷¹ NMSAC. (2015). *Made in China 2025 Key Technology Roadmap*. <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 22 May 2023).

revealed comparative advantage in exports – among the strategic sectors identified in Made in China 2025²⁹⁷².

Made in China 2025 set the following goals to be met by 2020:

- The R&D capabilities and the leading products of China's rail transit equipment segment will reach a global, advanced level;
- The rail transit equipment segment's sales output will exceed RMB 650 billion (~EUR 93,2 billion);
- Chinese railway companies' overseas business will exceed 30% of their overall business, and their service business will exceed 15% of their overall business;
- Key products will enter the European and US markets²⁹⁷³; and
- 40% of core basic components and key materials will be produced self-sufficiently²⁹⁷⁴.

While no official announcement indicates that these goals were met, market data suggests that some were achieved. The Chinese rail transit equipment segment arguably reached a global, advanced level, with one source indicating that CRRC accounted for 53% of all sales in the industry worldwide²⁹⁷⁵. Another source estimated that China's conventional and high-speed locomotive sales reached RMB 350 billion (~EUR 44,4 billion)²⁹⁷⁶, though this is only a portion of the rail transit equipment segment.

Outstanding goals to be met by 2025 include:

- China's rail transit equipment segment will develop a sound innovation system with the ability to continuously innovate;
- Chinese railway companies' overseas business will exceed 40% of their overall business, and their service business will exceed 20% of their overall business;
- China will become a leader in setting international standards in this field;
- China will build a world-leading and modern rail transit equipment industry and occupy the high-end of the industry's global supply chain²⁹⁷⁷; and
- 70% of core basic components and key materials will be produced self-sufficiently²⁹⁷⁸.

²⁹⁷² Preziosi, N., et al. (2019). *China: Challenges and prospects from an industrial and innovation powerhouse*. Publications Office of the European Union, pp. 109–11. <https://op.europa.eu/en/publication-detail/-/publication/c89434b2-88cd-11e9-9369-01aa75ed71a1/language-en> (accessed on 22 May 2023).

²⁹⁷³ National Advisory Committee for the Powerful Manufacturing Country Construction Strategy. (2015). *Made in China 2025 Key Technology Roadmap*. <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 1 August 2023).

²⁹⁷⁴ National Manufacturing Strategic Advisory Committee. (2016). *Development Catalogue for Core Basic Parts (Components), Key Basic Materials, Advanced Basic Craft/Technics, and Industry Technology Foundation*. <http://www.cm2025.org/show-14-126-1.html> (accessed on 1 August 2023).

²⁹⁷⁵ Huajing Information Network. (2021). *Analysis of the Scale and Competition of China's Rail Transit Equipment Market in 2020, with a High Degree of Industry Concentration*. <https://baijiahao.baidu.com/s?id=1708321790307544822> (accessed on 1 August 2023).

²⁹⁷⁶ Ruiguan. (2020). *Analysis on Global Rail Transit Equipment Industry Overview and Development Trend*. <https://www.reportrc.com/article/20200315/4956.html> (accessed on 1 August 2023).

²⁹⁷⁷ National Advisory Committee for the Powerful Manufacturing Country Construction Strategy. (2015). *Made in China 2025 Key Technology Roadmap*. <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 1 August 2023).

²⁹⁷⁸ NMSAC. (2016). *Development Catalogue for Core Basic Parts (Components), Key Basic Materials, Advanced Basic Craft/Technics, and Industry Technology Foundation*. <http://www.cm2025.org/show-14-126-1.html> (accessed on 1 August 2023).

The *Industrial Four Bases Catalogue* released by the National Manufacturing Strategic Advisory Committee (‘NMSAC’) focused on the 10 fields identified by Made in China 2025, including the advanced railway equipment industry, to provide guidance to enterprises and scientific research institutions in determining their development directions and goals and direct financial institutions to make use of various tools to support enterprises engaging in R&D and production²⁹⁷⁹.

In conjunction with the ‘go out’ policy, Made in China 2025 encourages Chinese companies in the railway industry to engage in overseas greenfield investments, mergers and acquisitions, and joint ventures and to establish R&D institutions, manufacturing bases, and marketing networks abroad, in part to compensate for perceived deficiencies in the domestic market, develop greater technical expertise and otherwise achieve China’s industrial policy goals²⁹⁸⁰ (see also Section 20.3.6).

20.3.6. INTERNATIONALISATION OF CHINA’S RAILWAY INDUSTRY: THE ‘GO OUT’ POLICY AND THE BELT AND ROAD INITIATIVE

More than two decades ago, in October 2000, the Fifth Plenary Session of the 15th Central Committee of the CPC proposed the ‘go out’ policy with the goal of achieving breakthroughs in utilising both domestic and foreign resources and markets²⁹⁸¹. This policy was subsequently implemented by the 10th FYP (2001-2005) for National Economic and Social Development²⁹⁸². While the ‘go out’ policy targets international markets, improving the competitiveness of domestic companies contributes to the motivation behind the policy. The ‘go out’ policy emphasised that Chinese companies can make full use of both domestic and international resources to make up for any deficiencies in the domestic market, improve China’s technologies, equipment, products and services, enable China to be in a better position to introduce new technologies and develop new industries, gradually form China’s own transnational corporations and better participate in international competition²⁹⁸³.

In expounding on this strategy in 2000, former Chinese president Jiang Zemin emphasised that “*only through boldly and actively ‘going out’ can we make up for the shortage of our domestic resources and markets, bring our technology, equipment and products to the outside world, be more qualified to introduce newer technologies and develop new industries, develop our own multinational companies from small to large to better participate in the competition of economic globalisation [...]*”²⁹⁸⁴.

²⁹⁷⁹ Ibid.

²⁹⁸⁰ NMSAC. (2015). *Made in China 2025 Key Technology Roadmap*. <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 22 May 2023).

²⁹⁸¹ See Xinhuanet. (2021, December 8). *1996, the strategy of ‘bringing in’ and ‘going out’*. http://www.news.cn/politics/2021-12/08/c_1211478976.htm (accessed on 8 June 2023).

²⁹⁸² National People’s Congress. (2001). *10th Five-Year Plan (2001-2005) for National Economic and Social Development*, Chap. 17, § 4. https://www.gov.cn/gongbao/content/2001/content_60699.htm (accessed on 8 June 2023).

²⁹⁸³ Xinhuanet. (2021, December 8). *1996, the strategy of ‘bringing in’ and ‘going out’*. http://www.news.cn/politics/2021-12/08/c_1211478976.htm (accessed on 8 June 2023).

²⁹⁸⁴ CPC Central Committee Party History and Literature Research Institute. (2012). *The Formation and Significance of Jiang Zemin’s ‘Going Out’ Strategy*. <https://www.dswxyjy.org.cn/n1/2019/0228/c425426-30909751.html> (accessed on 4 August 2023).

The basic ideas articulated by Jiang Zemin touch on dynamics still relevant for the rail industry. Indeed, President Xi as recently as 2017 echoed these same principles, when he stated before the 19th Party Congress (see Section 2.2.4) that China must “*give equal emphasis to ‘‘bringing in’ and ‘going global’’ and ‘‘make new ground in opening China further’’*”²⁹⁸⁵. In particular, the concentrated nature of China’s rail ecosystem, with its small number of differentiated state-owned firms that operate both domestically and under the ‘Go Out’ strategy, creates a market environment in which these firms’ actions abroad have a direct feedback loop to their domestic behaviour by generating economies of scale and providing another pathway for technology and knowledge transfer to China. For example, following reforms to the Ministry of Railways in 2013 (see Section 20.2.3.1), a strategy drafted by the GOC “*called for the establishment of a unified and centralised SOE dedicated to facilitating the export of China’s [high-speed railway] industry*” through “*merging existing state firms*” to “*strengthen sectoral competitiveness through economies of scale*”²⁹⁸⁶. Through this strategy, “*the central government would play a crucial role in overcoming the fragmentation of interests and herding actors towards a common direction*”²⁹⁸⁷. The subsequent events that gave rise to the forced merger of CNR and CSR into CRRC created an SOE that would execute this strategy of centralising exports while simultaneously dominating China’s domestic rolling stock market²⁹⁸⁸.

This also shapes the domestic market and allows China to pursue its general industrial policy objectives. Chinese policymakers view the need to “*coordinat[e] domestic development and participat[e] in global governance*” as mutually reinforcing and necessary to compete in a globalised world²⁹⁸⁹. As such, “*the domestic economy must borrow, co-operate and interact with the global economy to meet (i) the new demands of globalisation, (ii) the new requirements and norms of economic development and (iii) the expectations of the international society*”²⁹⁹⁰. The export of high-speed railway construction and technology through the BRI promotes economic growth for the railway industry at home by locking foreign countries into using Chinese providers²⁹⁹¹.

China proposed the BRI in 2013 (see Section 4.2.4) and infrastructure connectivity via railways, roads, shipping, aviation, pipelines, and integrated space information networks is central to the BRI²⁹⁹². With respect to the railway industry, part of BRI’s goal involves using rail to connect

²⁹⁸⁵ Yan, K. (2021). The Railroad Economic Belt: Grand strategy, economic statecraft, and a new type of international relations. *The British Journal of Politics and International Relations*, 23(2), p.263.

²⁹⁸⁶ *Ibid*, p.270.

²⁹⁸⁷ *Ibid*, p.270.

²⁹⁸⁸ *Ibid*, p.270–271.

²⁹⁸⁹ *Ibid*, p.267.

²⁹⁹⁰ *Ibid*, p.267.

²⁹⁹¹ *Ibid*, p.267–268.

²⁹⁹² State Council Information Office. (2019). *The Belt and Road Initiative: Progress, Contributions and Prospects*. http://english.scio.gov.cn/beltandroad/2019-04/22/content_76329624.htm (accessed on 22 May 2023). President Xi Jinping first announced the initiative during official visits to Kazakhstan and Indonesia in 2013 as a two-pronged plan: a land-based Silk Road Economic Belt and a Maritime Silk Road. McBride, J., Berman, N., & Chatzky, A. (2023). *China’s Massive Belt and Road Initiative*. Council on Foreign Relations. <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative> (accessed on July 5, 2023). The two plans were collectively known as the One Belt, One Road Initiative and eventually became the Belt and Road Initiative. *Ibid*.

certain regions, including Southeast Asia and East Africa, to China directly or via maritime ports²⁹⁹³.

BRI also promotes improvements to railway networks connecting China with Europe²⁹⁹⁴. With the implementation of BRI, China has built inter-regional and inter-continental railway networks in cooperation with multiple countries²⁹⁹⁵, including Laos, Thailand, Hungary, Serbia, Indonesia, Pakistan, Kyrgyzstan and Uzbekistan²⁹⁹⁶. China also cooperates with multiple countries on international railway operations²⁹⁹⁷. For instance, railway companies in China, Belarus, Germany, Kazakhstan, Mongolia, Poland and Russia have signed an agreement on deeper cooperation on China-Europe rail service²⁹⁹⁸.

Railways built by Chinese companies in Africa, including in Nigeria, Kenya and Zambia, have constituted a major part of Chinese lending to African countries – a practice that has drawn criticism for creating ‘*debt traps*’ while alleviating overcapacity concerns in China’s domestic market (see also Section 20.4.5)²⁹⁹⁹. To support these efforts, the Ministry of Transport encourages local actors to improve service functions and transportation capabilities and establish logistics companies and cross-border e-commerce platforms³⁰⁰⁰.

Furthermore, China has conditioned loans for infrastructure projects under the BRI on the adoption of Chinese technical standards, fostering dependence on Chinese companies for further construction and maintenance³⁰⁰¹. NDRC has set benchmarks to promote the adoption of Chinese standards abroad, and by September 2019, China entered 90 bilateral agreements with 52 countries and regions regarding technical standardisation³⁰⁰². Generally, technical standards are national or regional in nature³⁰⁰³. If one country adopts another’s technical standards, the former will become locked into the latter’s technology and must rely on suppliers

²⁹⁹³ Haralambides, H., & Merk, O. (2020). *The Belt and Road Initiative: Impacts on global maritime trade flows*. International Transport Forum, pp. 8-10.

²⁹⁹⁴ State Council Information Office. (2015). *Action Plan on the Belt and Road Initiative*. <http://www.scio.gov.cn/31773/35507/35519/Document/1535279/1535279.htm> (accessed on 22 May 2023).

²⁹⁹⁵ People’s Daily. (2021, February 7). *Build the Belt and Road in cooperation and improve the high-speed railway*. http://www.gov.cn/xinwen/2021-02/07/content_5585512.htm (accessed on 22 May 2023).

²⁹⁹⁶ Belt and Road Network. (2015). *Action plan on the Belt and Road Initiative*. <https://www.yidaiyilu.gov.cn/ldzd/dejgfld/wjxz/86708.htm> (accessed on 22 May 2023).

²⁹⁹⁷ *Ibid.*

²⁹⁹⁸ *Ibid.*

²⁹⁹⁹ Chen, Y. (2022). *African Railway ambitions meet China’s Belt and Road*. National Bureau of Asian Research. https://www.nbr.org/wp-content/uploads/pdfs/publications/sr98_inroadsandoutposts_may2022.pdf (accessed on 8 June 2023);

Condon, B., & The Associated Press. (2023, May 18). ‘*In a lot of the world, the clock has hit midnight*’: China is calling in loans to dozens of countries from Pakistan to Kenya. *Fortune*. <https://fortune.com/2023/05/18/china-belt-road-loans-pakistan-sri-lanka-africa-collapse-economic-instability/amp/> (accessed on 22 May 2023).

³⁰⁰⁰ Ministry of Transport. (2015). *Opinion on Implementing the Integrating into the National ‘Belt and Road’ Development Strategy to Build the ‘Liaoning-Manchuria-Europe’ Comprehensive Transportation Corridor*. https://xxgk.mot.gov.cn/2020/jigou/ysfws/202006/t20200623_3315187.html (accessed on 22 May 2023).

³⁰⁰¹ Rühlig, T. (2023). Chinese Influence through Technical Standardization Power. *Journal of Contemporary China*, 32(139), p.65, 67. <https://doi.org/10.1080/10670564.2022.2052439> (accessed on 1 August 2023).

³⁰⁰² *Ibid.*, p.60.

³⁰⁰³ *Ibid.*, p.63.

based in the latter for railway construction and maintenance³⁰⁰⁴. As such, railway projects in Ethiopia, Djibouti, Indonesia and Laos constructed through the BRI and financed by China's state banks have facilitated reliance on Chinese companies in these countries³⁰⁰⁵.

A 2023 analysis found that paying back these loans drains host countries' tax revenues and foreign currency reserves³⁰⁰⁶. For example, Indonesia was forced to bail out a railway financed by Chinese bank loans twice, and a USD 3,5 billion (~EUR 3,3 billion) loan provided for a railway system in Laos requires approximately 25% of the country's annual output to repay³⁰⁰⁷.

20.3.7. OTHER POLICIES

Various other policies relate to railway component localisation and railway construction investment. In 1999, the State Council released the *Implementation Opinions on the Localisation of Urban Rail Transit Equipment* to local governments³⁰⁰⁸. This policy – still in force at the time of writing this Report – requires urban railway projects to use domestically-manufactured railway vehicles and equipment³⁰⁰⁹. Specifically, the average localisation rate of all rail vehicles and equipment must be no less than 70%, regardless of the types of construction funds involved³⁰¹⁰. The policy also notes that the state may provide financial support (including, for instance, loans with favourable interest rates and financial subsidies) for those urban rail projects that meet the above standard³⁰¹¹. China's localisation requirements have reached 75% for metro rolling stock, 50% for metro traction and 60% for metro signalling³⁰¹². For example, the procurement announcement for the Xuzhou Urban Rail Transit No. 6 Line Phase I Project-Electric Vehicle Traction System requires that the localisation rate shall be no less than 50%³⁰¹³.

In 2016, NDRC released the Medium and Long-term Railway Network Plan³⁰¹⁴. This policy provides central guidance on railway construction from 2016 to 2025 and long-term planning through 2030³⁰¹⁵. It promotes innovation in investment methods for railway construction³⁰¹⁶. Specifically, it indicates the Government is to support local governments in establishing railway

³⁰⁰⁴ *Ibid*, p.63.

³⁰⁰⁵ *Ibid*, p.65.

³⁰⁰⁶ Condon, B., & The Associated Press. (2023, May 18). *'In a lot of the world, the clock has hit midnight': China is calling in loans to dozens of countries from Pakistan to Kenya*. Fortune. <https://fortune.com/2023/05/18/china-belt-road-loans-pakistan-sri-lanka-africa-collapse-economic-instability/amp/> (accessed on 22 May 2023).

³⁰⁰⁷ *Ibid*.

³⁰⁰⁸ State Council. (1999). *Implementation Opinions on Localization of Urban Rail Transit Equipment*. People's Government of Guangdong Province. http://www.gd.gov.cn/zwgk/gongbao/1999/13/content/post_3359582.html (accessed on 22 May 2023).

³⁰⁰⁹ *Ibid*.

³⁰¹⁰ *Ibid*.

³⁰¹¹ *Ibid*.

³⁰¹² ITIF Heading off track 2021, p. 29.

³⁰¹³ Xuzhou Public Resource Trading Platform. (2022). *Xuzhou Urban Rail Transit No. 6 Line Phase I Project-Procurement Project of Electric Vehicle Traction System* <http://ggzy.zwb.xz.gov.cn/jyxx/003009/003009001/20220616/734f0d85-54ec-4499-9b01-5cc7cc296bcc.html> (accessed on 1 August 2023).

³⁰¹⁴ National Development and Reform Commission. (2016). *Medium and Long-term Railway Network Planning*. <http://www.gov.cn/xinwen/2016-07/20/5093165/files/1ebe946db2aa47248b799a1deed88144.pdf>. (accessed on 22 May 2023).

³⁰¹⁵ *Ibid*.

³⁰¹⁶ *Ibid*.

development funds, issuing government-backed railway construction bonds and raising long-term, low-cost construction funds³⁰¹⁷. This policy also provides for the state to implement policies to increase investment in the construction of railways in China's emerging Middle and West regions while researching and developing subsidy policies for their operation³⁰¹⁸.

20.4. MARKET INTERVENTIONS

This section examines how the Chinese government intervenes in its internal railway industry through imposing technology transfer policies on foreign companies, providing financial incentives and support to domestic companies – such as grants, preferential tax treatment and preferential loan policies – and creating barriers to foreign company access to public procurement of railway contracts through standardisation and other requirements. Overcapacity issues partly driven by such policies, in turn, help drive China's expansion into the overseas railway market.

20.4.1. STATE SUPPORT MEASURES

20.4.1.1. FOREIGN TECHNOLOGY TRANSFERS

China's intellectual property system favours domestic companies over foreign investors³⁰¹⁹. From 2018 through 2019, the EU lodged and revised a WTO consultation request regarding China's practice of conditioning foreign investment on transferring technology into China through, for example, requiring foreign companies to share certain technology with domestic partners in joint ventures³⁰²⁰. Such practices helped lay the groundwork of China's high-speed railway industry (see also Section 8.2.3.1.3 for a more general context of technology transfers).

After nearly a decade of failed attempts to develop high-speed rail technology, a '*technology transfer for market access*' strategy was promulgated in 2003, permitting foreign firms to sell high-speed rail technology only if they formed joint ventures and shared technology with Chinese companies³⁰²¹. After agreeing to train engineers, provide access to blueprints, and instruct companies on manufacturing processes, Alstom, Kawasaki, and Bombardier were awarded some of the contracts of the initial USD 1,4 billion (~EUR 1,1 billion) procurement package launched in 2004³⁰²². Once Chinese companies absorbed and were able to replicate this technology³⁰²³, companies like Alstom were effectively shut out of the high-speed rail

³⁰¹⁷ *Ibid.*

³⁰¹⁸ *Ibid.*

³⁰¹⁹ Preziosi, N., et al. (2019). *China: Challenges and prospects from an industrial and innovation powerhouse.*, p. 16.

³⁰²⁰ WTO. (2019). *China – Certain measures on the transfer of technology.* <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/549-1R1.pdf&Open=True> (accessed on 22 May 2023).

³⁰²¹ ITIF Heading off track 2021, p. 20.

³⁰²² *Ibid.*, p. 20–21.

³⁰²³ Huang, Y. (2022). The multiple roles of state-owned enterprises in China's innovation system: A case study of high-speed railways. *China Review*, 22(1), pp. 98-102. <https://www.jstor.org/stable/48653980> (accessed on 8 June 2023).

market³⁰²⁴, and Japanese firms continue to bring IP claims based on allegedly stolen high-speed rail technology³⁰²⁵.

20.4.1.2. FINANCIAL SUPPORT AND INCENTIVES

Strong internal demand, often driven by public investment, spurred China's railway industry to grow exponentially from 2007 to 2017³⁰²⁶ (see also Section 20.2.5). China provides its railway industry with a comprehensive suite of financial incentives that includes grants, equity investments, preferential tax treatment, and loans with favourable terms (see also Chapter 6).

20.4.1.3. GRANTS

China's central and subnational governments provide grants to enterprises in a wide range of advanced manufacturing, strategic emerging, and high-tech industries critical to the country's economic development, including the railway industry. These grants are issued for a variety of purposes, including the transformation and upgrading of industrial enterprises³⁰²⁷, R&D³⁰²⁸, transformative science and technology achievements³⁰²⁹ and intellectual property development³⁰³⁰.

The National Key R&D Plan focuses on industries that are key to China's national economy³⁰³¹ and includes a key special program on advanced rail³⁰³². According to one study, the Government subsidised advanced rail transit through the National Key R&D Plan with RMB

³⁰²⁴ ITIF Heading off track 2021, p. 21–22.

³⁰²⁵ *Ibid*, p. 22–23.

³⁰²⁶ Commission 2019 Railway Report, p. 10.

³⁰²⁷ State Council. (2012). *Guiding Opinions of the State Council on Promoting Technology Transformation of Enterprises*, Art. 3(3). http://www.gov.cn/zwggk/2012-09/10/content_2221011.htm (accessed on 22 May 2023).

³⁰²⁸ Shandong Provincial Science and Technology Department, Shandong Provincial Finance Department, & Shandong Provincial Tax Bureau. (2021). *Measures on the Implementation of Financial Subsidies for R&D of Enterprises in Shandong Province*. http://kjt.shandong.gov.cn/art/2021/1/14/art_103585_10285407.html (accessed on 22 May 2023).

³⁰²⁹ Shanghai Science and Technology Commission, Shanghai Finance Bureau, & Shanghai Tax Bureau. (2020). *Measures on the Administration of Shanghai Special Supporting Funds for the Transformation of High-tech Achievements*. <https://stcsm.sh.gov.cn/zwggk/kjzc/czwj/kwzcxwj/20201118/7bd684403e1e417daf900a83fd956b86.html>

³⁰³⁰ Guangdong Provincial Government. (2019). *Measures on the Patent Incentives of Guangdong Province*. http://www.gd.gov.cn/zwggk/wjk/qbwj/yfl/content/post_2271960.html (accessed on 22 May 2023).

³⁰³¹ State Council. (2014). *Notice of the State Council on Deepening the Administration Reform Plan for Central Fiscal Science and Technology Plans (Special Programs, Funds, etc.)*, Art. 3(3). http://www.gov.cn/zhengce/content/2015-01/12/content_9383.htm (accessed on 22 May 2023); see also Ministry of Science and Technology ('MOST'), & Ministry of Finance ('MOF'). (2017). *Notice of the Ministry of Science and Technology and the Ministry of Finance on Issuing the 'Interim Measures for the Administration of National Key R&D Programs'*, Art. 2. https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzc/gfxwj/gfxwj2017/201706/t20170628_133796.html (accessed on 22 May 2023).

³⁰³² MoST and MOF. (2017). *Notice of the Ministry of Science and Technology and the Ministry of Finance on Issuing the 'Interim Measures for the Administration of National Key R&D Programs'*, Art. 2. https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzc/gfxwj/gfxwj2017/201706/t20170628_133796.html (accessed on 22 May 2023).

1.2 billion³⁰³³ (~EUR 163,2 million) in 2016, RMB 480,9 million³⁰³⁴ (~EUR 63 million) in 2017 and RMB 183,8 million³⁰³⁵ (~EUR 23,5 million) in 2018. The National Key R&D Plan for the 14th FYP period continues to subsidise the railway industry through the key special program of ‘*transportation equipment and intelligent transportation technology*’³⁰³⁶.

The annual reports of the key publicly listed companies in the railway industry discussed in Section 20.2.1 show substantial subsidisation through grants. For example:

- The annual reports of CRRC show that, ever since 2007, it has received substantial government subsidies for ‘*science and technology programs*’, with such subsidies totalling RMB 478,4 billion (~EUR 57,7 billion) in 2022³⁰³⁷. CRRC’s annual report disclosed RMB 410 million (~EUR 57,9 million) in government subsidies in 2022³⁰³⁸. These consisted of subsidies provided through the government’s science and technology fund, compensation for demolition projects and returning land, discounted interest on imported products and subsidies for infrastructure development and environmental protection³⁰³⁹.
- CRSC’s 2022 annual report disclosed RMB 361 million (~EUR 51 million) in government subsidies for scientific research and as compensation for demolition projects³⁰⁴⁰.
- That same year, CRCC received RMB 136,5 million (~EUR 19,3 million) in annual government subsidies for scientific research, tax, and corporate development and support purposes³⁰⁴¹.
- CREC’s 2022 annual report reveals government subsidies of RMB 87,5 million (~EUR 12,4 million)³⁰⁴². The subsidies were used for several specific projects, the Yichun Luming infrastructure investment project and demolition costs for the Hada high-speed

³⁰³³ Kota Academic. (2018, November 18). *2016 list of key special programs under national key R&D plan*. <https://www.sciping.com/22798.html> (accessed on 22 May 2023).

³⁰³⁴ Kota Academic. (2018, November 17). *2017 list of key special programs under national key R&D plan*. <https://www.sciping.com/22487.html> (accessed on 22 May 2023).

³⁰³⁵ Kota Academic. (2018, December 6). *2018 list of key special programs under national key R&D plan*. <https://www.sciping.com/23261.html> (accessed on 22 May 2023).

³⁰³⁶ MoST. (2022). *2022 Project Application Guidelines for the Key Special Program of ‘Transportation Equipment and Intelligent Transportation Technology’ under the National Key R&D Plan for 14th Five-Year Period*. https://kyc.shzu.edu.cn/_upload/article/files/84/2f/0e0204c04fbfa15ec70dd9f1bc4f/2d8d4f56-b29a-4e6b-8abc-392e821f9a89.pdf (accessed on 22 May 2023).

³⁰³⁷ CRRC. (2023). *2022 annual report of CRRC*. <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900005127&stockCode=601766&announcementId=1216271749&announcementTime=2023-03-31> (accessed on 22 May 2023).

³⁰³⁸ CRRC. (2022). *2022 annual report of CRRC*. <https://www.crrcgc.cc/Portals/71/Uploads/Files/2023/5-4/638188140477510592.pdf> (accessed on 22 May 2023).

³⁰³⁹ *Ibid.*

³⁰⁴⁰ CRSC. (2022). *2022 annual report of CRSC*. http://www.sse.com.cn/disclosure/listedinfo/announcement/c/new/2023-03-24/688009_20230324_BTU4.pdf (accessed on 22 May 2023).

³⁰⁴¹ CRCC. (2022). *2022 annual report of CRCC*. http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2023/2023-3/2023-03-31/8931942.PDF (accessed on 22 May 2023).

³⁰⁴² CREC. *2022 annual report of CREC*. http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2023/2023-3/2023-03-31/8936032.PDF (accessed on 22 May 2023).

railway³⁰⁴³. CREC also received subsidies for science and research and company support³⁰⁴⁴.

- While China Railway receives targeted subsidies for a variety of public welfare activities, including transporting students, disabled soldiers, agricultural materials and emergency rescue personnel, as well as funds to supplement operating losses from such public welfare activities³⁰⁴⁵, the amount of subsidies is not disclosed.

20.4.1.4. EQUITY INVESTMENT

China Railway Development Fund Co., Ltd. (*‘the Rail Fund’*) is a railway investment and financing fund supported by the Government³⁰⁴⁶. The Rail Fund claims to follow market economy rules and attracts private capital investment to expand the sources of capital for railway construction, but mainly invests in railway projects approved by the government³⁰⁴⁷. The Rail Fund is a public-private enterprise in which China Railway acts as the Government’s representative, alongside other private shareholders³⁰⁴⁸. China Railway is the largest shareholder with 48.1% of the Rail Fund’s shares, and CDB (see Section 6.3.1.3) is the second largest, owning 33.8% of shares³⁰⁴⁹. A mix of state-owned and private insurance companies hold the remaining 18% of shares³⁰⁵⁰. While private investors, as the preferred shareholders of the Rail Fund, have priority in obtaining stable and reasonable investment returns and enjoy voting rights and other rights³⁰⁵¹, the Rail Fund is mainly operated by China Railway as the investment manager for railway construction projects targeted by the Rail Fund³⁰⁵².

When the distributable income of the Rail Fund is insufficient to pay the agreed returns to its private investors, China Railway must make up the difference and cannot withdraw its capital, while private investors can withdraw after one year³⁰⁵³. Since it was established in September 2014 with registered capital of RMB 367,1 billion (~EUR 44,8 billion), the Rail Fund has participated in or controlled 103 large- and medium-sized railway construction projects representing a total investment of RMB 3,3 trillion (~EUR 435 billion), with China Railway contributing RMB 385.7 billion (~EUR 50,8 billion) of this amount³⁰⁵⁴.

³⁰⁴³ *Ibid.*

³⁰⁴⁴ *Ibid.*

³⁰⁴⁵ China Business Network. (2020, May 13). *China Railway Group 9 provinces and regions implement two reforms, local take over loss-making feeder railway projects*. Sina Finance. <https://baijiahao.baidu.com/s?id=1666568411556945637> (accessed on 22 May 2023).

³⁰⁴⁶ NDRC, MOF & Ministry of Transportation (‘MOT’). (2014). *Administrative Measures on Railway Development Fund*, Art. 2. https://www.nra.gov.cn/jglz/fgzd/gfwj/zt/qt/202104/t20210401_135008.shtml (accessed on 22 May 2023),

³⁰⁴⁷ NDRC, MOF & MOT. (2014). *Administrative Measures on Railway Development Fund*, Art. 3. https://www.nra.gov.cn/jglz/fgzd/gfwj/zt/qt/202104/t20210401_135008.shtml (accessed on 22 May 2023).

³⁰⁴⁸ *Ibid.*, Art. 4.

³⁰⁴⁹ Chichacha. *China Railway Development Fund Co., Ltd.* <https://www.qcc.com/firm/ce6551497c343c575b0dbe7357db6dac.html> (accessed on 1 August 2023).

³⁰⁵⁰ *Ibid.*

³⁰⁵¹ NDRC, MOF and MoT. (2014). *Administrative Measures on Railway Development Fund*, Art. 8. https://www.nra.gov.cn/jglz/fgzd/gfwj/zt/qt/202104/t20210401_135008.shtml (accessed on 22 May 2023).

³⁰⁵² *Ibid.*, Art. 14, 15.

³⁰⁵³ *Ibid.*, Art. 20, 22.

³⁰⁵⁴ China Railway Investment Group. *Introduction of China Railway Development Fund Co., Ltd.* http://www.cric-china.com.cn/gsjjs/jjgs_intro/ (accessed on 22 May 2023).

20.4.1.5. LAND SUPPLY

China Railway currently owns abundant land resources, with a large number of stations and marshalling yards concentrated in city centres³⁰⁵⁵. Government policy encourages China Railway to develop the land it owns around the railways and use the income generated by that land to fund railway construction and operation³⁰⁵⁶. Through this policy, China Railway engages in real estate development while offsetting its railway operating losses³⁰⁵⁷.

20.4.1.6. PREFERENTIAL TAXATION

EIT (see Section 15.5.2) is the most significant tax imposed on Chinese companies. China has been providing a preferential EIT rate of 15% to HNTEs since 1991³⁰⁵⁸, but this preferential treatment was not uniformly provided for by legislation until the promulgation of the Law of the People's Republic of China on Enterprise Income Tax in 2007³⁰⁵⁹. The 15% rate is a substantial reduction of 10% points from China's standard 25% EIT rate for resident enterprises³⁰⁶⁰.

HNTEs are resident companies that: (1) are engaged in continuous R&D and application of technological achievements in the fields prescribed in the list of *High- and New-Tech Fields with Key Support of the State*; and (2) have developed core independent intellectual property rights and conducted their business operations on the basis of these intellectual property rights³⁰⁶¹. Local authorities in China share responsibility for awarding companies HNTE status³⁰⁶². For an HNTE to qualify for the preferential EIT rate³⁰⁶³:

- (1) the enterprise must obtain ownership of intellectual property rights, which play a core supportive role technologically for the enterprise's main products or services through, for example, independent R&D, transfer, donation, or merger or acquisition;

³⁰⁵⁵ Lu, Y. (2013, August 21). *Four types of railways liberalize ownership and management rights*. People's Daily Online. <http://politics.people.com.cn/n/2013/0821/c1001-22636004.html> (accessed on 5 July 2023).

³⁰⁵⁶ Lu, Y. (2013, August 21). *Four types of railways liberalize ownership and management rights*. People's Daily Online. <http://politics.people.com.cn/n/2013/0821/c1001-22636004.html> (accessed on 5 July 2023).

³⁰⁵⁷ *Ibid.*

³⁰⁵⁸ State Council & State Administration of Taxation. (1991). *Provisions of the Tax Policy for the National High-and-New-Tech Industrial Development Zones*, Art. 4. <http://www.chinatorch.gov.cn/gxq/zcfg/199103/06a4d8f9a4c341bba5ecb92dd9bca302.shtml> (accessed on 5 July 2023).

³⁰⁵⁹ National People's Congress. (2017). *Law of the People's Republic of China on Enterprise Income Tax*, Art. 28. <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c28479830/content.html> (accessed on 22 May 2023).

³⁰⁶⁰ *Ibid.*, Art. 4.

³⁰⁶¹ MOST, MOF & State Administration of Taxation. (2016). *Notice of the Ministry of Science and Technology, the Ministry of Finance, the State Administration of Taxation on Amending and Issuing the Administrative Measures on the Accreditation of High- and New-Tech Enterprises*, Art. 2. http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 22 May 2023).

³⁰⁶² OECD. (2023). *Government support in industrial sectors: A synthesis report*. OECD Publishing, pp. 16–17. <https://www.oecd-ilibrary.org/docserver/1d28d299-en.pdf?expires=1686161509&id=id&accname=guest&checksum=7D7594B3F5D2971A5E681CADB4B094B3> (accessed on 8 June 2023).

³⁰⁶³ MOST, MOF & State Administration of Taxation. (2016). *Notice of the Ministry of Science and Technology, the Ministry of Finance, the State Administration of Taxation on Amending and Issuing the Administrative Measures on the Accreditation of High- and New-Tech Enterprises*, Art. 11. http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 22 May 2023).

- (2)the technologies playing a core supportive role for the enterprise’s main products or services are included in the list of *High-and-New-Tech Fields with Key Support of the State*;
- (3)the proportion of scientific and technological personnel engaged in R&D and related technological innovation activities at the enterprise must account for no less than 10% of the total number of employees of the enterprise;
- (4)total R&D expenses must account for no less than 3 to 5% of the total business income, depending upon the amount of the company’s annual business income;
- (5)R&D expenses accrued within the territory of China must account for no less than 60% of total R&D expenses; and
- (6)business income generated from high- and new-tech products or services must account for no less than 60% of the total income of the enterprise.

The list of High- and New-Tech Fields with Key Support of the State includes the field of ‘*advanced manufacturing and automation*’ and the sub-field of ‘*automobile- and rail-vehicle-related technology*’³⁰⁶⁴. Several subsidiaries of CRRC are HNTes and qualify for the 15% EIT rate³⁰⁶⁵. While the requirements to qualify for the preferential EIT rate for HNTes do not distinguish between domestic companies and FIEs in China, FIEs may face difficulties in complying with the requirement that at least 60% of R&D expenses be accrued within China³⁰⁶⁶.

In addition, R&D expenses incurred by companies in the development of new technologies, products or techniques are subject to a deduction on taxable income³⁰⁶⁷.

20.4.1.7. PREFERENTIAL LOANS

Chinese policy banks – including CDB and EXIM (see Section 6.3.1.3.) – have issued several loans to support the development of China’s railway industry. From 2011 to 2020, CDB lent RMB 1,2 trillion (~EUR 152,2 billion) to China Railway and its predecessors³⁰⁶⁸. CDB provided loans to the railway sector totalling RMB 236,7 billion (~EUR 28,9 billion) in

³⁰⁶⁴ MOST, MOF and State Administration of Taxation. (2016). *High- and New-Tech Fields with Key Support of the State*. (The list of *High- and New-Tech Fields with Key Support of the State* is attached to the *Administrative Measures on the Accreditation of High- and New-Tech Enterprises*). https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzc/gfxwj/gfxwj2016/201602/t20160205_123998.html (accessed on 22 May 2023).

³⁰⁶⁵ CRRC. (2023). *2022 annual report of CRRC*. <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900005127&stockCode=601766&announcementId=1216271749&announcementTime=2023-03-31> (accessed on 22 May 2023).

³⁰⁶⁶ MOST, MOF & State Administration of Taxation. (2016). *Notice of the Ministry of Science and Technology, the Ministry of Finance, the State Administration of Taxation on Amending and Issuing the Administrative Measures on the Accreditation of High- and New-Tech Enterprises*, Art. 11. http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 22 May 2023).

³⁰⁶⁷ *Ibid*; MOF, & State Administration of Taxation. (2021). *Announcement on Further Improving the Policy of Additional Deduction of R&D Expenses before Taxation*. http://www.gov.cn/zhengce/zhengceku/2021-04/07/content_5598193.htm (accessed on 22 May 2023).

³⁰⁶⁸ China Development Bank. (2021). *China Development Bank has lent more than 2.6 trillion yuan to support the construction of more than 70,000 kilometres of railways*. https://www.cdb.com.cn/xwzx/khdt/202104/t20210412_8373.html (accessed on 8 June 2023).

2014³⁰⁶⁹, RMB 121,6 billion (~EUR 17,4 billion) in 2015³⁰⁷⁰, RMB 172,5 billion (~EUR 23,5 billion) in 2016³⁰⁷¹ and RMB 147,2 billion (~EUR 19,3 billion) in 2017³⁰⁷². It continued to support the development of the railway industry from 2018 through 2022³⁰⁷³.

For example, in 2020, CDB issued the Work Plan of China Development Bank on Supporting the High-quality Development of the Manufacturing Industry, which established a special loan of RMB 250 billion (~EUR 31,7 billion) to support key areas defined by national industry policies, which include high-speed rail and rail transit equipment³⁰⁷⁴. In a study of 22 global firms with combined revenues of more than 70% of the global rolling stock market in 2020, the OECD found that these companies received approximately USD 5 billion (~EUR 4,4 billion) from grants, tax concessions, and below-market borrowings from 2016 to 2020³⁰⁷⁵. CRRC alone obtained nearly 60% of all below-market borrowings identified by the OECD³⁰⁷⁶.

20.4.1.8. EFFECTS OF STATE SUPPORT MEASURES

While China relied on imports for the initial development of its high-speed rail capabilities, by 2020, the majority of equipment for China's high-speed railways were made by Chinese companies³⁰⁷⁷. A study found that the introduction of high-speed rail technology to China via technology transfers '*leads to a significant growth in patenting activities among firms close to the direct receivers of foreign technologies*' and is '*associated with real economic gains, such as significant growth in total factor productivity and revenue*'³⁰⁷⁸.

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- ³⁰⁶⁹ China Development Bank. (2015). *2014 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2014_jx/ (accessed on 22 May 2023).
- ³⁰⁷⁰ China Development Bank. (2016). *2015 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2015_jx/ (accessed on 22 May 2023).
- ³⁰⁷¹ China Development Bank. (2017). *2016 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2016_jx/ (accessed on 22 May 2023).
- ³⁰⁷² China Development Bank. (2018). *2017 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2017_jx/ (accessed on 22 May 2023).
- ³⁰⁷³ China Development Bank. (2019). *2018 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2018_jx/ (accessed on 22 May 2023); China Development Bank. (2020). *2019 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2019_jx/ (accessed on 22 May 2023); China Development Bank. (2021). *2020 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2020_jx/ (accessed on 22 May 2023); China Development Bank. (2022). *2021 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2021_jx/ (accessed on 22 May 2023); China Development Bank. (2023). *2022 annual report of China Development Bank*. https://www.cdb.com.cn/gvykh/ndbg_jx/2022_jx/ (accessed on 22 May 2023).
- ³⁰⁷⁴ People's Daily Overseas Edition. (2020, March 30). *China Development Bank's special loan to support the manufacturing industry*. http://paper.people.com.cn/rmrhwb/html/2020-03/30/content_1978848.htm (accessed on 22 May 2023).
- ³⁰⁷⁵ OECD. (2023). *Government support in industrial sectors: A synthesis report*. OECD Publishing, p. 40. <https://www.oecd-ilibrary.org/docserver/1d28d299-en.pdf?expires=1686161509&id=id&accname=guest&checksum=7D7594B3F5D2971A5E681CADB4B094B3> (accessed on 8 June 2023).
- ³⁰⁷⁶ *Ibid.*
- ³⁰⁷⁷ UBS. (2020). *Global Railway: Lessons from the world's most profitable HSRs*, p. 29.
- ³⁰⁷⁸ Lin, Y., Qin, Y., & Xie, Z. (2021). Does foreign technology transfer spur domestic innovation? Evidence from the high-speed rail sector in China. *Journal of Comparative Economics*, 49, 213. <https://doi.org/10.1016/j.jce.2020.08.004> (accessed on 22 May 2023).

The government has provided financial support to Chinese firms to not only build and operate its high-speed rail network but manufacture the equipment supporting these projects³⁰⁷⁹. The Commission estimated in 2019 that CRRC was receiving EUR 450 million per year in subsidies³⁰⁸⁰, and according to an analysis by the Information Technology and Innovation Foundation (‘ITIF’), from 2015 to 2021, CRRC received almost USD 800 million (~EUR 702,5 million) in direct government subsidies³⁰⁸¹. The ITIF also estimates that CRRC’s state-supported debt increased from USD 70 billion (~EUR 56,3 billion) in 2005 to over USD 558 billion (~EUR 493,9 billion) in 2017³⁰⁸².

These and other measures create economies of scale for China’s SOEs that further reduce the ability of other companies to compete. According to the ITIF, ‘CRRC is not only larger than its competitors, but also has the broadest capabilities in the rail market’³⁰⁸³. While CRRC enjoys 70% of the global rolling stock market, the ITIF analysis estimates that CRRC’s market share would be 15 to 40% of this market in the absence of these measures³⁰⁸⁴.

Through direct subsidies, government grants, tax benefits and export credits, China continues to subsidise its industries of strategic importance, including its SOEs³⁰⁸⁵. Firms involved in advanced rail technology receive subsidies and tax incentives to support R&D, enjoy income tax rate reductions and qualify for more tax deductions³⁰⁸⁶.

20.4.2. PUBLIC PROCUREMENT PRACTICES

Opaque and discriminatory procurement procedures hinder foreign firms’ access to China’s massive domestic rail market³⁰⁸⁷ (see also Section 7.1.2).

20.4.3. RESTRICTIONS ON FOREIGN COMPANY ACCESS TO PUBLIC PROCUREMENT

China’s WTO membership imposes certain obligations with respect to non-discrimination despite China’s attestations that the procurement activities of its SOEs are commercial in nature and thus fall outside of this requirement³⁰⁸⁸. Nevertheless, China controls a heavily restricted procurement market that, along with its control of SOEs, funnels work to Chinese companies³⁰⁸⁹.

³⁰⁷⁹ ITIF Heading off track 2021, p. 5.

³⁰⁸⁰ Commission 2019 Railway Report, p. 156.

³⁰⁸¹ ITIF Heading off track 2021, p. 24. Furthermore, this estimate ‘likely represents an incomplete picture of direct government support, as company financial documents also acknowledge government subsidy contributions to “non-operating income,” “other receivables,” and “other cash received relevant to business activities.”’

³⁰⁸² *Ibid*, p. 23.

³⁰⁸³ *Ibid*, p. 14–15.

³⁰⁸⁴ *Ibid*, p. 52.

³⁰⁸⁵ Smith, J. et al. (2020). *Charting a transatlantic course to address China*. Center for a New American Security, p. 25.

³⁰⁸⁶ ITIF Heading off track 2021, p. 23.

³⁰⁸⁷ Commission 2019 Railway Report, p. 156.

³⁰⁸⁸ General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A: General Agreement on Tariffs and Trade 1994, Article III 1867 U.N.T.S. 187. (‘GATT’); available at: https://www.wto.org/english/docs_e/legal_e/04-wto.pdf (accessed on 8 June 2023).

³⁰⁸⁹ ITIF Heading off track 2021, pp. 24–25.

China's railway industry reflects the discriminatory nature and distortionary effects of the country's public procurement practices. According to the ITIF, to compete for public procurement contracts, foreign firms must get licenses by setting up joint ventures with Chinese companies, yet some tenders prohibit such joint ventures from bidding³⁰⁹⁰. Similarly, firms with local IP are granted more points under procurement criteria³⁰⁹¹.

In 2022, China Railway launched four tenders for the supply of 87 high-speed trains³⁰⁹². None of these bids were won by foreign companies, and only one of these bids was won by an FIE: Alstom Sifang (Qingdao) Transportation Ltd., a joint venture between Alstom and a subsidiary of CRRC³⁰⁹³. In some cases, CRRC started production before the tender was issued and had trains ready for delivery by the time the contract was signed³⁰⁹⁴. In a survey across industries, companies cited myriad licensing requirements and challenges as creating barriers to access to the Chinese market, including IP disclosures, inconsistent interpretation of regulations between central and local regulators, lengthy and indeterminate approval timelines, and de facto licensing restrictions on the number of players permitted in a particular industry³⁰⁹⁵.

The implementation of Made in China 2025 and related policy initiatives may further reduce market access for foreign firms operating in China, as such firms receive unequal treatment relative to the treatment of Chinese companies by other governments³⁰⁹⁶. According to the Commission's Joint Research Centre ('JRC'), from 2015 to 2018, about 30% of all European deals in China related to sectors covered by Made in China 2025, and one of them was related to advanced rail equipment³⁰⁹⁷. While China operated at a trade deficit in rail vehicles from 2008 to 2010, from 2014 to 2016 it operated at a significant trade surplus³⁰⁹⁸. Around the same time, European investors began favouring joint ventures and investing in minority stakes of Chinese companies because of the discriminatory policy and regulatory environment's favouring of Chinese firms³⁰⁹⁹. UNIFE assesses that the 'accessibility rate' of foreign investors to the Chinese rail market fell from an already-low rate of 20% in 2013-2015³¹⁰⁰ to 17% in 2020³¹⁰¹.

³⁰⁹⁰ *Ibid*, pp. 25–26.

³⁰⁹¹ *Ibid*, p. 26.

³⁰⁹² Bingyang, L. (2022, December 9). *The largest scale of bidding for high-speed locomotives is initiated with an amount of 5.2 billion yuan and the purchase of equipment is still low*. Tencent News. <https://new.qq.com/rain/a/20221209A0A8GZ00> (accessed on 8 June 2023).

³⁰⁹³ National Railway Procurement Platform. (2022). *Announcement on winning the bid for the procurement project of Fuxing EMU (8 trains) with a speed of 350 kilometers per hour*. <https://cg.95306.cn/baseinfor/notice/informationShow?id=142863acf0ab2acdce582fba627529f9> (accessed on 8 June 2023).

³⁰⁹⁴ ITIF Heading off track 2021, p. 25.

³⁰⁹⁵ U.S. Chamber of Commerce. (2017). *Made in China 2025: Global ambitions built on local protections*, p. 27.

³⁰⁹⁶ Preziosi, N., et al. (2019). *China: Challenges and prospects from an industrial and innovation powerhouse.*, p. 16.

³⁰⁹⁷ *Ibid*, p. 50-51.

³⁰⁹⁸ *Ibid*, p. 29.

³⁰⁹⁹ *Ibid*, p. 50.

³¹⁰⁰ See UNIFE. (2016). *Annual report 2016*. <https://www.unife.org/wp-content/uploads/2021/03/ANNUAL-REPORT-2016-13MB.pdf> (accessed on 8 June 2023).

³¹⁰¹ European Rail Supply Industry. (2021). *Annual report 2021*. https://www.unife.org/wp-content/uploads/2022/03/UNIFE-AR2021_Updated-HQspreads-07022022.pdf (accessed on 8 June 2023).

While CRRC enjoys the largest share of the global high-speed rail market mainly due to its outsized presence in the Chinese market, other major companies like Alstom, Hitachi, Kawasaki, and Siemens have seen their relative and absolute market shares decrease due to their inability to access the Chinese market³¹⁰². According to ITIF, as EU imports of rail products from China more than doubled from EUR 101 million in 2011 to EUR 212 million in 2017, EU exports of locomotives to China fell from EUR 865 million to EUR 505 million over this same time period³¹⁰³.

20.4.4. STANDARDISATION

Technical standards consist of common product specifications that include basic safety and interoperability requirements for common use³¹⁰⁴. In contrast to Europe and the US, China's standardization approach is state-driven, as even ostensibly private standards-developing organisations rely on state funding and state-support³¹⁰⁵. The economies of scale resulting from the Chinese governmental interventions in its domestic rail market allow for greater standardisation of the production process³¹⁰⁶. This not only helps increase production, but also gives Chinese companies a leg up in winning contracts with China Railway, which tends to include similar requirements in each contract³¹⁰⁷.

China's activities in international standards-setting bodies also impact its domestic market. The 14th Five Years Development Plan for Railway Standardisation's goal of translating more than 95% of international railway standards into Chinese standards by 2025³¹⁰⁸ exceeds the general national target of 85% alignment³¹⁰⁹. This is of concern, as China has been accused of pushing its own domestic standards through international bodies, and then requiring that all companies in its domestic market use international standards as a means to 'cover up unfair domestic protectionism'³¹¹⁰.

20.4.5. OVERCAPACITY

Overseas expansion of the high-speed railway segment has helped reduce domestic overcapacity³¹¹¹. During their rapid expansion, both CRRC and CRCC have faced overcapacity

³¹⁰² ITIF Heading off track 2021, p. 11.

³¹⁰³ *Ibid*, p. 13.

³¹⁰⁴ Rühlig, T.N., & ten Brink, T. (2021). The externalization of China technical standardization approach. *Development and Change*, 52(5), p.1198. <https://doi.org/10.1111/dech.12685> (accessed on 22 May 2023).

³¹⁰⁵ *Ibid*, p.1205–1206.

³¹⁰⁶ Kratz, A., & Oertel, J. (2021). *Home advantage: How China's protected market threatens Europe's economic power*. European Council on Foreign Relations, p. 31.

³¹⁰⁷ *Ibid*.

³¹⁰⁸ National Railway Administration. (2021). *14th Five-Year Development Plan for Railway Standardization*. https://www.nra.gov.cn/jglz/kjgl/zywj/202112/t20211227_272220.shtml (accessed on 22 May 2023).

³¹⁰⁹ Sheehan, M.; Feldgoise, J. (2023, February 27). *What Washington gets wrong about China and technical standards*. <https://carnegieendowment.org/2023/02/27/what-washington-gets-wrong-about-china-and-technical-standards-pub-89110>.

³¹¹⁰ *Ibid*.

³¹¹¹ Xiaoxi, C. (2014, December 26). *Japanese media: The domestic over-capacity issue, China urges companies to 'go outside'*. China Daily. http://caijing.chinadaily.com.cn/2014-12/26/content_19173902_3.htm (accessed on 22 May 2023); People's Daily Online. (2015, March 6). *Renmin Net: Facilitate the mass export of China high-speed railway - An interview with the representative of the National People's Congress and visit of China Railway No. 4 Engineering Group*. China Railway

issues³¹¹². Even when the high-speed railway segment itself is not experiencing overcapacity issues³¹¹³, China uses this industry to resolve overcapacity in other industries such as iron and cement manufacturing³¹¹⁴.

China has identified the need to curb overcapacity and has taken steps in recent years to attempt to mitigate this issue. In 2018, NDRC released a circular providing guidance on strengthening the regulation of investments in urban railway transportation and preventing overcapacity³¹¹⁵. Specifically, the circular requires local governments to report their local industries' manufacturing capacities for urban railway locomotives, traction systems, braking systems, and signalling systems to NDRC in order to establish monitoring mechanisms and strengthen guidance to prevent overcapacity³¹¹⁶. Furthermore, the circular directs provincial-level NDRCs to strictly regulate investment in urban railway locomotives, prohibiting regions that utilise less than 80% of such products manufactured from increasing manufacturing, and requiring companies that apply for expansion projects to demonstrate an 80% utilisation rate during the prior two years³¹¹⁷.

A 2018 State Council opinion concluded that several cities had too many urban rail construction projects, thereby imposing financial burdens on local governments³¹¹⁸.

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- No. 4 Engineering Group Co., Ltd. <http://www.crec4.com/content-1933-19017-1.html> (accessed on 22 May 2023).
- ³¹¹² Lu, B. (2013, March 31). *The issue of 'investment in exchange for order' re-emerge, how to resolve the over-capacity issue of subway cars manufacturing*. China Business News. <https://finance.sina.com.cn/jjxw/2023-03-31/doc-imynuhca4432578.shtml>; China Economics Net. (2017, May 22). *CRRC has trouble in over-capacity, the overseas business is not growing continuously*. <http://finance.china.com.cn/industry/20170522/4220928.shtml> (accessed on 22 May 2023); Zhou, C., & Zhang, Z. (2018, April 9). *The director of CRRC: The risks of the over-capacity of urban railway is still controllable*. Daily Economics News. <http://ifinance.ifeng.com/16062773/news.shtml?&back> (accessed on 22 May 2023); China Business News. (2020, August 14). *How to resolve the over-capacity of manufacturing railway transportation equipment - An interview with Ning Sun, the General Manager of the Railway Business Department of TUV Rheinland China*. Rail+ Metro. <http://www.railmetrochina.com/expo/%E8%BD%A8%E9%81%93%E4%BA%A4%E9%80%9A%E8%A3%85%E5%A4%87%E5%88%B6%E9%80%A0%E4%BA%A7%E8%83%BD%E8%BF%87%E5%89%A9%E5%A6%82%E4%BD%95%E5%8C%96%E8%A7%A3%EF%BC%9F-%E4%B8%93%E8%AE%BF%E5%BE%B7.html> (accessed on 22 May 2023).
- ³¹¹³ Zeng, H. (2014, July 3). *Yuanzheng Cao: The over-capacity issue is serious but not for high-speed railways*. China News. <https://www.chinanews.com.cn/cj/2014/07-03/6345403.shtml> (accessed on 22 May 2023).
- ³¹¹⁴ Yu, X. (2013, July 23). *The State hopes to resolve the over-capacity issue by developing the railway industry - improve the investment in high-speed railway*. Shanghai Securities News. <https://news.cnstock.com/industry,tt-201307-2667884.htm> (accessed on 22 May 2023).
- ³¹¹⁵ NDRC. (2018). *Circular On Relevant Matters on Strengthening the Supervision of Investment Projects of Urban Railway Transportation Cars released by the National Development and Reform Commission*. http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5434899.htm (accessed on 22 May 2023).
- ³¹¹⁶ *Ibid.*
- ³¹¹⁷ *Ibid.*
- ³¹¹⁸ State Council. (2018). *Opinion on Further Strengthening the Management of Urban Railway Transportation Planning Construction*. http://www.gov.cn/zhengce/content/2018-07/13/content_5306202.htm (accessed on 22 May 2023).

In 2022, Beijing's Fengtai District released a circular regarding the development of rail transportation for the 14th FYP period that mentions overcapacity in the manufacture of urban railway transportation cars and associated raw materials³¹¹⁹.

The Government also ordered CRRC to halt development of maglev production plants “as part of broader orders to stop local governments from building excessive local transit projects that drive up debt and create overcapacity in industrial production”³¹²⁰. One such factory was expected to produce 60 maglev trains a year, far more than the global market could support³¹²¹.

According to a special report published by the National Bureau of Asian Research, the BRI not only serves geopolitical interests but “other contingent, commercial goals, particularly in offshoring surplus investment at home to other geographies [...] to resolve latent issues of overcapacity and debt issues through the export of capital and capacity”³¹²². After China injected “huge sums of capital at home” in the wake of the 2008 global financial crisis, SOEs facing a saturated domestic market were encouraged to search for other markets with the help and support of state-owned banks, leading to increased railway construction abroad, especially in developing countries³¹²³. From 2013 to 2019, CRCC signed 21 rail construction contracts abroad worth USD 19,3 billion (~EUR 15,3 billion), while CREC signed 19 contracts worth USD 12,9 billion (~EUR 10,9 billion)³¹²⁴.

20.5. CHAPTER SUMMARY

China has supported the development of its railway industry, and especially high-speed rail and its components, through a variety of plans, policies and strategies issued by the country's central and local governments. Government policy facilitated the transfer of high-speed rail technology from foreign to Chinese companies while this industry was still nascent in China. In the nearly 20 years since then, China has provided financial support via grants, equity investments, and preferential tax and loan treatment to its essentially state-owned railway industry while shielding domestic companies from international competitors.

Reforming how the industry is structured and regulated has been instrumental in China's development of the sector. The 2015 forced merger of CNR and CSR to form CRRC created a national and, increasingly, global champion in rolling stock manufacturing. In 2013, and again in 2017, China reorganised the supervision of its railway industry to separate regulatory and

³¹¹⁹ People's Government of Fengtai District Beijing City. (2022). *The Development Plan of the Railway Transportation Industry of Fengtai District during the Fourteenth Five-year Period*. <http://www.bjft.gov.cn/ftq/zfwj/202202/b87a2bb0c28e4aceaa30cae1b350cf9a.shtml> (accessed on 22 May 2023).

³¹²⁰ Lichao, S., & Cao, B. (2018, May 24). *Maglev train production line suspended amid overcapacity concern*. Caixin Global. <https://www.caixinglobal.com/2018-05-24/maglev-train-production-line-suspended-amid-overcapacity-concern-101255179.html> (accessed on 22 May 2023).

³¹²¹ *Ibid.*

³¹²² Chen, Y. (2022). *African Railway ambitions meet China's Belt and Road*. National Bureau of Asian Research, p. 37. https://www.nbr.org/wp-content/uploads/pdfs/publications/sr98_inroadsandoutposts_may2022.pdf (accessed on 8 June 2023).

³¹²³ *Ibid.*

³¹²⁴ China Power. (2021). *How are foreign rail construction projects advancing China's interests?* <https://chinapower.csis.org/rail-construction/> (accessed on 22 May 2023).

inspection duties from operations and to allow China Railway to operate as a modern enterprise. Since then, China Railway has invested in railway infrastructure development, including through its role as government representative of the China Railway Development Fund Co., Ltd.

China Railway also plays a role in government procurement, launching tenders for railway component purchases for the country's rail projects that are inaccessible to foreign companies, and even foreign-Chinese joint ventures have seen their access to public tenders diminish.

The totality of China's interventions in its domestic market have sheltered China's railway SOEs from foreign competition at home and enabled them to significantly undercut their European, Japanese, and US competitors abroad. At the same time, China's projects through the BRI and other initiatives helped push Chinese overcapacity overseas, sometimes through financing arrangements that contributed further indirect distortions on the Chinese domestic market.

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21.1. INTRODUCTION

Environmental goods and services are those that aim “to prevent, measure, control, limit, minimise or correct environmental damage and resources depletion”³¹²⁵. Environmental goods can be defined as the outputs of environmental activities, i.e. activities that either directly serve an environmental purpose or produce specifically designed products whose use serve an environmental purpose. Thus environmental goods are all goods that directly serve environmental protection (all activities and actions which have as their main purpose the prevention, reduction and elimination of pollution and of any other degradation of the environment) or resource management (activities that include the preservation, maintenance and enhancement of the stock of natural resources and therefore the safeguarding of those resources against depletion) or are specifically designed goods whose use serves for environmental protection or resource management³¹²⁶. As such, they encompass a wide array of components, products, sectors and industries, and developing an internationally agreed upon definition of what falls within or outside the definition of ‘environmental goods’ has proven difficult³¹²⁷. Nevertheless, goods that undisputedly fall within the definition are products and components principally focused on the clean energy transition, such as goods used in the renewable energy sector. Accordingly, this chapter will focus on the environmental goods used in the renewable energy generation sector, specifically goods used to produce solar energy, wind energy and geothermal energy – in particular, solar cells, wind turbines and geothermal (or ‘ground source’) heat pumps (‘GHP’), respectively.

China has explicitly identified the production of environmental goods as important to its economic development objectives. In 2010, the State Council adopted the *Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries*, designating certain industries as SEIs that warranted special policy and fiscal attention³¹²⁸. One such industry was the ‘new energy industry’, which includes both the PV and wind power industries³¹²⁹. Accordingly, manufacturers of products in the new energy industry have been eligible to receive various kinds of state support.

³¹²⁵ Eurostat 2009, *The environmental goods and services sector*, p. 19; available at: <https://ec.europa.eu/eurostat/documents/3859598/5910217/KS-RA-09-012-EN.PDF.pdf/01d1733e-46b6-4da8-92e6-766a65d7fd60?t=1414781549000> (accessed on 11 October 2023).

³¹²⁶ Eurostat 2016, *Environmental goods and services sector accounts, Handbook*, p. 12; available at: <https://ec.europa.eu/eurostat/documents/3859598/7700432/KS-GQ-16-008-EN-N.pdf/f4965221-2ef0-4926-b3de-28eb4a5faf47?t=1476868680000> (accessed on 11 October 2023).

³¹²⁷ See Reinsch, W.A., Benson, E. and Puga, C., *Environmental Goods Agreement: A New Frontier or an Old Stalemate?*, 28 October 2021; available at: <https://www.csis.org/analysis/environmental-goods-agreement-new-frontier-or-old-stalemate> (accessed on 24 August 2023).

³¹²⁸ Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries, 2010; available at: http://www.gov.cn/zwggk/2010-10/18/content_1724848.htm (accessed on 24 August 2023); *China's Strategic Emerging Industries: Policy, Implementation, Challenges, & Recommendations*, US-China Business Council, 2013; available at: <https://www.uschina.org/sites/default/files/sei-report.pdf> (accessed on 24 August 2023).

³¹²⁹ *Ibid.*

Now China is responsible for 60% of global wind turbine manufacturing capacity³¹³⁰, over 80% of solar cell manufacturing³¹³¹ and almost 40% of heat pump manufacturing³¹³². These positions are primarily the result of prior Chinese government interventions that have left the global market in these sectors dominated by Chinese firms³¹³³.

21.2. REGULATORY AND POLICY FRAMEWORK

21.2.1. 14TH FIVE YEARS PLAN FOR NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT

In 2016, China promulgated the 13th FYP (see Section 2.2.5), which included the goal of establishing a modern energy system³¹³⁴. The 13th FYP included ambitions around wind and solar power generation and accelerating the development of geothermal energy³¹³⁵.

The 14th FYP – the current centrepiece of China’s industry policy and planning system (see more in Section 2.2.5) – builds upon the 13th FYP in its emphasis on a modern energy system, calling for the promotion of an energy revolution and for building a clean, low carbon, safe and efficient energy system³¹³⁶. The 14th FYP further focuses on expanding the scale of wind and solar power generation, developing offshore wind power and developing and utilising geothermal energy, where permitted by local conditions³¹³⁷. The plan designates energy storage as a cutting-edge sector for which research through ‘national future industrial technology research institutes’ will be conducted³¹³⁸. The plan also proposes the accelerated development of pumped storage power stations and the large-scale implementation of new energy storage technologies³¹³⁹.

21.2.2. MADE IN CHINA 2025

³¹³⁰ *Energy Technology Perspectives 2023*, International Energy Agency, 2023, p. 115, available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 24 August 2023).

³¹³¹ *Solar Photovoltaics: Supply Chain Deep Dive Assessment*, US Department of Energy Response to Executive Order 14017, “America’s Supply Chains”, US Department of Energy, 24 February 2022, p. 37; available at: <https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf> (accessed on 24 August 2023).

³¹³² *Energy Technology Perspectives 2023*, International Energy Agency, 2023, pp. 98–99; available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 13 April 2023).

³¹³³ However, China may provide additional government support to meet ambitions it has set for itself or to overcome economic challenges. See *China to step up financial support for wind and solar power*, Reuters, 25 March 2021; available at: <https://www.reuters.com/business/energy/china-step-up-financial-support-wind-solar-power-2021-03-25/> (accessed on 30 August 2023).

³¹³⁴ See Chapter 30, Section 1 of the Outline of the 13th FYP for National Economic and Social Development, National People’s Congress, 2016; available at: http://www.gov.cn/xinwen/2016-03/17/content_5054992.htm (accessed on 24 August 2023).

³¹³⁵ *Ibid.*

³¹³⁶ See Chapter 11, Section 3 of the 14th FYP for National Economic and Social Development and Long-range Objectives for 2035 of the PRC, National People’s Congress, 2021; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 24 August 2023).

³¹³⁷ *Ibid.*, Chapter 11, Section 3.

³¹³⁸ *Ibid.*, Chapter 9, Section 2.

³¹³⁹ *Ibid.*, Chapter 11, Section 3.

Made in China 2025 (see Section 4.2.3) addresses also ‘green development’, describing the need to popularise and apply technologies, processes and equipment for energy conservation and environmental protection³¹⁴⁰. Made in China 2025 selects 10 key industries for achieving breakthroughs and for which global leadership or advanced technological development is sought by 2025³¹⁴¹. One such key industry is electrical equipment, under which Made in China 2025 calls for the development of renewable energy equipment and advanced energy storage devices³¹⁴².

The Made in China 2025 Roadmap (see Section 4.2.3) includes as key products renewable energy power generation equipment and intelligent control systems, such as the 5 MW-class wind turbine and advanced solar power generation equipment, including large-scale photothermic power generation. The Made in China 2025 Roadmap also lists ultra-long blades and intelligent control systems of large wind turbines as key parts and components, and lists wind turbine blade design technology for 5 MW and greater, wind turbine intelligent control systems, 10 MW-class superconducting wind turbine technology and overall structure design, efficient solar energy heat collection, heat storage and exchange systems and equipment, intelligent control technology and system integration as key technologies for China to develop³¹⁴³. The Made in China 2025 Roadmap authorises the use of the full suite of taxation and fiscal policy tools and administrative processes to support technological progress and industrialisation of clean and efficient power generation equipment, and to build a major national innovation base for clean and efficient power generation technology³¹⁴⁴.

Furthermore, China promulgated the Industrial Four Bases Catalogue in 2016³¹⁴⁵. For the 10 fields identified by Made in China 2025, the catalogue explained that industrial and manufacturing capacity should be promoted in (1) ‘core basic components’, (2) ‘key basic materials’, (3) ‘advanced basic technology’ and (4) the ‘industrial technology base’. Included within the catalogue are various environmental goods in the new energy sector, such as large-scale composite wind power blades and composite pole towers, anode and cathode materials of water-based batteries for wind- and solar-scale energy storage, ultra-efficient III-V crystal solar cells and thin-film gallium arsenide solar cells³¹⁴⁶. The catalogue was published in part to “guide financial institutions, credit guarantee industries and insurance industries to make full use of various financial means to support research and development”³¹⁴⁷.

21.2.3. PLANS ON RENEWABLE ENERGY DEVELOPMENT

³¹⁴⁰ See Article 2, Section 1 of the *Made in China 2025*, State Council, 2015; available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 24 August 2023).

³¹⁴¹ *Made in China 2025 Key Technology Roadmap. Preface*, National Manufacturing Strategy Advisory Committee, 2015; available at: <http://www.cm2025.org/uploadfile/2016/0321/20160321015412313.pdf> (accessed on 11 October 2023).

³¹⁴² See Article 3, Section 6, Item 7 of the *Made in China 2025*, State Council, 2015; available at: http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm (accessed on 24 August 2023).

³¹⁴³ *Ibid.*, Article 7.1.3.1 (5). Items 1 and 2, Article 7.1.3.2 (4), Article 7.1.3.3(5).

³¹⁴⁴ *Ibid.*, Article 7.1.5.2.

³¹⁴⁵ *Industrial Four Bases Catalogue*, National Manufacturing Strategy Advisory Committee, 2016; available at: <http://www.cm2025.org/show-14-126-1.html> (accessed on 28 July 2023).

³¹⁴⁶ *Ibid.*, Sections 2(4)11–12, 6(2)30, 9(2)17–18.

³¹⁴⁷ *Ibid.*, Foreword.

21.2.3.1. 13TH FIVE YEARS PLANS

The 13th Five Years Plan for Renewable Energy Development focused directly on the development and efficient utilisation of various forms of renewable energy, including wind power, solar energy and geothermal energy, and it included as one of the main development targets the application of energy storage technologies in the renewable energy sector³¹⁴⁸. It also aimed to accelerate technological innovation related to renewable energy, including by improving technology for product preparation, production processes and the localisation of production equipment for the entire supply chain, while also advancing R&D of key technologies³¹⁴⁹.

The 13th Five Years Plan for Solar Energy Development included goals related to the solar cell industry, such as improving the conversion efficiency of advanced crystalline silicon PV cells to more than 23%, improving the conversion efficiency of thin-film PV cells and the industrial development of several new types of PV cells³¹⁵⁰. The plan “[e]ncourage[d] financial regulators and financial institutions to implement green credit policies that promote the development of clean energy” and “actively promote[d] cooperation between banks and other financial institutions and local governments to establish investment and financing service platforms for photovoltaic power generation projects”³¹⁵¹. Moreover, the plan suggested that state funding, enterprise investment and social capital participation could be used to establish a national photovoltaic industry investment fund to provide funds for innovative businesses.³¹⁵²

In the 13th Five Years Plan for Wind Energy Development, China called for increased performance of wind turbines, achieving breakthroughs in the design and manufacturing of large-capacity (10 MW) wind turbines and key components, and mastering other technologies related to wind turbines, such as intelligent diagnosis and cooperative control technology³¹⁵³. The plan also authorised developing and amending standards related to wind turbines. The plan “[e]ncourage[d] financial institutions to issue green bonds, encourage[d] policy banks to increase support for the wind power industry by means of lower interest rates, and encourage[d] commercial banks to promote project financing models”³¹⁵⁴. The plan also aimed to support offshore wind industrial policy by, in part, “improv[ing] offshore wind power development plans in coastal provinces” and “encourag[ing] coastal provinces (autonomous regions, municipalities) and major development companies to build offshore wind power demonstration projects”³¹⁵⁵.

³¹⁴⁸ See Chapter 4, Sections 2, 3, 5 and 7 of the 13th Five-Year Plan for the Development of Renewable Energy, NDRC, 2016; available at: http://www.nea.gov.cn/135916140_14821175123931n.pdf (accessed on 11 October 2023).

³¹⁴⁹ *Ibid.*, Chapter 7, Section 2.

³¹⁵⁰ See Section 2.3.3 of the 13th Five-Year Plan for Solar Energy Development, NEA, 2016; available at: http://zfxgk.nea.gov.cn/auto87/201612/t20161216_2358.htm?keywords= (accessed on 24 August 2023).

³¹⁵¹ *Ibid.*, Section 4.5.

³¹⁵² *Ibid.*

³¹⁵³ See Section 4.3 of the 13th Five-Year Plan for Wind Energy Development, NEA, 2016; available at: <http://www.gov.cn/xinwen/2016-11/30/5140637/files/2bf9f0e12d00443fb99aea2753a5de5a.pdf> (accessed on 11 October 2023).

³¹⁵⁴ *Ibid.*, Section 4.3.

³¹⁵⁵ *Ibid.*, Section 4.4.

The 13th Five Years Plan for Geothermal Energy Development was the first national-level plan focused on the geothermal industry³¹⁵⁶. The plan highlighted the increasingly important role of the geothermal energy industry for the clean energy transition, and it established the goal of achieving breakthroughs in heat pump technology³¹⁵⁷. The plan promoted the development of investment support policies, the provision of policy support in the form of land and sea use provisions and electricity price support and increased investment in R&D³¹⁵⁸.

Independent analyses of China's renewable energy commitments during the 13th FYP period indicate that China has seen success in achieving its ambitions, at least at a high level. By 2020 – the end of the 13th FYP period – China had 530 GW of installed solar and wind capacity, vastly exceeding the goal of 320 GW³¹⁵⁹. Moreover, China surpassed its target for the non-fossil fuel share of energy consumption, reaching 16% by 2020, slightly ahead of the goal of 15%³¹⁶⁰.

21.2.3.2. 14TH FIVE YEARS PLAN ON RENEWABLE ENERGY DEVELOPMENT

The 14th Five Years Plan on Renewable Energy Development describes the support that the government will provide to promote the development of renewable energy, such as land and sea use planning to develop and utilise renewable energy; increasing the collection of renewable energy development funds; improving support policies for renewable energy such as deep-sea wind power, biomass energy and geothermal energy; incorporating the financing of renewable energy projects into local governments' incentive plans, such as through low-interest rate financing; and establishing a financial support mechanism to support distributed renewable energy³¹⁶¹.

The 14th Five Years Plan on Renewable Energy Development is predicated upon the expectation that global energy consumption will transition to a low- or zero-carbon future, and as such, renewable energy will gradually become the main energy source for supporting economic and social development³¹⁶². Accordingly, during the period covered by the 14th FYP, China's renewable energy sectors should enter a new stage of 'high-quality leapfrog development'³¹⁶³.

³¹⁵⁶ *The 13th FYP for Geothermal Energy Development May Activate a High-value Industry*, China Energy News, 28 August 2017; available at: https://paper.people.com.cn/zgnyb/html/2017-08/28/content_1800973.htm (accessed on 14 April 2023).

³¹⁵⁷ See Sections 3.5 and 5.1.5 of the *13th Five-Year Plan for Geothermal Energy Development*, NDRC, NEA, and Ministry of Land and Resources, 2017; available at: <http://www.gov.cn/xinwen/2017-02/06/5165321/files/19f10bae3ba5463f833c954de2d06a8f.pdf> (accessed on 24 August 2023).

³¹⁵⁸ *Ibid.*, Section 5.1.

³¹⁵⁹ Min, H., *Guest post: Will China's new renewable energy plan lead to an early emissions peak?*, Carbon Brief, 7 July 2022; available at: <https://www.carbonbrief.org/guest-post-will-chinas-new-renewable-energy-plan-lead-to-an-early-emissions-peak/> (accessed on 24 August 2023).

³¹⁶⁰ *Ibid.*

³¹⁶¹ *14th Five-Year Plan on Renewable Energy Development*, Articles 8.2–8.4, NDRC, NEA, Ministry of Finance, the Ministry of Natural Resources, Ministry of Ecology and the Environment, Ministry of Housing and Urban-Rural Development, Ministry of Agriculture and Rural Affairs, China Meteorological Administration, State Forestry and Grassland Administration, 2022; available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202206/P020220602315308557623.pdf> (accessed on 24 August 2023).

³¹⁶² *Ibid.*, Article 1.2.

³¹⁶³ *Ibid.*, Article 1.2.

By the end of 2030, China's goal is that the total installed capacity for wind and solar power will exceed 1.2 billion KW³¹⁶⁴.

The 14th Five Years Plan on Renewable Energy Development ('14th Renewable Energy FYP') addresses multiple areas of development for the renewable energy sector. It promotes the development of solar cell technologies³¹⁶⁵, improvements to wind turbine technology, upgrades to existing wind turbines and an emphasis on the R&D of large offshore wind turbines and high-altitude and high-power wind turbines, as well as achieving breakthroughs in large-capacity wind turbines³¹⁶⁶, as well as calls for the active utilisation of GHPs for heating and cooling services³¹⁶⁷.

In regions with ample wind and solar energy sources and with the conditions necessary for sustainable large-scale development, China aims to improve the capacity of local renewable energy consumption and transmission. China focuses on building new energy generation sites in XUAR, the upper reaches of the Yellow River, the Hexi Corridor, the Yellow River Jiziwan, northern Hebei Province, the Songliao region and the lower reaches of the Yellow River. Moreover, the 14th Renewable Energy FYP sets the goal of building five offshore wind power bases in the Shandong Peninsula, the Yangtze River Delta, southern Fujian, eastern Guangdong and the Beibu Gulf³¹⁶⁸.

In addition to emphasising the development of wind and solar power generation bases, the 14th Renewable Energy FYP also promotes the deployment of distributed wind and solar energy – i.e., smaller-scale wind and solar generation sites located near where the energy will be consumed³¹⁶⁹ – in industrial parks, economic development zones and oil, gas and mining and their surrounding areas. The plan also focuses on the promotion and application of low-wind speed wind power technology, the promotion of local and nearby development of wind power in central, southeast and eastern China according to local conditions and the development of wind power capacity in rural areas. With solar generation, the plan references a focus on promoting the development and utilisation of rooftop solar panels in industrial parks, economic development zones and public buildings; the development of building-integrated PV power generation in new factories and public buildings and the implementation of the comprehensive utilisation of 'Photovoltaic +' such as through integrating the development of solar power generation with information technology industries, including 5G base stations and big data centres, and the application of solar power in new energy vehicle charging, facilities along railway lines, expressway service areas and other transportation fields³¹⁷⁰.

³¹⁶⁴ *Ibid.*, Article 2.3.

³¹⁶⁵ *Ibid.*

³¹⁶⁶ *Ibid.*, Sections 3.1–3.2, 5.1.

³¹⁶⁷ *Ibid.*, Sections 3.6.

³¹⁶⁸ *Ibid.*, Article 3.1.

³¹⁶⁹ *Unlocking the Potential of Distributed Energy Resources: Power system opportunities and best practices*, IEA, 2022, p. 3.; available at: https://iea.blob.core.windows.net/assets/3520710c-c828-4001-911c-ae78b645ce67/UnlockingthePotentialofDERs_Powersystemopportunitiesandbestpractices.pdf (accessed on 24 August 2023).

³¹⁷⁰ See Article 3.2. of the *14th Five-Year Plan on Renewable Energy Development*, NDRC, NEA, MOF, the MLR, MEE, Ministry of Housing and Urban-Rural Development, Ministry of Agriculture and Rural

The 14th Renewable Energy FYP promotes the use of medium and deep geothermal energy to provide heating in the northern regions of China, and to explore the application of medium and deep geothermal energy refrigeration technology on the south-eastern coast of China. The plan also encourages the development of soil source heat pumps, recycled water source heat pumps and surface water source heat pumps. It aims to expand the scale of development and utilisation of shallow geothermal energy. Moreover, the plan calls for promoting the development of high-temperature geothermal power generation in regions such as Tibet, Qinghai and Sichuan, supporting the demonstration of advanced technologies such as hot dry rock and enhanced geothermal power generation and promoting medium and low temperature geothermal power generation in areas rich in medium and low temperature geothermal resources, such as the eastern and central regions of China³¹⁷¹.

21.2.4. 14TH FIVE YEARS PLAN FOR A MODERN ENERGY SYSTEM

During the 13th FYP period, China sought to modernise its energy system and continued to pursue that ambition during the 14th FYP period. The 14th Five Years Plan for a Modern Energy System ('14th Modern Energy FYP') describes expediting the green and low-carbon transformation of energy as a key aspect of developing a modern energy system³¹⁷² and references expanding the clean energy industry, implementing the renewable energy transition, promoting the construction of a new electricity power system and gradually increasing the proportion of new energy in China's energy sector. According to the plan, China can then reach its carbon peak and achieve carbon neutrality in a 'scientific and orderly' manner while continuously improving its green development³¹⁷³.

Accelerating large-scale and high-quality wind and solar power generation development is one way China plans to realise its green and low-carbon energy transformation goals³¹⁷⁴. Doing so, according to the plan, requires developing both centralised and distributed wind and solar power generation capabilities³¹⁷⁵. Additionally, the plan identifies geothermal resources as another way to realise the green and low-carbon energy transformation and actively promotes using geothermal power to provide heating and cooling where viable³¹⁷⁶.

The 14th Modern Energy FYP explains the various fiscal, taxation and financial support measures that should be put in place to implement these goals, and mention, in particular, 'preferential tax policies', 'increase[d] support for renewable energy, energy conservation and carbon reduction' and the development of a 'green financial system'.³¹⁷⁷

Affairs, China Meteorological Administration, State Forestry and Grassland Administration, 2022; available at: <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202206/P020220602315308557623.pdf> (accessed on 24 August 2023).

³¹⁷¹ *Ibid.*, Article 3.5.

³¹⁷² See Chapter 1, Section 2 of the *14th Five-Year-Plan for a Modern Energy System*, NDRC and NEA, 2022; available at: <http://www.gov.cn/zhengce/zhengceku/2022-03/23/5680759/files/ccc7dffca8f24880a80af12755558f4a.pdf> (accessed on 24 August 2023).

³¹⁷³ *Ibid.*, Chapter 4.

³¹⁷⁴ *Ibid.*.

³¹⁷⁵ *Ibid.*

³¹⁷⁶ *Ibid.*

³¹⁷⁷ *Ibid.*, Chapter 7.

21.2.5. 14TH FIVE YEARS PLAN FOR NEW ENERGY STORAGE DEVELOPMENT

China emphasizes that new energy storage is important for building a modern electrical power system and achieving its carbon peak and carbon neutrality goals, an ambition embodied in its *14th Five Years Plan for New Energy Storage Development*³¹⁷⁸. By the end of 2025, China aims to have new energy storage capacity for large-scale commercial applications, and by the end of 2030, new energy storage should be ‘fully market oriented’, with technological innovation allowing China to be a world leader in new energy storage³¹⁷⁹.

The 14th Five Years Plan for New Energy Storage Development promotes R&D of new energy system technologies, the development of joint industry-academic research programs, industrialising new energy storage systems, developing large-scale new energy systems, increasing the speed at which these systems can be brought to market, providing necessary ‘policy guarantees’ and improving the management of new energy storage systems³¹⁸⁰. On R&D related to key technologies and equipment, the plan mentions conducting research on key technologies and equipment for sodium-ion batteries, new lithium-ion batteries, lead-carbon batteries, liquid flow batteries, compressed air, hydrogen (ammonia) energy storage and thermal (cold) energy storage; conducting research on energy storage technologies such as superconducting and supercapacitors and conducting research on new generation high-energy density storage technologies such as liquid metal batteries, solid-state lithium-ion batteries and metal-air batteries³¹⁸¹. The plan also calls for achieving breakthroughs in safety technology and smart-control technology related to new energy storage³¹⁸².

On policy support, the plan directs localities to increase their support for large-scale energy storage projects, including by using existing funds to support the industrialisation and application of new energy storage technology, and by supporting the energy storage development fund to integrate new energy storage into the green energy financial system³¹⁸³.

21.2.6. OTHER STRATEGIES AND PLANS

21.2.6.1. NATIONAL STRATEGIES AND PLANS

The Strategy for the Revolution in Energy Production and Consumption (2016-2030) calls for the aggressive development of wind and solar energy and the utilisation of geothermal energy in cities and regions where conditions permit³¹⁸⁴. This strategy also instructs government agencies to promote the acceleration of technological R&D and the production of equipment for large-scale land and offshore wind power. For efficiently generating solar power, the strategy focuses on R&D related to solar cell materials, PV conversion technology, smart PV

³¹⁷⁸ NDRC and NEA (2022). *14th Five-Year Implementation Plan for New Energy Storage Development*; available at: <http://www.gov.cn/zhengce/zhengceku/2022-03/22/5680417/files/41a50cec48e84cc4adfca855c3444f6b.pdf> (accessed on 24 August 2023).

³¹⁷⁹ *Ibid.*, Article 1.3.

³¹⁸⁰ *Ibid.*

³¹⁸¹ *Ibid.*, Article 2.1.

³¹⁸² *Ibid.*

³¹⁸³ *Ibid.*

³¹⁸⁴ NDRC and NEA, *Strategy for the Revolution in Energy Production and Consumption (2016-2030)*, 2016, Chapter 5, Section 2; available at: <http://www.gov.cn/xinwen/2017-04/25/5230568/files/286514af354e41578c57ca38d5c4935b.pdf> (accessed on 24 August 2023).

power stations and wind-PV-water complementary power generation technology. The strategy also prioritises the development of energy storage technology.

In 2023, MIIT, Ministry of Education, MOST, PBOC, CBIRC and Energy Bureau issued the Guiding Opinions on Promoting the Development of the Energy Electronics Industry³¹⁸⁵ that explicitly proposes developing efficient solar products and technologies. The Guiding Opinions encourage R&D spending and breakthroughs in various PV technologies, including smart PVs, high efficiency and low-cost crystalline silicon cells, N-type high-efficiency cells and flexible thin-film cells, among others³¹⁸⁶. On policy support, the Guiding Opinions direct the “*full use of relevant central and local channels to implement relevant preferential policies and measures*”³¹⁸⁷. Moreover, firms in the industry should be identified for special policy treatment (e.g., as a ‘little giant’ enterprise for small- and medium-enterprises). The Guiding Opinions promote the “*use [of] credit, bonds, funds, insurance and other financial instruments to increase support for the supply chain of the energy and electronics industry*”³¹⁸⁸.

In 2022, China promulgated the 14th FYP on the Development of Energy Efficient Buildings and Green Construction³¹⁸⁹. The ambitions of the plan include that by the end of 2025, the installed capacity of solar power in new buildings across China will reach more than 50 million KW, the application area of buildings with geothermal energy will exceed 100 million square metres and the replacement rate of renewable energy in urban buildings will reach 8%³¹⁹⁰. The plan seeks to promote the use of solar energy in buildings by coordinating the use of solar PV and solar thermal systems based on the resources available³¹⁹¹. It also calls for promoting the application of geothermal energy (including through GHP technology and other geothermal technologies), air heat energy and biomass energy, among others, to meet the various energy demands of buildings³¹⁹². The plan directs policy support for energy-saving renovations of existing structures, renewable energy application and green farmhouses. The plan also encourages the development of green finance, credit and insurance support, improved government procurement standards for green building materials and carbon emission trading for larger buildings³¹⁹³.

Promotion of power generation and the comprehensive utilisation of technologies for advanced renewable energy is one of the five key tasks listed in the 14th FYP on Technological Innovation

³¹⁸⁵ *Guiding Opinions on Promoting the Development of the Energy Electronics Industry*, MIIT, Ministry of Education, MOST, PBOC, China Banking and Insurance Regulatory Commission and Energy Bureau, 2022; available at: http://www.gov.cn/zhengce/zhengceku/2023-01/17/content_5737584.htm (accessed on 24 August 2023).

³¹⁸⁶ *Ibid.*, Article 3.

³¹⁸⁷ *Ibid.*, Article 8(21).

³¹⁸⁸ *Ibid.*

³¹⁸⁹ *14th Five-Year Plan on the Development of Energy Efficient Buildings and Green Construction*, Ministry of Housing and Urban-Rural Development, 2022; available at: http://www.gov.cn/zhengce/zhengceku/2022-03/12/content_5678698.htm (accessed on 24 August 2023).

³¹⁹⁰ *Ibid.*

³¹⁹¹ *Ibid.*

³¹⁹² *Ibid.*

³¹⁹³ *Ibid.*

in the Energy Sector³¹⁹⁴. The plan includes the development of new high-efficiency and low-cost wind power technology, technology for the recycling and reuse of decommissioned wind turbines, high-powered medium-voltage DC PV power generation systems and high-powered DC boost converters, high-efficiency perovskite battery production, high-efficiency and low-cost PV cell technology, technology for the recycling and reuse of PV modules, solar thermal power generation and utilisation technology and geothermal energy technology³¹⁹⁵.

21.2.6.2. SUB-NATIONAL PLANS

On the subnational level, Shanxi issued in August 2022 the Guiding Opinions on Fully Promoting the High-quality Development of Geothermal Energy Industry, which included the promotion of GHP technologies to achieve the goal of realizing low-cost heating and cooling in residential buildings in rural regions and encouraged the adoption of heat pump technologies in mines³¹⁹⁶. Policy support measures include the provision of land, tax relief, reduced benchmark prices for the transfer of geothermal mining rights and R&D subsidies, among others³¹⁹⁷.

Hunan's 14th Five Years Plan on Renewable Energy lists the development of wind power, solar power and geothermal power as key tasks during the plan's lifespan. By the end of 2025, Hunan aims to achieve total installed wind turbine power generation capacity of over 12 million KW, and total installed solar PV power generation capacity of over 13 million KW. The plan also calls for promoting the centralised supply of geothermal energy³¹⁹⁸. In furtherance of these ambitions, the plan directs certain cities and prefectures to provide incentives and guidance to promote the accelerated development of renewable energy³¹⁹⁹.

Qinghai's 14th FYP on Energy Development sets the goal of generating 45.8 million KW of solar PV power and 16.5 million KW of wind power by 2025, adding 30 million KW of solar PV power and 8.07 million KW of wind power over 2020 capacity levels³²⁰⁰. The plan promotes the large-scale development of bases for solar PV and wind power generation, distributing new energy generation capabilities throughout the province, strengthening clean power transmission across provinces, developing projects that integrate energy from multiple sources and regulating capacity from multiple complementary energy sources³²⁰¹. To achieve these goals,

³¹⁹⁴ See Article 3.1. of the *14th Five-Year Plan on Technological Innovation in the Energy Sector*, NEA and Ministry of Science and Technology, 2021; available at: <http://www.gov.cn/zhengce/zhengceku/2022-04/03/5683361/files/489a4522c1da4a7d88c4194c6b4a0933.pdf> (accessed on 24 August 2023).

³¹⁹⁵ *Ibid.*, Articles 3.1.2–3.1.3 and Article 3.1.4 (11).

³¹⁹⁶ See Sections 2.3 and 2.5. of the *Guiding Opinions on Fully Promoting the High-quality Development of Geothermal Energy Industry*, General Office of Shanxi Provincial People's Government, 2022; available at: http://www.shanxi.gov.cn/zfxxgk/zfxxgkzl/fdzdgnr/lzyj/szfbgtwj/202208/t20220819_6966730.shtml (accessed on 24 August 2023).

³¹⁹⁷ *Ibid.*, Article 3.

³¹⁹⁸ See Article 4.1.1, Article 4.1.2, Article 4.2.2 of the *14th Five-Year Plan on Renewable Energy of Hunan Province*, Hunan Provincial Development and Reform Commission, 2022; available at: https://fgw.hunan.gov.cn/fgw/xxgk_70899/zcfg/gfxwj/202206/t20220627_26526958.html (accessed on 24 August 2023).

³¹⁹⁹ *Ibid.*, Article 6(3).

³²⁰⁰ *14th Five-Year Plan on Energy Development*, Qinghai Provincial People's Government, 2022; available at: http://www.qinghai.gov.cn/xxgk/xxgk/fd/zfwj/202203/t20220309_189260.html (accessed on 24 August 2023).

³²⁰¹ *Ibid.*

the plan notes that “[f]inancial and taxation support will be increased, and relevant tax preferential policies will be implemented for qualified clean energy projects”, and that financial institutions should provide credit, bonds, and insurance to green projects that support clean energy development³²⁰². The plan will also provide “construction land plan guarantees” to projects “included in the list of national and provincial key projects”³²⁰³.

For wind power, Shandong’s 14th FYP on Energy Development focuses on offshore capacity, aiming to building a 10 million KW offshore wind power base that focuses on three major geographies – Bozhong, southern peninsula and northern peninsula – and sets the goal that by the end of 2025, the installed capacity of wind power turbines in Shandong Province will reach 25 million KW. For solar PV power generation, the plan aims to have by the end of 2025 installed PV power generation capacity of 57 million KW. The plan also discusses other forms of clean energy, including geothermal energy³²⁰⁴. Policy incentives include land and sea use provisions, encouraging policy banks to support major energy project construction, credit for green projects and tax preferences for emission reduction and energy conservation³²⁰⁵.

In May 2021, the Zhejiang Provincial Development and Reform Commission issued the 14th FYP on Renewable Energy Development³²⁰⁶, pursuant to which Zhejiang encourages companies to pursue technological transformation and upgrade wind turbines with a capacity of less than 1.5 MW per turbine. The plan also calls for the vigorous development of wind and solar power and the development of biomass energy, geothermal energy and ocean energy depending on local conditions. The plan aims for installed capacity that exceeds 27.5 KW for solar power and 6.4 million KW for wind power turbines in the province by the end of the 14th FYP period. The plan promotes the deeper implementation of various preferential policies for renewable energy, including tax, land and lending policies³²⁰⁷.

21.3. KEY CHINESE ENVIRONMENTAL GOODS INDUSTRIES

21.3.1. SOLAR CELL INDUSTRY

The solar cell value chain can be categorised into three main segments³²⁰⁸. The first segment consists of upstream raw materials and equipment for solar cells, including silica; silicon wafers; silver or aluminium paste; copper, indium and selenium; gallium arsenide (‘GaAs’) and cadmium telluride (‘CdTe’); polymer compounds; plasma-enhanced chemical vapour deposition (‘PECVD’); automatic sorting machines and fast sintering furnaces; screen printing

³²⁰² *Ibid.*, Article 6(6)

³²⁰³ *Ibid.*

³²⁰⁴ *14th Five-Year Plan on Energy Development of Shandong Province*, Shandong Provincial People’s Government, 2021; available at: <http://www.shandong.gov.cn/module/download/downloadfile.jsp?classid=0&filename=2f6a3b6e732648f29920343c045ae5a7.pdf> (accessed on 24 August 2023).

³²⁰⁵ *Ibid.*, Chapter 4(4).

³²⁰⁶ See Section 3.2 of the *14th Five-Year Plan on Renewable Energy Development in Zhejiang Province*, Zhejiang Provincial Development and Reform Commission, 2021; available at: https://fzggw.zj.gov.cn/art/2021/6/23/art_1229123366_2305635.html (accessed on 24 August 2023).

³²⁰⁷ *Ibid.*, Article 4(4).

³²⁰⁸ *Analysis of Upstream, Midstream, and Downstream Sectors of Value Chain of the Solar Cell Industry in China in 2022*, ASKCI, 16 August 2022; available at: <https://www.askci.com/news/chanye/20220816/1722431958188.shtml> (accessed on 24 August 2023).

equipment and etching machines. The second segment consists of solar cells, including crystalline silicon PV cells; monocrystalline silicon PV cells; polycrystalline silicon PV cells; thin film PV cells; silicon-based thin-film PV cells; copper, indium, gallium, and selenium-based thin film PV cells and CdTe-based thin film PV cells. The third segment consists of downstream sectors, including PV modules, crystalline PV modules and thin-film PV modules. These modules are then incorporated into PV power stations, PV heating, building-integrated PV systems and PV transportation.

Like in many strategic industry sectors, many Chinese solar cell companies are closely connected to the government. For example, *Shanghai Academy of Spaceflight Technology*³²⁰⁹ – a division of *China Aerospace and Technology Corporation*, the state-owned military and defence company – is the major shareholder and actual controller³²¹⁰ of *Shanghai Aerospace Automobile Electromechanical Co, Ltd* ('HT-SAAE')³²¹¹, a company mainly engaged in the integration of polysilicon, solar cells, battery packs and new 'PV + energy storage' systems as well as other products and technologies in the civil-military integration field³²¹². Furthermore, it is worth noting that 83% of China's large-scale grid-connected solar power plants were SOEs as of 2020³²¹³, thus it may potentially influence the whole manufacturing industry chain.

China has achieved a dominant position in the solar industry across the supply chain, including in solar cells. The IEA reported that from 2010 to 2021 China became dominant in the global supply of wafer, cell and module manufacturing while China's share of global polysilicon production capacity almost tripled during this period³²¹⁴. IEA estimated that China's global share in all stages of PV power manufacturing exceeded 80%, more than double of its 36% share in global PV deployment³²¹⁵. China accounts for the vast majority of announced manufacturing capacity expansion plans for solar PV components through 2030, including 85% for solar cells and 90% for wafers³²¹⁶.

³²⁰⁹ Shanghai Academy of Spaceflight Technology (n.d.). *Company Profile*; available at : <http://www.sast.spacechina.com/n1323876/n1323907/index.html> (accessed on 24 August 2023).

³²¹⁰ Under China's *Company Law*, an actual (or 'de facto') controller is an entity that 'although is not a shareholder of the company, is capable of actually controlling the conduct of the company through investment relations, agreements or other arrangements.' Ministry of Commerce (2019). *Company Law of the People's Republic of China*, Article 216(III); available at: <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml> (accessed on 24 August 2023).

³²¹¹ HT-SAAE, *Annual Report*, 2022, p. 89; available at : <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=gssh0600151&stockCode=600151&announcementId=1216272648> (accessed on 24 August 2023).

³²¹² HT-SAAE (n.d.). *About Us*; available at: <http://www.ht-saae.com/En/aboutUs.aspx> (accessed on 24 August 2023).

³²¹³ Zhang, F. and Zuo, J. (15 February 2023). *State-Owned Enterprises' Responses to China's Carbon Neutrality Goals and Implications for Foreign Investors*, Georgetown Journal of International Affairs; available at: <https://gjia.georgetown.edu/2023/02/15/state-owned-enterprises-responses-to-chinas-carbon-neutrality-goals-and-implications-for-foreign-investors/> (accessed on 24 August 2023).

³²¹⁴ IEA 2022, *Special Report on Solar PV Global Supply Chain*, p. 17; available at: <https://iea.blob.core.windows.net/assets/d2ee601d-6b1a-4cd2-a0e8-db02dc64332c/SpecialReportonSolarPVGlobalSupplyChains.pdf> (accessed on 24 August 2023).

³²¹⁵ *Ibid.*

³²¹⁶ IEA 2023, *Energy Technology Perspectives 2023*, p. 22; available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 24 August 2023).

China is also the largest exporter of solar cells, exporting 3.201 billion solar cells for a total value of USD 28.46 billion (~EUR 24.06 billion) in 2021. In quantity, the 2021 figures reflected a 17.56% increase over 2020 export levels, while the value of solar cell exports increased 43.79% over the previous year³²¹⁷. From January to October 2022, China increased its exports of solar cells by 24.06% over the same period in 2021, exporting a total 3.294 billion solar cells over that period; this represented an increase in total export value of 75.58% to USD 40.033 billion (~EUR 37.915 billion)³²¹⁸. These increases mirror an increase in Chinese exports of PV products overall: in 2018, the value of Chinese exports of PV products was USD 15 billion (~EUR 12.7 billion), which increased to USD 21 billion (~EUR 18.8 billion) in 2019, to USD 22 billion (~EUR 19.3 billion) in 2020, before increasing again to USD 32 billion (~EUR 27.1 billion) in 2021 and growing 64% to USD 52 billion (~EUR 49.4 billion) in 2022³²¹⁹.

21.3.2. WIND TURBINE INDUSTRY

The wind industry value chain consists of five main segments: raw materials (rare earth metals, steel and copper wire), components (blades, towers and blade bearings), wind turbines (turbines that either have a horizontal axis or a vertical axis), wind farms and grids³²²⁰.

The actual controller of several large wind turbine companies in China – including Zhejiang Windey Co, Ltd (*‘Windey’*)³²²¹, CRRC Shandong Co Ltd (*‘CRRC Shandong’*)³²²², China State Shipbuilding Corporation (*‘CSSC’*)³²²³, Shanghai Electric Wind Power Group (*‘Electric Wind Power’*)³²²⁴, Dongfang Electric Corporation (*‘Dongfang Electric’*)³²²⁵ and Guodian United Power Technology Co, Ltd (*‘United Power’*)³²²⁶ – is the SASAC or its local counterparts, or

³²¹⁷ *Research Report on China’s Solar Cell Export 2023-2032*, Research and Markets, 2022; available at: <https://www.researchandmarkets.com/reports/5702082/research-report-on-chinas-solar-cell-export> (accessed on 24 August 2023).

³²¹⁸ *Ibid.*

³²¹⁹ Wood Mackenzie, *China’s solar exports booming, up 64% in 2022 despite global trade tensions*, 23 May 2023; available at: <https://www.woodmac.com/press-releases/chinas-solar-exports-booming-up-64-in-2022-despite-global-trade-tensions/> (accessed on 24 August 2023).

³²²⁰ Liu, J., Wei, Q., Dai, Q and Liang, C., *Overview of Wind Power Industry Value Chain Using Diamond Model: A Case Study from China*, Applied Sciences, 2018, p. 2; available at: https://www.researchgate.net/publication/328256036_Overview_of_Wind_Power_Industry_Value_Chain_Using_Diamond_Model_A_Case_Study_from_China (accessed on 24 August 2023).

³²²¹ Zhejiang Windey Co, Ltd., *2021 Annual Report*, 2022, p. 78; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=szse&orgId=9900036169&stockCode=300772&announcementId=1212522777> (accessed on 24 August 2023).

³²²² CRRC Shandong Co Ltd., *2022 Annual Report*, 2023, p. 81; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=9900005127&stockCode=601766&announcementId=1216271749> (accessed on 24 August 2023).

³²²³ List of SOEs under SASAC authority: <http://wap.sasac.gov.cn/n2588045/n27271785/n27271792/c14159097/content.html> (accessed on 11 September 2023).

³²²⁴ Shanghai Electric Wind Power Group 2023, *2022 Annual Report*, p. 117; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=nssc1000609&stockCode=688660&announcementId=1216235744> (accessed on 28 August 2023).

³²²⁵ Dongfang Electric Corporation, 2023, *2022 Annual Report*, p. 82; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=gssh0600875&stockCode=600875&announcementId=1216301205> (accessed on 28 August 2023).

³²²⁶ Qixin, *Company Profile of United Power*; <https://www.qixin.com/company/9f2961a7-72bc-4ab4-88af-4fe5e2ce9946> (accessed on 11 September 2023).

the State Council itself. Windey, CRRC Shandong, CSSC, Electric Wind Power, Dongfang Electric and United Power collectively have 38.5% market share in China³²²⁷.

China occupies a major share of the global wind turbine market. In component manufacturing, China accounts for 60% of global capacity and almost half of exports, with most destined for Europe and other countries in Asia³²²⁸. Further, China accounts for the vast majority of announced manufacturing capacity expansion for onshore wind turbine components through 2030, including 85% for turbine blades and 90% for nacelles and towers³²²⁹.

In 2021, the top 15 manufacturers globally accounted for almost 90% of the wind turbine capacity deployed, and more than 55% of them were Chinese companies³²³⁰. In its 2023 European Wind Power Action Plan, the Commission also noted that out of the world's 10 largest wind turbine manufacturing companies (covering over 80% of demand for wind turbines globally), 4 have their headquarters in the EU, while 4 are located in China³²³¹. According to BloombergNEF, China added 49 GW of new wind capacity in 2022, which amounted to more than half of the wind capacity additions globally that year³²³². Accordingly, BloombergNEF listed six Chinese firms in its list of the 10 wind turbine manufacturers with the largest added installed capacity in 2022³²³³. Xinjiang Goldwind Science & Technology Co, Ltd ('Goldwind') – a Chinese wind turbine manufacturer – was the largest manufacturer globally by GW of commissioned wind capacity. Other Chinese companies in the top 10 included Envision Energy, Ming Yang Wind Power Group ('Mingyang'), Windey, Sany Heavy Industry Co Ltd and CRRC³²³⁴.

It should be further mentioned that in its past TDI investigations concerning the wind energy industry, the Commission established the presence of significant distortions in the sector, such as concerning wind towers³²³⁵ or glass fibre fabrics³²³⁶.

21.3.3. GEOTHERMAL HEAT PUMP INDUSTRY

³²²⁷ CWEA 2023, *Statistics Report on Wind Installed Capacity in 2022 in China*, available at : <http://www.eastwp.net/news/show.php?itemid=68198> (accessed on 28 August 2023).

³²²⁸ IEA 2023, *Energy Technology Perspectives 2023*, p. 22; available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 28 August 2023).

³²²⁹ *Ibid.*, p. 22.

³²³⁰ *Ibid.*, p. 95.

³²³¹ See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2023) 669 final, 24 October 2023, p. 3.

³²³² Gusick, W. (23 March 2023). *Goldwind and Vestas in Photo Finish for Top Spot as Global Wind Power Additions Fall*, Bloomberg NEF; available at: <https://about.bnef.com/blog/goldwind-and-vestas-in-photo-finish-for-top-spot-as-global-wind-power-additions-fall/> (accessed on 28 August 2023).

³²³³ *Ibid.*

³²³⁴ *Ibid.*

³²³⁵ See the Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China, *OJ L 450*, 16.12.2021, p. 59–136, rec. 52-135.

³²³⁶ See the Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt, *OJ L 108*, 6.4.2020, p. 1–91, rec. 98-167.

GHPs use the more consistent temperature below the earth's surface to heat or cool a space or to heat water³²³⁷. Other types of heat pumps include air-source and water-source heat pumps³²³⁸. The value chain includes heat pump components, such as fans, pumps, tanks, expansion valves, heat exchanges and compressors; the manufacturing of the heat pumps themselves and the application of the heat pumps in various settings to provide climate control³²³⁹.

The GHP industry engages SOEs in manufacturing. For example, SASAC is the actual controller of both Tsinghua Tongfang Artificial Environment Co, Ltd³²⁴⁰ and Beijing Yongyuan Heat Pump Co, Ltd³²⁴¹. China's share of the global geothermal market has grown significantly since the 1990s. In 1995, China accounted for only a 0.04% share of installed GHP capacity³²⁴², but by 2015, it held a 23.61% share³²⁴³. By 2020, China's share of global installed GHP capacity reached 34.11%, the largest share of any country³²⁴⁴. Although heat pump manufacturing is often done in the market it serves, China is unique as an exporter of a large amount of heat pumps³²⁴⁵. China is a net exporter of heat pumps, generally, and accounted for almost 40% of the manufacturing capacity for mass-manufactured heat pump technologies and components in 2021³²⁴⁶. Relative to other types of heat pump products in China, the scale of GHPs is relatively small, with the size of the GHP market at only CNY 1.3 billion (~EUR 170.4 million) – 6.2% of the overall heat pump market – in 2021³²⁴⁷.

21.4. MARKET DISTORTIONS

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- ³²³⁷ US Environmental Protection Agency. (n.d.). *Geothermal Heating and Cooling Technologies*; available at: <https://www.epa.gov/rhc/geothermal-heating-and-cooling-technologies#Ground-Source-Heat-Pumps> (accessed on 21 April 2023).
- ³²³⁸ US Department of Energy. *Heat Pump Systems*; available at: <https://www.energy.gov/energysaver/heat-pump-systems> (accessed on 28 August 2023).
- ³²³⁹ *Report on Renewable Energy in China-Insights into Heat Pump Industry in 2023*, 36kr.com, 30 March 2023; available at: <https://36kr.com/P/2192004679434625> (accessed on 28 August 2023); *Energy Technology Perspectives 2023*, IEA, 2023, p. 99; available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 28 August 2023).
- ³²⁴⁰ Tsinghua Tongfang Co Ltd., *2021 Annual Report*, p. 27 and 93; available at: <http://www.cninfo.com.cn/new/disclosure/detail?plate=sse&orgId=gssh0600100&stockCode=600100&announcementId=1213178161> (accessed on 28 August 2023).
- ³²⁴¹ Qichacha. *Company Profile of Beijing Yongyuan Heat Pump Co Ltd.*; available at: <https://www.qcc.com/firm/9e9f838046650633a001b98993818673.html> (accessed on 14 September 2023).
- ³²⁴² China Natural Resources News, *China Is Leading the World in the Geothermal Heat Pump Industry*, 21 August 2019; available at: https://www.mnr.gov.cn/dt/ywbb/201908/t20190821_2459133.html (accessed on 28 August 2023).
- ³²⁴³ *Ibid.*
- ³²⁴⁴ Sufang, K. (2021). Analysis of the Market Size and Development Prospect of China's Ground Source Heat Pump Industry in 2021. The installed capacity is expected to exceed 40,000 MW in 2025, *Forward-The Economist*; available at: <https://www.qianzhan.com/analyst/detail/220/210507-53617fba.html> (accessed on 28 August 2023).
- ³²⁴⁵ IEA (2023), *Energy Technology Perspectives 2023*, p. 99; see : <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 28 August 2023).
- ³²⁴⁶ *Ibid.*, p. 96.
- ³²⁴⁷ XYZ Research (2023), *Report on Analysis of Global and China Heat Pump Industry*, p. 5; available at: <https://xyz-research.com/uploads/20230410/16872e7cae2518f1defeca86a592858e.pdf> (accessed on 28 August 2023).

It is important to note that China’s horizontal market distortive policies discussed in other sections in this report – such as the special privileges afforded to SOEs (see Chapter 5) – apply equally to the environmental goods.

21.4.1. PUBLIC PROCUREMENT AND PURCHASING

China’s *Government Procurement Law* specifically includes a preference for domestic content over foreign content when possible and subject to few exceptions³²⁴⁸ (see more in Chapter 7). China has historically provided traditional domestic preferences to the renewable energy sector. Moreover, with a near-100% share in the domestic market for these industries, Chinese manufacturers are well-positioned to take advantage of the domestic demand generated by feed-in tariffs (*FITs*) and competitive auction policies, which can, in turn, insulate the industry from varying demand dynamics outside of China³²⁴⁹. Although not considered public procurement in the traditional sense³²⁵⁰, these government purchases function similarly, with the government purchasing the output of these industries.

21.4.2. GRANTS AND OTHER SUBSIDIES

China has used grant and subsidy schemes to foster its domestic solar industry. As the IEA noted, China’s solar industry policies focused less on promoting domestic demand but rather focused on generating supply in response to “*the considerable export opportunities*”³²⁵¹. Accordingly, China provided “[g]rants, low-cost loans from state banks and funds from the Science and Technology Ministry”, which “*led to the establishment of several pioneering domestic manufacturers*”³²⁵².

21.4.3. TAX RELIEF

China’s main tax on businesses is the EIT, for which HNTes have received a preferential rate of 15% – 10 points lower than the typical 25% – since 2008³²⁵³. Businesses in the renewable energy industry – including companies in the solar, wind and geothermal energy industries –

³²⁴⁸ See Article 10 of the *Government Procurement Law of the PRC*, National People’s Congress, 2002; available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/06/content_1382108.htm (accessed on 28 August 2023).

³²⁴⁹ IEA (2022), *Special Report on Solar PV Global Supply Chains*, p. 108; available at: <https://iea.blob.core.windows.net/assets/d2ee601d-6b1a-4cd2-a0e8-db02dc64332c/SpecialReportonSolarPVGlobalSupplyChains.pdf> (accessed on 28 August 2023).

³²⁵⁰ Canada – Certain Measures Affecting the Renewable Energy Generation Sector; Canada – Measures Relating to the Feed-In Tariff Program. Reports of the Appellate Body, WT/DS412/AB/R, Para. 5.79., WTO, 2013; available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/412ABR.pdf> (accessed on 28 August 2023).

³²⁵¹ IEA 2022, *Special Report on Solar PV Global Supply Chains*, p. 107; available at: <https://iea.blob.core.windows.net/assets/d2ee601d-6b1a-4cd2-a0e8-db02dc64332c/SpecialReportonSolarPVGlobalSupplyChains.pdf> (accessed on 28 August 2023).

³²⁵² *Ibid.*

³²⁵³ WTO 2016, *Replies to questions from the European Union regarding the new and full notification of China*, available at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=234022,234017,234018,232295,232142,232161,232160,232129,232060,232024&CurrentCatalogueIdIndex=9 (accessed on 28 August 2023).

can qualify for the HNTE preferred rate³²⁵⁴. Chinese law sets out certain conditions that eligible businesses must meet to qualify as HNTEs, which include that no more than 40% of R&D expenses are incurred outside of China³²⁵⁵. Moreover, the HNTE must own the intellectual property of the critical technologies for its products or services, which it can acquire through its own R&D or through transfer, donation or M&A³²⁵⁶.

21.4.4. PREFERRED ACCESS TO CREDIT

The solar and wind industries' status as a strategic emerging industry and a high-technology sector meant that they could access lines of credit at preferred rates for expanding manufacturing capacity³²⁵⁷. In 2021, pursuant to guiding opinions of the CCP and the State Council³²⁵⁸, the CDB established a special loan programme for '*carbon peaking and carbon neutrality*', which would provide CNY 100 billion (~EUR 13.1 billion) in 2021 and CNY 500 billion (~EUR 65.6 billion) over the lifespan of the 14th FYP, which was made available to solar power generation projects³²⁵⁹. Moreover, the *Action Plan for Carbon Peaking Before 2030* released by the State Council in 2021 directed "*financial institutions to provide long-term and low-cost funds for green and low-carbon projects and encourage[d] development policy financial institutions to provide long-term and stable financing support for carbon peaking actions in accordance with the principle of market-oriented rule of law*"³²⁶⁰. In 2021, the PBOC announced it would provide preferential access to loan and credit support to the wind and solar industries to counteract production and operations difficulties stemming from tight cash

³²⁵⁴ State Taxation Administration, *High-tech enterprises are levied enterprise income tax at a reduced rate of 15%*, 11 August 2022; available at: <http://www.chinatax.gov.cn/chinatax/c102089/c5178717/content.html> (accessed on 28 August 2023); *High-tech fields supported by the state*, Ministry of Commerce, 2008; available at: <http://www.mofcom.gov.cn/aarticle/bh/200805/20080505534363.html> (accessed on 11 September 2023); *China's High and New-Technology Enterprise (HNTE) Program*, US-China Business Council, 2013; available at: <https://www.uschina.org/sites/default/files/2013%20HNTE%20Background.pdf> (accessed on 28 August 2023).

³²⁵⁵ See Article 11 of the Notice of the MIST, the MOF and the State Administration of Taxation on Revising and Issuing the 'Administrative Measures for the Identification of High-tech Enterprises', State Council, 2016; available at: http://www.gov.cn/gongbao/content/2016/content_5076985.htm (accessed on 28 August 2023).

³²⁵⁶ *Ibid.*, Article 11.

³²⁵⁷ Nahm, J. (2023). *How Solar Developed from the Bottom-Up in China*, University of California Institute on Global Conflict and Cooperation; available at: <https://ucigcc.org/publication/how-solar-developed-from-the-bottom-up-in-china/> (accessed on 28 August 2023).

³²⁵⁸ See Article 31 of the Guiding Opinions of the Central Committee on Completely, Accurately and Comprehensively Implementing the New Development Concept and Doing a Good Job of Carbon Neutrality at Carbon Peak, Central Committee of the CCP and State Council, 2021; available at: https://www.gov.cn/zhengce/2021-10/24/content_5644613.htm (accessed on 28 August 2023).

³²⁵⁹ Ministry of Finance (2021). *Reply of the Ministry of Finance to Recommendation No. 9142 of the Fourth Session of the 13th National People's Congress*; available at: http://jjs.mof.gov.cn/jytafwgk_8360/2021jytafwgk_1/rddbjiyfwgk/202108/t20210805_3743186.htm (accessed on 28 August 2023).

³²⁶⁰ See Article 5(3) of the *Action Plan for Peaking Carbon Emissions before 2030*, State Council, 2021; available at: https://www.gov.cn/zhengce/content/2021-10/26/content_5644984.htm (accessed on 30 August 2023).

flows³²⁶¹, suggesting that the government is ready to intervene to assist the renewable energy industries, when needed.

21.4.5. EXPORT FINANCING

Historically, China's two major policy banks – CDB and EXIM – have been the dominant players in energy financing, providing the same amount in loans as all Western development banks combined³²⁶². China's export financing in the renewable energy sector was a minor share of its overall financing of global energy projects³²⁶³. China's policy banks offered minimal financing for renewable energy projects abroad³²⁶⁴. In September 2021, President Xi Jinping announced that China would no longer build coal-powered projects abroad³²⁶⁵, thus, an uptick in future overseas financing of renewable energy projects remains possible. Moreover, the 14th FYP specifically promotes the “vigorous [...] develop[ment of] green finance”³²⁶⁶.

China's BRI is increasingly prioritising infrastructure investments in renewable energy following President Xi Jinping's September 2021 announcement. In August 2023, Reuters reported – based upon a report from Fudan University's Green Finance and Development Centre – that 56% of China's construction and investment in the energy sector under BRI was in renewable energy projects³²⁶⁷. Included among these projects were solar and wind projects³²⁶⁸.

21.4.6. USE OF FORCED LABOUR

Manufacturers sourcing polysilicon made with forced labour obtain cost advantages over those manufacturers who procure polysilicon from ethical sources³²⁶⁹ (see also Section 13.9.).

³²⁶¹ Reuters (25 March 2021), *China to step up financial support for wind and solar power*; available at: <https://www.reuters.com/business/energy/china-step-up-financial-support-wind-solar-power-2021-03-25/> (accessed on 22 April 2023).

³²⁶² Liu, C. and Urpilainen, J. (7 January 2021). *Why the United States should compete with China on global clean energy finance*. Brookings Institute; available at: <https://www.brookings.edu/research/why-the-united-states-should-compete-with-china-on-global-clean-energy-finance/> (accessed on 30 August 2023).

³²⁶³ From 2000 to 2018 only 1.65% of power projects financed by CDB and EXIM were for solar projects and 0.91 for wind projects. See Kong, B. and Gallagher, K. (2020). *Chinese development finance for solar and wind power abroad*, Boston University Global Development Policy Center, p. 3; available at: https://www.bu.edu/gdp/files/2020/02/WP9-Kong-Bo-inc_abstract.pdf (accessed on 30 August 2023).

³²⁶⁴ Boston University Global Development Policy Center (2020), *Inadequate Demand and Reluctant Supply: The Limits of Chinese Official Development Finance for Foreign Renewable Power*, available at: <https://www.bu.edu/gdp/2020/11/17/inadequate-demand-and-reluctant-supply-the-limits-of-chinese-official-development-finance-for-foreign-renewable-power/> (accessed on 30 August 2023).

³²⁶⁵ MFA, Xi Jinping Attends the General Debate of the 76th Session of the United Nations General Assembly and Delivers an Important Speech, 22 September 2021; available at: https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/gjs_665170/gjsxw_665172/202109/t20210923_9580159.html (accessed on 30 August 2023).

³²⁶⁶ See Chapter 39, Section 4 of the 14th FYP for National Economic and Social Development and Long-range Objectives for 2035 of the PRC, National People's Congress, 2021; available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 30 August 2023).

³²⁶⁷ Hayley, A. (1 August 2023). *China's Belt and Road energy projects set for “greenest” year, research shows*, Reuters; available at: <https://www.reuters.com/business/energy/chinas-belt-road-energy-projects-set-greenest-year-research-2023-08-02/> (accessed on 30 August 2023).

³²⁶⁸ *Ibid.*

³²⁶⁹ Wang, S., Lloyd, J. and Núñez-Mujica, G. (2022). *Confronting the Solar Manufacturing Industry's Human Rights Problem*, The Breakthrough Institute; available at: <https://thebreakthrough.org/issues/energy/sins-of-a-solar-empire> (accessed on 30 August 2023).

According to researchers at Sheffield Hallam University, approximately 45% of the global supply of polysilicon – an input found in approximately 95% of solar modules – is sourced from XUAR, 11 companies in XUAR engaged in forced labour, and 4 other companies were situated within industrial parks that had ‘accepted labour transfers’ from other provinces³²⁷⁰.

China’s largest wind turbine manufacturer, Goldwind is also based in XUAR and is linked to the Xinjiang Production and Construction Corps, which the EU and the US have sanctioned for human rights violations³²⁷¹. In December 2022, a report by the UK-based Hong Kong Watch listed Goldwind as a firm that has likely engaged in forced labour in XUAR³²⁷².

21.5. CHAPTER SUMMARY

Solar cells, wind turbines, and GHPs are all environmental goods that play major roles in the transition to more renewable sources of energy. Chinese firms manufacturing these goods have become dominant players in their respective global markets. These positions of dominance reflect a decades-long focus by China on using state support to foster domestic manufacturing capabilities. Moreover, these industries continue to benefit from the distortionary policies that apply horizontally across the Chinese economy. In all three mentioned sectors, China has the largest manufacturing capacity and is likely to continue its growth based on current projections³²⁷³. Certain forms of support – such as access to the HNTE reduction on EIT and the use of forced labour in the production of needed components – continue to provide Chinese firms with market distortive advantages over their international competitors. Accordingly, the global markets for these environmental goods are distorted by the lingering effects of China’s subsidies specific to these industries, the impact of horizontal subsidies across the Chinese economy and the ongoing use of specific forms of state support.

³²⁷⁰ Murphy, K.T. and Elimä, N. (2021). *In Broad Daylight: Uyghur Forced Labour and Global Solar Supply Chains*, Sheffield Hallam University, Helena Kennedy Centre for International Justice, p. 7.

³²⁷¹ Fromer, J. and Zhou, C. (2020). *As US moves to renewable energy, wind turbines from Xinjiang may get caught in political tempest*, South China Morning Post; available at: <https://www.scmp.com/news/china/article/3115771/us-moves-renewable-energy-wind-turbines-xinjiang-may-get-caught> (accessed on 31 August 2023); Emmott, R. and Brunnstrom, D. (2021). *West sanctions China over Xinjiang abuses, Beijing hits back at EU*, Reuters; available at: <https://www.reuters.com/article/uk-usa-china-eu-sanctions/west-sanctions-china-over-xinjiang-abuses-beijing-hits-back-at-eu-idUSKBN2BE2LF> (accessed on 30 August 2023).

³²⁷² Patterson, J., Goodman, S. and Wear, E.A. (2022). *Passively Funding Crimes Against Humanity: How Your Savings May Be Financing Internment Camps and Forced Labor in China*, Hong Kong Watch, p. 16. <https://static1.squarespace.com/static/58ecfa82e3df284d3a13dd41/t/638e318e6697c029da8e5c38/1670263209080/EDITED+REPORT+5+DEC.pdf> (accessed on 30 August 2023).

³²⁷³ *Solar Photovoltaics: Supply Chain Deep Dive Assessment*; US Department of Energy Response to Executive Order 14017, “America’s Supply Chains”, US Department of Energy, 24 February 2022, p. 37; available at: <https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf> (accessed on 30 August 2023); *Energy Technology Perspectives 2023*, IEA (2023), pp. 118, 224–225; available at: <https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf> (accessed on 30 August 2023).

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22.1. INTRODUCTION

The current automotive landscape is comprised of six types of powertrains. Three have an internal combustion engine as the primary source of propulsion: (i) internal combustion engine vehicles (*ICEs*), (ii) hybrid electric vehicles (*HEVs*)³²⁷⁴, and (iii) plug-in hybrid electric vehicle (*PHEVs*)³²⁷⁵. Three others have electric motors as the primary mover: (iv) battery electric vehicle (*BEVs*)³²⁷⁶, (v) range extended electric vehicle (*REEVs*)³²⁷⁷, and (vi) fuel cell electric vehicle (*FCEVs*), also called hydrogen electric vehicles (*H₂EVs*)³²⁷⁸.

The global automotive market is going through a profound structural change in the coming years because of the phasing out of ICEs in favour of the other propulsion systems, in particular in the EU, the USA and China.

³²⁷⁴ HEVs have an internal combustion engine and an electric motor that assists only at low speeds. The battery cannot be charged from off-board sources, but it is charged either by the internal combustion engine or through recuperation when braking.

³²⁷⁵ PHEVs have both an internal combustion engine and an electric motor as source of propulsion and can be charged from an external charging point.

³²⁷⁶ BEVs use only electric motors as a source of propulsion and store energy in the battery. The battery can only be charged from the grid while stationary.

³²⁷⁷ REEVs are BEVs that run on electricity but include an auxiliary power unit known as a ‘range extender’.

³²⁷⁸ FCEVs or H₂EVs use electric motors. The electricity is generated in fuel cells and can be stored in a small buffer battery. FCEVs or H₂EVs require hydrogen (compressed into tanks) as fuel.

The products concerned by this chapter are new energy vehicles ('NEVs'), a definition developed in China which include (iii) PHEVs, (iv) BEVs, (v) REEVs and (vi) FCEVs or H₂EVs³²⁷⁹.

On the contrary, ICEs are not included because they are motored by the traditional propulsion system. Not even HEVs are included because, in addition to being motored primarily by an internal combustion engine, their electric motor cannot be charged from off-board sources and are therefore unconcerned with most of the issues and needs related to the spread of the electric mobility, like the range limit and the deployment of the charging infrastructure.

The products concerned by this chapter are NEVs of all types and segments. Therefore, this chapter deals not only with passenger cars (including small vans for passengers), but also light commercial vehicles and heavy-duty vehicles, like buses and heavy-duty trucks.

NEV powertrains involve considerably fewer components (around 200) and less labour compared to ICEs' powertrains (around 1 400 components). However, NEVs require more raw materials compared to ICEs. In particular, the most important and expensive cost item in the production of the NEVs is the electric battery. While the weight of the battery in the production cost of a NEV depends on the type of NEV, it generally represents around one third of the production cost³²⁸⁰, reaching 40% of the production cost of BEVs³²⁸¹. In turn, China has an abundance of essential raw materials used in batteries or easy access to them through other Asian or African countries. Thus, China can use these materials – including lithium, cobalt and nickel – for the production of batteries. Due to their impact on the cost of NEVs, this chapter takes into consideration also Chinese policies regarding batteries for NEVs.

22.2. THE CHINESE NEV AND BATTERY INDUSTRIES

In the past, China did not have the capability to develop the technology for the production of ICEs. From the 1980s, growing demand in China for ICEs was fulfilled at first by imports, mainly from Japan, and then through joint ventures with overseas manufacturers. Whilst this allowed a certain degree of technology transfer into China, the Chinese automobile industry still had no ICE-based intellectual property rights it could exploit, or the access to the global supply chains that underpinned the success of Japanese, Korean, European and US automotive manufacturers.

Due to the lack of access to the ICE technology and to the drivers for its development, China decided to instead focus on the entry into the NEV market in advance compared to foreign automakers and to bet on its major development in the following decades. As described in Section 22.3, already in 2005, the Government started to direct this strategic shift to turn the country's automotive industry into a global powerhouse for the development of NEVs.

22.2.1. PRODUCTION

³²⁷⁹ According to Section 1 of the NEV Plan 2012-2020, as defined below in Section 22.3.4.

³²⁸⁰ International Center for Trade and Sustainable Development ('ICTSD') (2017), *International Trade Governance and Sustainable Transports: The Expansion of Electric Vehicles*, Geneva, ICTSD.

³²⁸¹ See at: <https://www.fleetnews.co.uk/electric-fleet/costs-and-incentives/tackling-the-rising-cost-of-electric-vehicle-batteries> (accessed on 12 June 2023).

At least since 2015, China has been the largest producer of NEVs in the world³²⁸².

In 2020, 1 366 000 NEVs were produced in China and in 2021 this figure increased to 3 545 000 NEVs. In 2022, China produced 7 058 000 NEVs, representing an increase of 99% as compared to 2021³²⁸³. In the first half of 2023, China produced 3 788 000 NEVs³²⁸⁴.

Broadening the view to the sales of NEVs, in 2015, Chinese brands accounted for 35% of global NEV sales³²⁸⁵. In 2022, this share increased to 45%³²⁸⁶. However, when considering the sales of NEVs in China, irrespective of whether made by Chinese brands or by foreign brands established in China, the share of the Chinese market increased even more: in 2022 the Chinese market accounted for around 60% of the global NEV market³²⁸⁷, with 6.9 million NEVs sold in China³²⁸⁸, compared to 2.6 million NEVs in the EU and less than 1 million in the USA³²⁸⁹. In the first half of 2023, sales of NEVs in China reached 3.8 million units³²⁹⁰. This share is in stark contrast with the 15% share of the global market that Chinese carmakers hold when considering the sales of both NEVs and ICEs in the passenger car segment.

With respect to the production of batteries, in 2022 China achieved a production of 545.9 GWh³²⁹¹. 1 GWh of batteries can be installed on at least 13 000 NEVs³²⁹². Chinese producers were responsible for 56% of the sales in the global market of batteries for NEVs in 2022³²⁹³.

22.2.2. MANUFACTURERS

There are around 300 NEV producers in China³²⁹⁴. This figure is subject to fluctuation for two reasons. First, the NEV market relies on innovative technologies and is therefore still dynamic. Indeed, NEV manufacturers in China include both (i) subsidiaries or JVs with local manufacturers of US, EU and Japanese brands, and (ii) Chinese brands, which are, in turn, either (a) self-standing companies, or (b) specialised business units of wider groups. While the subsidiaries or JVs of foreign manufacturers, once set up, tend to have a continuous production, Chinese brands include, besides established traditional automakers, also short-lived start-ups and industrial experiments of wider groups attracted by the innovative market, which may stop

³²⁸² Chapter I, Section 2 of the New Energy Vehicle Industry Development Plan (2021-2035), see Section 22.3.13.

³²⁸³ See at: <http://en.caam.org.cn/Index/show/catid/59/id/1890.html> (accessed on 12 June 2023).

³²⁸⁴ See at: <http://en.caam.org.cn/Index/show/catid/65/id/2033.html> (accessed on 12 June 2023).

³²⁸⁵ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 12 June 2023).

³²⁸⁶ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 12 June 2023).

³²⁸⁷ See at: <https://iea.blob.core.windows.net/assets/dacf14d2-eabc-498a-8263-9f97fd5dc327/GEVO2023.pdf> (accessed on 12 June 2023).

³²⁸⁸ See at: <http://en.caam.org.cn/Index/show/catid/60/id/1902.html> (accessed on 12 June 2023).

³²⁸⁹ See at: <https://www.ft.com/content/34c6c191-a803-495a-938d-e1328d53d77c> (accessed on 12 June 2023).

³²⁹⁰ See at: <http://en.caam.org.cn/Index/show/catid/66/id/2045.html> (accessed on 12 June 2023).

³²⁹¹ According to data from the China Alliance for Electric Vehicles, reported in: <https://thechinaproject.com/2023/06/20/china-now-has-a-lot-more-batteries-than-electric-vehicles/#:~:text=In%202022%2C%20a%20battery%20shortage,GWh%20were%20installed%20in%20E.Vs.,and> <https://equalocean.com/analysis/2023021519466> (accessed on 12 June 2023).

³²⁹² See at: <https://www.scmp.com/business/china-business/article/3230673/chinese-ev-battery-maker-adds-overcapacity-fears-plan-us139-billion-plant-jiangxi> (accessed on 12 June 2023).

³²⁹³ See at: <https://www.visualcapitalist.com/the-top-10-ev-battery-manufacturers-in-2022/> (accessed on 12 June 2023).

³²⁹⁴ See at: <https://www.economist.com/special-report/2023/04/14/cars-with-chinese-characteristics> (accessed on 13 June 2023).

production soon after their inception. Second, the Government is engaged in an effort of consolidation of the NEV market, encouraging NEV producers to merge, thus reducing their number, in order to create larger NEV producers³²⁹⁵. For this reason, there is not a complete list of NEV producers in China. This section includes below an overview of the main NEV producers.

Amongst the main NEV producers, in 2022, the top selling NEV producer in the world was the Chinese brand BYD Auto Co., Ltd. (*‘BYD’*), with a market share of 18% of the global NEV market. It was followed by Tesla, a US producer with NEV production also in China, with a 13% market share in the global NEV market. Down the ranking, in fourth place, the Chinese brand Zhejiang Geely Holding (Group) Co., Ltd. (*‘Geely’*) held a 6% market share³²⁹⁶.

The largest NEV producers in China include also two groups of companies, dubbed the ‘Big Four’ and the ‘Four Dragons’ respectively. The ‘Big Four’ are four State-owned traditional automakers – (i) SAIC Motor Corporation Ltd. (*‘SAIC’*), (ii) Dongfeng Motor Corporation Ltd. (*‘Dongfeng’*), (iii) China FAW Corporation Ltd. (*‘FAW Group’*), and (iv) Chang’an Automobile Co., Ltd. (*‘Chang’an’*) – which are transitioning to various extent from the production of ICEs to NEVs. The ‘Four Dragons’ include the four largest companies established as NEV producers in the last decade: (i) Nio Inc. (*‘NIO’*), (ii) WM Motor Technology Group Co., Ltd. (*‘WM Motor’*), (iii) Byton Ltd. (*‘Byton’*), and (iv) Guangzhou Xiaopeng Motors Technology Co., Ltd. (*‘Xpeng’*). However, in 2021 Byton suspended operations due to financial difficulties³²⁹⁷ and its role in the ‘Four Dragons’ has been taken by Li Auto Inc. (*‘Li Auto’*).

Finally, other large Chinese traditional automakers which leveraged their presence in the ICE market to become important players in the Chinese NEV market are: Chery Automobile Co., Ltd. (*‘Chery’*), Great Wall Motors Co., Ltd. (*‘GWM’*), Guangzhou Automobile Group Motor Co., Ltd. (*‘GAC’*) and Wuling Motors Holdings Ltd. (*‘Wuling’*).

The main Chinese manufacturers of batteries for NEVs are also listed in the overview of the main NEV and battery manufacturers below. Indeed, some NEV producers are also battery manufacturers and are therefore vertically integrated, notably BYD. Instead, the largest non-integrated players in the Chinese battery production are Contemporary Amperex Technology Ltd. (*‘CATL’*), China Aviation Lithium Battery Technology Group Ltd. (*‘CALB’*) and Ganfeng Lithium Co., Ltd. (*‘Ganfeng Lithium’*), also known as Guoxuan. Overall, there are around 50 NEV battery producers in China.³²⁹⁸

Chinese brands³²⁹⁹

- Aiyas Automobile Co., Ltd. (*‘Aiyas’*)

³²⁹⁵ See Section 2(2) of the 2017 Automobile Plan, as defined in Section 22.3.8, and Chapter VIII, Section 1 of the NEV Plan 2021-2035, as defined in Section 22.3.13.

³²⁹⁶ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 13 June 2023).

³²⁹⁷ See at: <https://asia.nikkei.com/Business/China-tech/Apple-supplier-Foxconn-s-EV-project-with-China-s-Byton-halted> (accessed on 13 June 2023).

³²⁹⁸ See at: <https://www.scmp.com/business/china-business/article/3228224/overcapacity-chinas-ev-battery-industry-reach-four-times-demand-2025-putting-small-players-risk> (accessed on 13 June 2023).

³²⁹⁹ Where not indicated otherwise, basic information on Chinese manufacturers were retrieved at: <https://thechinaproject.com/2021/04/20/all-the-electric-car-companies-in-china-a-guide-to-the-27-top-players-in-the-chinese-ev-industry/> (accessed on 13 June 2023).

Aiways is a pure NEV manufacturer with headquarters in Shanghai. It also produces batteries.

- Alibaba Group Holding Ltd. (*‘Alibaba’*)
Alibaba is active in the Chinese NEV market through its joint venture Zhiji Motors, also known by its English name IM Motors, together with SAIC.
- BAIC Motor Corporation Ltd. (*‘BAIC Motor’*)
BAIC Motor is a traditional auto maker with headquarters in Beijing. BAIC Motor is part of the BAIC Group and is controlled by the Beijing municipality. It is active in the manufacturing of NEVs through the JV Beijing Electric Vehicle with Daimler, under the brand Arcfox. It also has a second JV with Didi Chuxing in the sector. In addition, it has a JV with Hyundai and the JV Beijing Benz with Mercedes-Benz, not active in the NEV market.
- Shenyang Jinbei Automotive Company Ltd. (*‘Brilliance’*)
Brilliance is one of the leading State-owned³³⁰⁰ Chinese automakers, with headquarters in Shenyang. Originally named Brilliance Auto Group Holdings Co. Ltd., in 2020 Brilliance went bankrupt and took the current company name after that in 2023 the city of Shenyang took over the control of the ailing company³³⁰¹. Besides its own production of NEVs, Brilliance has the JV BMW Brilliance Automotive Ltd. (*‘BMW Brilliance Automotive’*) with BMW, which produces also NEVs under the BMW brand. It used to have also the JV Renault Brilliance Jinbei Automotive with Renault, which however filed for bankruptcy in 2021³³⁰².
- BYD
BYD is a NEV producer with headquarters in Shenzhen, in the Guangdong province. It is referred to also with the full name Build Your Dreams. It is part of the Chinese multinational BYD Company Ltd. The US company Berkshire Hathaway owns a stake of approx. 15% in BYD. In 2021 it reached a total turnover of RMB 211 billion (EUR 27,68 billion)³³⁰³.
The NEV business unit was born in 2002 from the acquisition of Tsinchuan Automobile, then the sixth-largest car manufacturer in China by sales volume. Aside from its own NEVs, BYD also supplies other NEV manufacturers, including the FAW Group. In April 2020, BYD and Toyota announced a joint partnership in a new company – BYD Toyota EV Technology – that would research and manufacture NEVs for the Chinese market.
- Byton
Byton was a NEV manufacturer with headquarters in Nanjing. It was formerly known as Future Mobility. As mentioned above, in 2021 it suspended its operations. Shareholders

³³⁰⁰ See at: <https://www.cnev.cn/shop/1047589/> (accessed on 12 June 2023).

³³⁰¹ See at: <https://www.bloomberg.com/news/articles/2023-04-21/china-s-shenyang-is-said-to-mull-buying-brilliance-china-stake#xj4y7vzkg> (accessed on 13 June 2023).

³³⁰² See at: <https://www.yicaglobal.com/news/renault-china-jv-with-brilliance-auto-goes-bust> (accessed on 12 June 2023).

³³⁰³ BYD Company Limited – 2021 Annual Results Announcement, p. 2. EUR/RMB exchange applied for 2021 in this chapter: 7.6343, sources: European Central Bank, European Commission – DG Budget, Pacific Exchange Rate Service.

included the FAW Group, the Nanjing city government³³⁰⁴ and Taiwanese company Foxconn.

- Chang'an

Chang'an – one of the largest State-owned automakers – started producing NEVs under the brand Oshan and through its subsidiary Avatr Technology. Avatr Technology was initially established as Chang'an NIO, a JV with NIO, but later NIO reduced its interest and Chang'an NIO was rebranded as Avatr Technology with the entry in the share capital of CATL and Huawei. Chang'an has also JVs with Ford and Mazda for the production of ICEs. It used to have a JV with the PSA Group, now part of the Stellantis Group, for the production of ICEs under the DS brand, but the JV ceased its operations in 2019.

- Chery

Chery is a State-owned traditional automaker which transitioned to NEVs, with headquarters in the Anhui province.

- Zhejiang Dianka Automobile Technology Co. Ltd. ('Dianka')

Dianka is a NEV producers with headquarters in the Zhejiang province. It used to market NEVs under the brand DearCC, but since 2018 it sells them under the Enovate brand.

- Dongfeng

Dongfeng is a State-owned company³³⁰⁵ involved in the production of NEVs through the brand Skio and through JVs with foreign brands such as Renault and Nissan. Dongfeng has also a JV with Honda and used to have the JV Dongfeng Peugeot-Citroën Automobiles with the PSA Group, now part of the Stellantis Group, which are not involved in the production of NEVs. In 2022, the Stellantis Group sold its interest in the JV to Dongfeng³³⁰⁶.

- Evergrande New Energy Vehicles

Evergrande New Energy Vehicles is a branch of the Evergrande conglomerate. It has production facilities in Shanghai and in Guangzhou, in the Guangdong province. Evergrande New Energy Vehicle was also the parent company of NEVS AB, a Swedish NEV producer which had purchased the assets of Saab Automobile and which stopped production in 2023³³⁰⁷. Following the default of the Evergrande conglomerate, Evergrande New Energy Vehicles was, as of writing of this Report, to issue new shares to pay off loans which would dilute the stake of Evergrande in its NEV subsidiary down to 46,86%³³⁰⁸.

- FAW Group

FAW Group is headquartered in Changchun, in the Jilin province. It is referred to also with the full name First Automotive Works. It is State-owned³³⁰⁹. It started producing

³³⁰⁴ See at: <https://asia.nikkei.com/Business/Business-Spotlight/China-s-local-governments-ride-to-the-rescue-of-EV-startups> (accessed on 13 June 2023).

³³⁰⁵ See at: <https://www.dfmc.com.cn/news/guoziyawen.html> (accessed on 13 June 2023).

³³⁰⁶ See at: <https://asia.nikkei.com/Business/Automobiles/Stellantis-begins-reset-of-joint-venture-with-China-s-Dongfeng> (accessed on 13 June 2023).

³³⁰⁷ See at: <https://www.carscoops.com/2023/03/saabs-ghost-comes-back-to-haunt-once-again-as-nevs-goes-into-hibernation-mode/> (accessed on 13 June 2023).

³³⁰⁸ See at: <https://www.reuters.com/business/autos-transportation/evergrande-ev-unit-issue-fresh-shares-bolster-restructuring-plans-2023-08-14/> (accessed on 13 June 2023).

³³⁰⁹ See at: <http://www.faw.com.cn/fawcn/373692/jtjl/jtjj42/index.html> (accessed on 13 June 2023).

NEVs under the luxury brand Hongqi and under the JV FAW-Volkswagen Automobile Co., Ltd. (*FAW-VW*) with Volkswagen and Audi.

- GAC

GAC is owned by the city of Guangzhou. It has a NEV subsidiary called Guangzhou New Energy Automobile which produces NEVs under the brand Aion. GAC has a number of JVs with foreign brands, which do not produce NEVs in China: Honda, Toyota, Mitsubishi and Isuzu. It also used to have a JV with Fiat Chrysler, a subsidiary of the Stellantis Group, which filed for bankruptcy in 2022³³¹⁰.

- Geely

Geely is one of the largest Chinese traditional automakers, which recently started transitioning from ICEs to NEVs, with headquarters in Hangzhou, in the Zhejiang province. In 2010 Geely acquired Volvo Car AB (*Volvo*) and in 2013 the production business of the London Taxi Company, rebranded London EV Company Ltd. (*LEVC*). Thus, Geely is active in the NEV market also with the brands Volvo, LEVC, Geometry, Lynk & Co, Zeekr and Polestar. In particular, NEVs under the Volvo brand are produced in China by the JV Daqing Volvo Car Manufacturing Co., Ltd. established between Geely and its subsidiary Volvo. Moreover, as of July 2023, Geely set up a new JV with Renault also for the production of motors for HEVs and PHEVs³³¹¹.

- GWM

GWM is a traditional automaker which entered the NEV market, with headquarters in Baoding, in the Hebei province. It has a JV with BMW to produce NEVs under the brand Mini³³¹². GWM markets NEVs also under the Link Tour brand, as part of the JV Link Tour Automobile Co., Ltd. (*Link Tour*), formerly known as Hebei Yogomo Vehicle Co., Ltd. (*Yogomo*)³³¹³.

- Hozon New Energy Automobile Co., Ltd. (*Hozon Auto*)

Hozon Auto is a NEV producer with headquarters in Shanghai. In 2022, it started exporting to Thailand and it has now covered ASEAN, South Asia and Middle East markets, with a view to enter the European markets³³¹⁴.

- Human Horizons (Shanghai) New Energy Powertrain Technology Co., Ltd. (*Human Horizons*)

Human Horizons is a producer focused on high-end NEV models, with headquarters in Shanghai. It is part of a group of companies focusing on technology and connectivity.

- Anhui Jianghuai Automobile Co., Ltd. (*JAC Motors*)

³³¹⁰ See at: <https://www.reuters.com/business/autos-transportation/stellantis-chinas-gac-joint-venture-file-bankruptcy-2022-10-31/> (accessed on 13 June 2023).

³³¹¹ See at: <https://media.renaultgroup.com/renault-group-and-geely-sign-joint-venture-agreement-to-launch-leading-powertrain-technology-company/> (accessed on 13 June 2023).

³³¹² See at: <https://www.press.bmwgroup.com/global/article/detail/T0282977EN/bmw-group-and-great-wall-motor-sign-joint-venture-agreement-for-mini-electric-vehicles-in-china?language=en> (accessed on 13 June 2023).

³³¹³ See at: <https://gasgoo66.wordpress.com/2018/07/24/yogomo-changes-name-as-link-tour-to-target-new-energy-pvs/> (accessed on 13 June 2023).

³³¹⁴ See at: <https://www.chinadaily.com.cn/a/202303/22/WS641a65aca31057c47ebb5dc8.html> (accessed on 13 June 2023).

JAC Motors is a State-owned traditional automaker which is transitioning to NEVs³³¹⁵.

- Li Auto Inc.

Li Auto is a NEV producer with headquarters in Beijing. It was formerly known as CHJ Automotive. Shareholders include the cities of Changzhou and Xiamen, the State-run investment bank China International Capital Corporation³³¹⁶ and the online platforms Meituan and ByteDance. It is specialised in the production of PHEVs.

- Nanjing Golden Dragon Bus Co., Ltd. ('NGDB')

NGDB is a traditional bus manufacturer which transitioned to NEVs of different categories, including passenger cars. It is active in the NEV market under the Skywell brand, through its subsidiary Skywell New Energy Automobile Group Co., Ltd., and the Kaiwo brand, through its subsidiary Kaiwo New Energy Automobile Group Co., Ltd. ('Kaiwo').

- NIO

NIO is a NEV producer which initially had its headquarters in Shanghai, later moved to Hefei, in the Anhui province. Shareholders in the company include the Hefei city government through various entities, Tencent as a second-largest shareholder, Baidu, funds managed by Sequoia China³³¹⁷ and funds managed by private equity Warburg Pincus³³¹⁸. In 2021, it reached a total turnover of RMB 36,13 billion (EUR 4,73 billion)³³¹⁹. NIO is also active in the Chinese NEV market through its related company NIO NextEV Ltd. In 2020, NIO – which was experiencing a financial reverse – reached an agreement with the Hefei city government whereby the latter would have invested in the company, reaching a 24,1% stake through various entities, and in exchange NIO would have moved its headquarters to Hefei from Shanghai³³²⁰.

- SAIC

SAIC is one of the largest State-owned Chinese traditional automakers, which recently transitioned from ICEs to NEVs. It is also referred to with the full name Shanghai Automobile Industry Corporation. Its headquarters are in Shanghai. In 2021, it reached a total turnover of RMB 779,85 billion (EUR 102,15 billion)³³²¹. It is active in the NEV market also as part of the JVs SAIC-Volkswagen, SAIC-GM, SAIC-GM-Wuling, and Zhiji Motors, also known with its English name IM Motors, together with online platform Alibaba. In the wider automobile market, SAIC is the parent company of the British brand MG Motor, acquired in 2005³³²², which together with the brand Roewe constitutes the SAIC Passenger Vehicle branch. This branch is an organisational unit within SAIC, as opposed to the JVs which are separate legal entities.

³³¹⁵ See JAC Motors' website at: <https://www.jac.com.cn/> (accessed on 13 June 2023).

³³¹⁶ See at: <https://asia.nikkei.com/Business/Business-Spotlight/China-s-local-governments-ride-to-the-rescue-of-EV-startups> (accessed on 13 June 2023).

³³¹⁷ See at: <https://www.sequoiacap.cn/en/companies/nio/> (accessed on 13 June 2023).

³³¹⁸ See at: <https://www.reuters.com/article/us-warburg-pincus-china-fund-idUSKCN1T70L8> (accessed on 13 June 2023).

³³¹⁹ Nio Inc. - Annual Report pursuant to Section 13 or 15(D) of the Securities Exchange Act Of 1934, p. 11.

³³²⁰ See at: <https://www.nio.com/news/nio-enters-definitive-agreements-establishing-nio-chinas-headquarters-hefei> (accessed on 13 June 2023).

³³²¹ SAIC Motor Corporation Limited - Annual Report 2021, p. 7.

³³²² See at: <https://www.mgmotor.eu/about> (accessed on 13 June 2023).

- China National Heavy Duty Truck Group Co., Ltd. (*‘Sinotruck’*)
Sinotruck is the main Chinese producer of heavy-duty vehicles and is transitioning to NEVs³³²³.
- WM Motor
WM Motor is a NEV producer with headquarters in Shanghai, established in 2015 by a former executive of Geely and of Volvo, and by former executives of SAIC. Shareholders include State-owned investors (notably a 5,7% stake of the city of Kunshan³³²⁴ and funds of the Hubei province, of the Shanghai municipality and of the cities of Suzhou, Hengyang, Hefei and Guangzhou³³²⁵), SAIC³³²⁶, the tech companies Baidu and Tencent, and funds managed by Susquehanna International Group³³²⁷ and Sequoia China³³²⁸. Weltmeister is the brand under which NEVs produced by WM Motor are sold.
- Wuling
Wuling is a State-backed automaker which produces not only cars but also trucks, buses and autoparts. It is active in the Chinese NEV market through the joint venture SAIC-GM-Wuling, which produces some of China’s cheapest NEV model.
- XEV Ltd. (*‘XEV’*)
XEV is a NEV producer incorporated in Hong Kong, which has its production facility in Shanghai. It has become well-known for its leading NEV model called Yoyo, a 2-seat mini-car increasingly used in EU urban contexts.
- Xiaomi
Xiaomi (see Section 18.8.2.), which was already a shareholder in the NEV producer Xpeng, started its own production of NEVs in 2023.
- Xpeng
Xpeng is a NEV producer with headquarters in Guangzhou, in the Guangdong province. The online platform Alibaba owns a 14% stake in Xpeng. Other shareholders include the Guangzhou provincial government through a state industrial fund³³²⁹, Xiaomi and funds managed by Sequoia China³³³⁰. Xpeng drew its employees from many well-known tech giants, including Xiaomi, Tencent, Samsung and Huawei. Their expertise helped Xpeng become competitive in NEV technologies.
- Zhiche Youxing Technology Co., Ltd. (*‘Youxing’*)

³³²³ See Sinotruck’s website at: <https://www.sinotrukinternational.com/> (accessed on 13 June 2023).

³³²⁴ See at: <https://asia.nikkei.com/Business/Business-Spotlight/China-s-local-governments-ride-to-the-rescue-of-EV-startups> (accessed on 13 June 2023).

³³²⁵ See at: <https://asia.nikkei.com/Business/Automobiles/Chinese-EV-startup-WM-Motor-raises-1.5bn-in-biggest-funding-round> (accessed on 13 June 2023).

³³²⁶ *Ibid.*

³³²⁷ *Ibid.*

³³²⁸ See at: <https://www.chinamoneynetwork.com/2017/12/22/tencent-sequoia-china-invest-chinese-ev-firm-wm-motor-duo-backed-rival-nio> (accessed on 12 June 2023).

³³²⁹ See at: <https://www.businesswire.com/news/home/20210315005543/en/XPeng-and-Guangdong-Provincial-Investment-Arm-Ink-Strategic-Agreement> (accessed on 12 June 2023).

³³³⁰ See at: <https://www.sequoiacap.cn/en/companies/xpeng/> (accessed on 13 June 2023).

Youxing is active as a NEV producer through its brand Singulato Motors. In 2021, Singulato Motors was reported to have found itself in judicial difficulties³³³¹. As of writing this Report, it was unclear if it was still active.

- Zotye International Automobile Trading Co. Ltd. ('Zotye')

Zotye is known for producing Western and luxury look-alike cars, including NEVs. Its headquarters are in Yongkang, in the Zhejiang province.

Foreign brands³³³²

- BMW
BMW is active in the NEV market in China through its joint venture BMW Brilliance Automotive with Brilliance under the BMW brand and with GWM under the Mini brand.
- General Motors ('GM')
GM is active in the Chinese NEV market through the JVs SAIC-GM and SAIC-GM-Wuling.
- Nissan
Nissan is active in the production of NEVs in China through its JV with Dongfeng.
- Renault
Renault is active in the production of NEVs in China through its JV with Dongfeng. Moreover, it has a JV with Geely for the production of motors, including motors for HEVs and PHEVs³³³³. It used to have a JV for the production of NEVs with Brilliance, which filed for bankruptcy in 2021³³³⁴.
- Tesla
Tesla produces NEVs in China in a gigafactory in Shanghai. Tesla is the only foreign company which was granted a waiver to own 100% of an EV factory in China³³³⁵.
- Toyota
Toyota is active as a NEV manufacturer in the Chinese market through BYD Toyota EV Technology, a JV with BYD.
- Volkswagen
Volkswagen is active in the Chinese market through the JVs SAIC-Volkswagen and FAW-VW. SAIC-Volkswagen is established in Shanghai and sells cars, including NEVs, under the Volkswagen and Skoda brands. FAW-VW, in which Audi – a wholly-owned subsidiary of Volkswagen – has also a 10% stake, produces also NEVs. Volkswagen is

³³³¹ See at: <https://www.yicaiglobal.com/news/china-bans-ev-startup-singulato-motors-its-founder-from-high-level-consumption> (accessed on 12 June 2023).

³³³² Where not indicated otherwise, basic information on Foreign brands active as NEV producers in China were retrieved at: <https://thechinaproject.com/2021/04/20/all-the-electric-car-companies-in-china-a-guide-to-the-27-top-players-in-the-chinese-ev-industry/> (accessed on 12 June 2023).

³³³³ See at: <https://media.renaultgroup.com/renault-group-and-geely-sign-joint-venture-agreement-to-launch-leading-powertrain-technology-company/> (accessed on 12 June 2023).

³³³⁴ See at: <https://www.yicaiglobal.com/news/renault-china-jv-with-brilliance-auto-goes-bust> (accessed on 13 June 2023).

³³³⁵ See at: <https://www.reuters.com/business/autos-transportation/stellantis-chinas-gac-joint-venture-file-bankruptcy-2022-10-31/> (accessed on 12 June 2023).

also active in the production of batteries for NEVs in China, as it is the biggest shareholder of Gotion High-tech Co., Ltd. (*Gotion High-tech*).

Battery manufacturers

- A123 Systems LLC. (*A123 Systems*)
A123 Systems is a US-incorporated company which was acquired by the Chinese Wanxiang Group Holdings, with headquarters in Hangzhou. It produces lithium iron phosphate batteries and energy storage systems. It has a joint venture with SAIC for the production of batteries for NEVs in China.
- Aiways
Aiways is a vertically integrated manufacturer, as it produces batteries, in addition to NEVs.
- BYD
BYD manufactures also batteries, in addition to NEVs. It is the second-largest battery producer in the world and in China, in both cases after CATL, with a market share in the global market of batteries for NEVs of 6,9% in 2021 and 12% in 2022, when it overtook an established player, Panasonic³³³⁶. As of 2023, in China it held a market share of 23,16%³³³⁷. Thus, it is the main vertically integrated NEV manufacturer.
- CALB
CALB is a State-owned company initially established by Aviation Industry Corporation of China Ltd. It held a market share of 2,7% in 2021 and 4% in 2022 in the global market of batteries for NEVs³³³⁸.
- CATL
As of writing of this Report, CATL is the largest manufacturer of batteries for NEVs in the world and in China. CATL is also known in Chinese by the name The Age of Ningde, as it is headquartered in Ningde, in the Fujian province. It held a market share of 32,5% in 2021 and 34% in 2022 in the global market of batteries for NEVs³³³⁹. As of 2023, in China it held a market share of 47,76%³³⁴⁰. It has the JV CATL-Geely Power Battery Co. together with Geely³³⁴¹ and two JVs with SAIC (United Auto Battery System Co., Ltd. and United Auto Battery Co., Ltd.) for the production of batteries for NEVs³³⁴². In addition, it supplies batteries to Tesla, Volkswagen, BMW and NIO³³⁴³. CATL opened a plant in Germany and was, as of writing of this Report, about to open another plant in Hungary, the only two production sites outside China³³⁴⁴. It also signed a deal in February

³³³⁶ See at: <https://www.visualcapitalist.com/the-top-10-ev-battery-manufacturers-in-2022/> (accessed on 13 June 2023).

³³³⁷ See at: <https://www.ft.com/content/34c6c191-a803-495a-938d-e1328d53d77c> (accessed on 13 June 2023).

³³³⁸ See at: <https://www.visualcapitalist.com/the-top-10-ev-battery-manufacturers-in-2022/> (accessed on 13 June 2023).

³³³⁹ *Ibid.*

³³⁴⁰ See at: <https://www.ft.com/content/34c6c191-a803-495a-938d-e1328d53d77c> (accessed on 13 June 2023).

³³⁴¹ CATL's 2020 annual report, p. 170.

³³⁴² See at: https://www.saicmotor.com/english/latest_news/saic_motor/49664.shtml (accessed on 13 June 2023).

³³⁴³ See at: <https://europe.autonews.com/suppliers/catls-1000-km-battery-picked-2-chinese-ev-startups> (accessed on 13 June 2023).

³³⁴⁴ See at: <https://www.catl.com/en/about/profile/> (accessed on 13 June 2023).

2023 with Ford to license its battery technology for use in Ford's US factory in Michigan³³⁴⁵.

- EVE Energy Co., Ltd. (*'EVE Energy'*)
EVE Energy produces both lithium batteries and batteries for consumer electronics.
- Ganfeng Lithium
Ganfeng Lithium is a vertically integrated lithium manufacturer, which produces also batteries.
- Geely
Geely is active in the production of batteries through its JV CATL-Geely Power Battery Co. with CATL.
- Gotion High-tech
Gotion High-tech, previously known as Dongyuan Electric Appliance Group, focuses on lithium iron phosphate batteries. Volkswagen is its biggest shareholder with a 26,47% stake. It held a market share of 2,0% in 2021 and 3% in 2022 in the global market of batteries for NEVs³³⁴⁶.
- NIO
While NIO is not a producer of batteries in itself, it has developed a network of public stations where users can swap used batteries for fully charged ones. This also allows for the NEVs to be sold at a lower price, not including the price of the battery³³⁴⁷. Moreover, it has opened a plant in Hungary of its subsidiary in charge of the deployment of its swapping infrastructure in the EU, in support of its EU sales³³⁴⁸.
- SAIC
SAIC is active in the production of batteries through a JV with A123 Systems and two JVs with CATL (United Auto Battery System Co., Ltd. and United Auto Battery Co., Ltd.)³³⁴⁹.
- Sunwoda Electronic Co., Ltd. (*'Sunwoda'*)
Sunwoda held a market share of 2% in 2022 in the global market of batteries for NEVs³³⁵⁰.
- SVOLT Energy Technology Co., Ltd. (*'SVOLT'*)
SVOLT held a market share of 1% in 2022 in the global market of batteries for NEVs³³⁵¹.

22.2.3. EXPORTS AND IMPORTS

In 2023, China became the largest automobile exporting country³³⁵². In particular, concerning only NEVs, in the first half of 2023 China exported 534 000 NEVs, an increase by 160%

³³⁴⁵ See at: <https://www.ft.com/content/9f411244-eb72-493f-86d2-e7bf77de757e> (accessed on 13 June 2023).

³³⁴⁶ See at: <https://www.visualcapitalist.com/the-top-10-ev-battery-manufacturers-in-2022/> (accessed on 13 June 2023).

³³⁴⁷ See at: <https://www.reuters.com/business/autos-transportation/chinas-nio-opens-trial-high-speed-ev-battery-swapping-stations-2023-03-28/> (accessed on 13 June 2023).

³³⁴⁸ See at: <https://www.nio.cn/news/20220801001> (accessed on 13 June 2023).

³³⁴⁹ See at: https://www.saicmotor.com/english/latest_news/saic_motor/49664.shtml (accessed on 13 June 2023).

³³⁵⁰ See at: <https://www.visualcapitalist.com/the-top-10-ev-battery-manufacturers-in-2022/> (accessed on 13 June 2023).

³³⁵¹ *Ibid.*

³³⁵² See at: <https://www.bbc.com/news/business-65643064> (accessed on 13 June 2023).

compared to the same period in 2022³³⁵³. Chinese share of global exports of NEVs grew from 9,9% in 2020 to 35% in 2022³³⁵⁴, to more than 60% in the first semester of 2023³³⁵⁵. SAIC, BYD and Tesla are the top Chinese exporters of NEVs³³⁵⁶.

In particular, the share of NEVs in the Chinese automobile export mix rose by more than 90%, compared to 2022. This allowed China between 2022 and 2023 to become, for the first time, an exporter rather than an importer of automobiles, as it had been so far due to the technology and know-how disadvantage in the production of ICEs³³⁵⁷.

The Government is encouraging Chinese NEV brands to explore markets overseas and has policies in place to support those enterprises in many ways. In this regard, the New Energy Vehicle Industry Development Plan (2021-2035) (see Section 22.3.13) sets five strategic tasks for China's NEV industry for the 15 years it spans: (1) improve capacity for technology innovation; (2) build a NEV industry ecosystem; (3) advance industrial integration and development; (4) build a sound infrastructure system; and (5) increase openness and deepen international cooperation. As concerns the international cooperation, domestic firms were encouraged to make strategic plans for international development, exploit overseas markets, and establish warehouses and post-sale service platforms abroad. It is also emphasized that supporting services for international cooperation such as corporate compliance and legal consulting and test and certification services were to be strengthened. Additionally, task 5 entails China's proactive participating in setting international rules and standards³³⁵⁸.

The EU market is one of the main export destinations of Chinese NEV brands³³⁵⁹. This is shown by the increasing market share of Chinese brands in the EU market. In fact, Chinese NEV brands accounted for 4% of the EU NEV market in 2021, 6% in 2022 and 8% in the first eight months of 2023³³⁶⁰.

Export strategies to the EU/Europe differ amongst Chinese brands. NIO entered the Norwegian market, where it appears to have more sales than in the EU market, as a preparatory move before obtaining an established presence in the EU market³³⁶¹. BYD plans to supply 100 000 EVs to the German-based car rental company SIXT over six years between 2022 and 2028, as it expands its presence into all major markets of the EU³³⁶². Aiways regarded penetration of

³³⁵³ See at: https://english.www.gov.cn/news/202307/21/content_WS64ba4441c6d0868f4e8de048.html (accessed on 13 June 2023).

³³⁵⁴ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 13 June 2023).

³³⁵⁵ See at: <https://www.globaltimes.cn/page/202308/1295756.shtml> (accessed on 13 June 2023).

³³⁵⁶ See at: <https://www.bbc.com/news/business-65643064> (accessed on 13 June 2023).

³³⁵⁷ See at: <https://www.ft.com/content/fddc1c5b-7494-4f0c-94cd-0409d7e9df70> (accessed on 13 June 2023).

³³⁵⁸ See at: <https://theicct.org/wp-content/uploads/2021/12/China-new-vehicle-industrial-dev-plan-jun2021.pdf> (accessed on 13 June 2023).

³³⁵⁹ See at: <https://insideevs.com/news/629493/china-exports-electric-vehicles-europe-reach-record-levels/> (accessed on 13 June 2023).

³³⁶⁰ See at: <https://www.reuters.com/business/autos-transportation/chinas-ev-makers-face-cost-consumer-challenges-conquer-europe-2023-08-18/> (accessed on 13 June 2023).

³³⁶¹ See at: <https://carnewschina.com/2023/02/01/nio-european-sales-12-cars-in-netherlands-3-in-norway-in-january/> (accessed on 13 June 2023).

³³⁶² See at: <https://www.byd.com/eu/news-list/BYD-Enters-Major-eMobility-Partnership-with-SIXT> (accessed on 13 June 2023).

export markets as a way to overcome the competitive pressure in the Chinese market³³⁶³. Lynk & Co, a brand part of Geely, offers subscription services of shared NEVs to EU customers³³⁶⁴. XEV was born as a Chinese producer of NEVs destined for the EU export market and started selling on the Chinese market only two years after it started selling to the EU³³⁶⁵.

Conversely, due to the development of its production, China imports under 1% of the NEVs sold in its domestic market³³⁶⁶.

Concerning the exports of foreign brands active as NEV producers in China, Renault and BMW appear to export NEV produced in China to the EU³³⁶⁷. Moreover, Tesla ships NEVs destined for the EU market from its Chinese plant³³⁶⁸, where at the beginning of 2022 more than half of the production was destined for export³³⁶⁹. However, this trade pattern is changing, as the Chinese plant was unable to keep up with orders and in March 2022, Tesla opened a production plant in Germany, which allowed to reduce the production pressure on the Chinese plant, then able to supply more the demand of the Chinese market³³⁷⁰. As a result, in the first quarter of 2023, 75% of newly registered Tesla BEVs in Western Europe was produced in Germany, nearly 25% was imported from China and few thousand units were imported from the USA³³⁷¹.

Concerning the Chinese export of batteries, in 2022 108.1 GWh of batteries and batteries incorporated in NEVs were exported³³⁷². Indeed, batteries are often exported already installed in the NEVs because the export of batteries for NEVs is difficult due to their weight, the fact that they contain hazardous materials and the need for matching with the relevant NEV model³³⁷³. For these reasons, Chinese producers prefer to establish new production plants abroad. For example, in 2023 Chinese battery producers accounted for 40% of the planned production capacity in Europe, notably with the project of CATL's second European plant in Hungary after the first one in Germany³³⁷⁴. Moreover, as of 2023, CATL was the second-largest producer in the EU after LG Energy Solution Ltd., with a 27,47% market share³³⁷⁵. Still, China is the world top exporter of batteries, with 56.7 GWh of self-standing batteries exported in the

³³⁶³ See at: <https://www.caixinglobal.com/2023-05-26/ev-startup-aiways-fails-to-pay-wages-amid-production-halt-102059051.html> (accessed on 13 June 2023).

³³⁶⁴ See at: <https://www.octotelematics.com/blog/lynk-co-launches-subscription-service-in-europe/> (accessed on 13 June 2023).

³³⁶⁵ See at: <https://carnewschina.com/2023/01/07/xev-yoyo-3d-printed-mini-car-to-launch-in-china-in-the-first-half-of-2023/> (accessed on 13 June 2023).

³³⁶⁶ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 13 June 2023).

³³⁶⁷ See at: <https://insideevs.com/news/629493/china-exports-electric-vehicles-europe-reach-record-levels/> (accessed on 13 June 2023).

³³⁶⁸ See at: <https://insideevs.com/news/629493/china-exports-electric-vehicles-europe-reach-record-levels/> (accessed on 13 June 2023).

³³⁶⁹ See at: <https://www.ft.com/content/7c3d6eb3-ca0b-4475-9da5-8e304162791b> (accessed on 13 June 2023).

³³⁷⁰ See at: <https://edition.cnn.com/2023/07/20/cars/tesla-germany-biggest-car-plant-europe/index.html> (accessed on 13 June 2023).

³³⁷¹ See at: <https://www.schmidtmatthias.de/post/tesla-tops-the-west-european-new-bev-passenger-car-market-during-q1-2023> (accessed on 13 June 2023).

³³⁷² See at: <https://equalocean.com/analysis/2023021519466> (accessed on 13 June 2023).

³³⁷³ See at: <https://www.cer.eu/publications/archive/policy-brief/2023/europe-american-chinese-green-tech#:~:text=9%20EU%20imports%20of,to%20cover%20the%20excess%20demand> (accessed on 13 June 2023).

³³⁷⁴ See at: <https://equalocean.com/analysis/2023021519466> (accessed on 13 June 2023).

³³⁷⁵ See at: <https://www.ft.com/content/34c6c191-a803-495a-938d-e1328d53d77c> (accessed on 13 June 2023).

first semester of 2023³³⁷⁶ – which allows to foresee an increase in exports compared to 2022 – and a share of global exports estimated at 31,1% in 2021³³⁷⁷ and at 35% in 2022³³⁷⁸. Also, in the case of batteries, the EU is one of the main export destinations, accounting for 31,21% of Chinese exports of lithium-ion batteries – the main type used in NEVs – in 2021³³⁷⁹ and for approximately one third in 2022³³⁸⁰.

22.2.4. OVERCAPACITY

The rapid growth NEVs production in China highlighted in Section 22.2.1 has already led to a situation of overcapacity. By the end of 2021, the total production capacity of NEVs in China reached 5.69 million NEVs, yet the total production was only 3.55 million NEVs. Despite the overall overcapacity in place, as of 2023, China still had an additional passenger car capacity of 10.46 million vehicles under construction, most of which for manufacturing NEVs³³⁸¹. Once all these factories are operating, China is therefore expected to reach a capacity of 16 million vehicles. While it is true that production of NEVs increased by 99% between 2021 and 2022, in the first half of 2023 it increased by 42,4% compared to the same period in 2022³³⁸². It is therefore debatable if China will be able to run NEV production plants at full capacity or if a certain share of the capacity will be likely to remain idle.

For this reason, the Government encourages NEV producers to explore markets overseas and export NEVs, with governmental support for enterprises in place. At the same time, the Government appears to encourage overcapacity to a certain extent. Indeed, the Dual-Credit Policy described in Section 22.3.10 sanctions the failure to reach certain targets measured on the average fuel consumption and on production or import. Since the average fuel consumption depends on the NEVs or other low-emission vehicles produced or imported, the targets are measures on production or imports (essentially production, given how negligible imports are in the Chinese NEV market (see Section 22.2.3)). Therefore, these targets could act as an incentive for producing increasingly more NEVs, not only to meet the targets but also to lower the average fuel consumption. Thus, they could be intended also as factors contributing to the overcapacity of the NEV industry.

³³⁷⁶ See at: <https://global.chinadaily.com.cn/a/202307/24/WS64bdc9daa31035260b8180a1.html#:~:text=In%20the%20first%20half%20of%20this%20year%2C%20Chinese%20battery%20companies,2022%20amounted%20to%2068.1%20GWh> (accessed on 13 June 2023).

³³⁷⁷ See at: <https://oec.world/en/profile/hs/batteries?countryComparisonFlowSelector=Exports&countryComparisonMeasureSelector=Trade%20Value&cumulativeMarketShareSelected=share> (accessed on 13 June 2023).

³³⁷⁸ See at: <https://iea.blob.core.windows.net/assets/dacf14d2-eabc-498a-8263-9f97fd5dc327/GEVO2023.pdf> (accessed on 13 June 2023).

³³⁷⁹ European Parliament (2023), *Global value chains: Potential synergies between external trade policy and internal economic initiatives to address the strategic dependencies of the EU*, Study requested by the INTA committee, EP/EXPO/INTA/FWC/2019-01/LOT5/R/09, p. 45, Table 7.

³³⁸⁰ See at: <https://www.cer.eu/publications/archive/policy-brief/2023/europe-american-chinese-green-tech#:~:text=9%20EU%20imports%20of,to%20cover%20the%20excess%20demand> (accessed on 13 June 2023).

³³⁸¹ See at: http://www.anbound.com/Section/ArticleView_31356_1.htm (accessed on 12 June 2023).

³³⁸² See at: <http://en.caam.org.cn/Index/show/catid/65/id/2033.html> (accessed on 12 June 2023).

Overcapacity is also a feature of the Chinese battery industry, together with oversupply. In 2022 China's battery production totalled 545.9 GWh, meanwhile the volume installed in NEVs for the domestic market was 294.6 GWh, accounting only for 53,96% of the production. Even adding 108.1 GWh of battery exports and exports of batteries incorporated in the NEVs, the ratio is only 73,77% of the production³³⁸³. This left more than a quarter of the battery production not used for NEVs. The same pattern appeared to continue in the first half of 2023, when 293.6 GWh were produced but only 152.1 GWh installed in NEVs³³⁸⁴. This stockpiled production could theoretically find other applications, as battery cells constituting this volume of production could be assembled in battery module packs for applications other than NEVs. However, even if that were the case, additional capacity can be devoted to the production of batteries for NEVs, as the battery production capacity developed by China is considerable. In fact, in terms of lithium-ion batteries, which is the most used type of battery for NEVs, the production capacity reached 893 GWh in 2022, corresponding to 77% of the global capacity³³⁸⁵. Even considering that this capacity was used not only for the lithium-ion batteries in the 545.9 GWh of batteries produced for NEVs, but also for other applications, this figure shows that Chinese producers have idle capacity for batteries for NEVs. Moreover, in perspective, it is foreseen that Chinese battery manufacturers will be able to manufacture 4 800 GWh of batteries in 2025, four times the demand of the country's NEV makers³³⁸⁶. Therefore, the battery production capacity in China does not appear to be developed only to supply the domestic demand, but also export markets.

22.3. REGULATORY FRAMEWORK

NEVs have been the subject of Chinese governmental guidelines, both at central and local level, at least since 2005. A number of policy documents and regulatory measures show the increased attention devoted by the Chinese authorities to the development of the production of NEVs and their components, in particular batteries, into a strategic industry. The following policy documents and regulatory measures in relation to NEVs will be analysed in more detail below:

- Decision No. 40 (see Section 4.2.9);
- the 2010 SEI Decision (see also Section 2.3.2.);
- the 2010 Notice on the Pilot Subsidy Scheme for the Private Purchase of New Energy Vehicles;
- the 12th FYP;
- the 2012-2020 Energy-saving and New Energy Vehicle Industry Development Plan;

³³⁸³ See at: <https://equalocean.com/analysis/2023021519466> and <https://thechinaproject.com/2023/06/20/china-now-has-a-lot-more-batteries-than-electric-vehicles/#:~:text=In%202022%2C%20a%20battery%20shortage,GWh%20were%20installed%20in%20EVs> (accessed on 12 June 2023).

³³⁸⁴ See at: <https://global.chinadaily.com.cn/a/202307/24/WS64bdc9daa31035260b8180a1.html#:~:text=In%20the%20first%20half%20of%20this%20year%2C%20Chinese%20battery%20companies,2022%20amounted%20to%2068.1%20GWh> (accessed on 12 June 2023).

³³⁸⁵ See at: <https://www.visualcapitalist.com/chinas-dominance-in-battery-manufacturing/> (accessed on 12 June 2023).

³³⁸⁶ See at: <https://www.scmp.com/business/china-business/article/3228224/overcapacity-chinas-ev-battery-industry-reach-four-times-demand-2025-putting-small-players-risk> (accessed on 12 June 2023).

- the 13th FYP;
- Made in China 2025 (see Section 4.2.3);
- the 2017 Medium and Long-Term Development plan for the Automobile Industry;
- the 2017 Action Plan for Promoting the Development of the Automotive Power Battery Industry;
- the 2017 Dual-Credit Policy;
- the Recommendations for the 14th FYP;
- the 14th FYP (see Section 4.2.5);
- the 2021-2035 New Energy Vehicle Industry Development Plan;
- the 2023 Announcement on the Continuation and Optimization of the New Energy Vehicle Purchase Tax Reduction Policy;
- the 2023 Measures to further promote the automobile consumption and Plans to boost the NEV industry; and
- certain provincial, regional, municipal and local plans of areas where NEV manufacturers are located.

22.3.1. DECISION NO. 40 AND GUIDING CATALOGUES

As recalled in Section 4.2.9, Decision No. 40 was adopted in the context of the 11th FYP. It shows a serious commitment of the Government, as early as 2005, to support the development of new industries fostering the sustainable development, including NEVs.

Indeed, in Chapter II dedicated to ‘*Directions and Key Points of Industrial Structure Adjustment*’, Article 7 states that the Government “shall [...] make great efforts to develop industries in the areas of [...] new energy”. Moreover, Article 6 refers to batteries when it states that “[t]he equipment manufacturing industry shall [...] break through especially in the areas such as [...] advanced power equipment, energy conservative and consumption reducing equipment”.

Chapter III defines the principles identifying the ‘*encouraged category*’ of industries included in the Guiding Catalogue for Industrial Structure Adjustment, which, as explained in Section 4.2.9, “is the important basis for guiding investment directions, and for the governments to administer investment projects, to formulate and enforce policies on public finance, taxation, credit, land, import and export, etc.”³³⁸⁷ applicable to Chinese companies³³⁸⁸. One of the principles is that encouraged industries should meet “the requirements of the sustainable development strategy” and should lead “to the development and utilization of new energy and renewable energy”³³⁸⁹.

It is noteworthy that another principle refers to the ability of encouraged industries to allow China to exert its “comparative advantages, especially the advantages of energy, mineral resources and labour resources”³³⁹⁰.

³³⁸⁷ Decision No. 40, Article 12.

³³⁸⁸ Indeed, a different list of encouraged industries applies to foreign investors.

³³⁸⁹ Decision No. 40, Article 14(4).

³³⁹⁰ Decision No. 14, Article 14(5).

Decision No. 40 tasked the NDRC with releasing and updating the Guiding Catalogue. All the four successive versions of the Guiding Catalogue (2005, 2011 – later amended in 2013 –, 2019 and 2023, effective as of 6 February 2024) mentioned NEVs among the encouraged industries. Indeed, already the 2005 version mentioned the “[d]evelopment and manufacturing of new energy vehicles and key components such as compressed natural gas, hydrogen fuel, synthetic fuel, liquefied petroleum gas, alcohol ether fuel vehicles, hybrid vehicles, electric vehicles, fuel cell vehicles, etc” as an encouraged industry³³⁹¹. The 2011 version mentioned ‘key parts and components’ of NEVs, which included, among others: ‘power battery packs’ ‘battery cathode material’, ‘electric vehicle electronic control integration’ and ‘electric vehicle drive motor’³³⁹². The 2013 amendment kept them in the list³³⁹³. The 2019 version included ‘key parts and components’ and ‘R&D capacity building’ of NEVs³³⁹⁴. The 2024 version refers to ‘key parts and components’ (including batteries) and ‘R&D and testing capabilities for new energy vehicles’³³⁹⁵.

22.3.2. THE 2010 STATE COUNCIL DECISION ON ACCELERATING THE DEVELOPMENT OF STRATEGIC EMERGING INDUSTRIES

The 2010 SEI Decision (see Section 2.3.2’) which lists the industrial sectors to be developed with priority and sets objectives for them, with NEVs included among the initial seven SEIs³³⁹⁶. NEVs remained a strategic emerging industry throughout the successive revisions made by the NDRC of the Strategic Emerging Industries Key Product and Services Catalogue in 2013 and 2017.

In the 2010 SEI Decision, the Government sets quantitative objectives: for example, by 2015 the strategic emerging industries were to represent 8% and by 2020 15% of the country’s GDP.

22.3.3. THE 2010 NOTICE ON THE PILOT SUBSIDY SCHEME FOR THE PRIVATE PURCHASE OF NEW ENERGY VEHICLES

In May 2010 the MOF, the Ministry of Science and Technology, the MIIT and the NDRC issued the Notice on the Pilot Subsidy Scheme for the Private Purchase of New Energy Vehicles

³³⁹¹ NDRC Order No. 40 of 2005, available at: https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/200512/t20051222_960679.html (accessed on 14 June 2023).

³³⁹² NDRC Order No. 9 of 2011, available at: https://www.ndrc.gov.cn/fggz/cyfz/zcyfz/201104/t20110426_1149263.html (accessed on 14 June 2023).

³³⁹³ NDRC Order No. 21 of 2013, available at: https://www.gov.cn/gongbao/content/2013/content_2404709.htm (accessed on 14 June 2023).

³³⁹⁴ NDRC Order No. 29 of 2019, available at: <https://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf>; an English translation is available on the website of the Australian trade defence authority: https://www.industry.gov.au/sites/default/files/adc/public-record/exhibit_d16.1_-_catalogue_for_guiding_industry_restructuring_-_en.pdf (accessed on 14 June 2023).

³³⁹⁵ See 2024 Guidance Catalogue for the industrial structure adjustment ; Section I-16 Automobile, available at: <P020231229700886191069.pdf> ([ndrc.gov.cn](http://www.ndrc.gov.cn)) (accessed on 15 January 2024).

³³⁹⁶ For wider context of the policies related to SEI sectors, see also Section 4.2.1.

(‘Purchase Subsidy Notice’)³³⁹⁷. The Purchase Subsidy Notice was meant to encourage the sale of NEVs for personal use by granting consumers a one-off subsidy³³⁹⁸ for the purchase or the lease of an NEV³³⁹⁹. In particular, NEVs concerned included both BEVs and PHEVs³⁴⁰⁰. The subsidy was paid directly to the NEV producer, which could have therefore sold the NEV to the customers at a discounted price³⁴⁰¹. In order to benefit from the purchase subsidy, the NEV purchased or leased should have fulfilled certain minimum performance and quality requirements³⁴⁰². The amount of the subsidy disbursed depended on the power of the battery, measured in kilowatt hours³⁴⁰³. A maximum amount of the individual subsidy was provided, higher for BEVs than for PHEVs³⁴⁰⁴.

Originally, the purchase subsidy was set to stop at the end of 2020. However, due to the economic impact of the COVID-19 pandemic, its end was delayed to the end of 2022. Between 2010 and 2020, the sale of 3.17 million NEVs benefitted from the purchase subsidy. Over the years, the purchase subsidy scheme was revised several times, making NEV criteria to award the subsidy more stringent and reducing the individual amount of the subsidy³⁴⁰⁵. The rationale for this was that the subsidy scheme was meant to support the spread of the use of NEVs but, once the general public had become accustomed to them, their sale and spread would have continued thanks to the market development.

This measure had an impact on NEV prices in China. Indeed, thanks to purchase subsidies, NEV prices were suppressed. This is shown by the fact that, once the purchase subsidy was withdrawn, NEV prices immediately increased³⁴⁰⁶. As a consequence, sales of NEVs in January 2023 dropped to a minimum of 408 000 units, signalling a decrease by 49,9% compared to December 2022 and a decrease by 6,3% compared to the same period in 2022³⁴⁰⁷.

However, the clear-cut strategy of progressively reducing the purchase subsidies down to their termination does not appear to have been completely followed. Indeed, other measures meant to encourage the sale of NEVs, such as the purchase tax exemption (see Section 22.3.15), had initially the same duration as the purchase subsidies but were continued beyond the end of the purchase subsidy scheme, and measures similar to the purchase subsidy were introduced at the lower administrative levels of government (see Section 22.4.5). This is a sign that as of 2023, the NEV market in China still enjoys economic stimulus pushed by the Government rather than relying solely on market forces.

22.3.4. NEVs IN THE 12th FYP

³³⁹⁷ https://www.ndrc.gov.cn/fggz/hjzy/jnhnx/201006/t20100603_1134366.html?code=&state=123 (accessed on 14 June 2023).

³³⁹⁸ Article 4, Purchase Subsidy Notice.

³³⁹⁹ Article 5, Purchase Subsidy Notice.

³⁴⁰⁰ Article 2, Purchase Subsidy Notice.

³⁴⁰¹ Article 5, Purchase Subsidy Notice.

³⁴⁰² Article 8, Purchase Subsidy Notice.

³⁴⁰³ Article 9, Purchase Subsidy Notice.

³⁴⁰⁴ Article 9, Purchase Subsidy Notice.

³⁴⁰⁵ See at: <https://www.sixthtone.com/news/1012221> (accessed on 14 June 2023).

³⁴⁰⁶ For example, in January 2023 BYD increased the prices of several models. See at: <https://www.sixthtone.com/news/1012221> (accessed on 14 June 2023).

³⁴⁰⁷ See at: <http://en.caam.org.cn/Index/show/catid/66/id/2050.html> (accessed on 14 June 2023).

The 12th FYP³⁴⁰⁸ mentioned the NEVs in Section 1 of Chapter 10 among the strategic emerging industries that the Government intends to develop³⁴⁰⁹. Specifically, the 12th FYP indicated that the focus of the NEV industry in the 2011-2015 period should have been “*the development of plug-in hybrid electric vehicles, pure electric vehicles and fuel cell automobile technologies*”.

22.3.5. THE ENERGY-SAVING AND NEW ENERGY VEHICLE INDUSTRY DEVELOPMENT PLAN (2012-2020)

In the context of the 12th FYP, the State Council issued the Energy-Saving and New Energy Vehicle Industry Development Plan (2012-2020) (‘*NEV Plan 2012-2020*’)³⁴¹⁰ with the strategic goal of developing energy-saving vehicles (i.e., ICEs with reduced fuel consumption) and NEVs, expressly including BEVs, PHEVs and FCEVs.

Article II(2), listing the basic principles, specified that the NEV Plan 2012-2020 should have employed a “*combination of government guidance and market drive. In the industrial start-up period, [the Government] will actively play the role of planning guidance and policy incentives, gather scientific and technological and industrial resources, encourage the development and production of energy-saving and new energy vehicles, and guide market consumption. After entering the mature period of the industry, [the Government will] give full play to the driving role of the market in industrial development and the basic role of resource allocation*”. The development of the industry was not limited to the NEVs, but also to their components throughout the value chain, including “*power batteries, motors, automotive electronics, advanced internal combustion engines, and high-efficiency transmissions*”.

In Article III(2)(1), the NEV Plan 2012-2020 also set specific quantitative objectives:

- by 2015, the production together with the sales of BEVs and PHEVs should have reached 500 000 units³⁴¹¹; and
- by 2020 the production capacity of BEVs and PHEVs should have reached 2 000 000 units and their production and sales taken together should have exceeded 5 000 000 units³⁴¹², while FCEVs and H₂EV should have developed following the international trends. It appears that the 2020 objective of NEV production and sale was not reached, as NEV production reached 1 366 000 units and sales 1 367 000 units, their sum thereby having fallen short of the 5 000 000 objective³⁴¹³.

³⁴⁰⁸ Section 4.1 of the 2017 version of this Report.

³⁴⁰⁹ See: https://www.gov.cn/2011lh/content_1825838_4.htm; an English translation is available at: <https://policy.asiapacificenergy.org/sites/default/files/12th%20Five-Year%20Plan%20%282011-2015%29%20for%20National%20Economic%20and%20Social%20Development%20%28EN%29.pdf> (accessed on 14 June 2023).

³⁴¹⁰ See at: https://www.gov.cn/zwggk/2012-07/09/content_2179032.htm (accessed on 14 June 2023).

³⁴¹¹ The figure of 500,000 units in this objective includes the units produced added to the units sold, double-counting units produced and sold in the same year.

³⁴¹² The figure of 5,000,000 units in this objective includes the units produced added to the units sold, double-counting units produced and sold in the same year. This is confirmed by separate data on production and sales of NEVs in 2021, which amounted to 2.6 and 2.5 million units respectively and reached 5.1 million units only by summing them up, see page 21 of the report by Shanxi Securities Co., Ltd. available at: https://dfscdn.dfcfw.com/download/A2_cms_f_20211202113558364819&direct=1&abc1432.pdf (accessed on 14 June 2023).

³⁴¹³ See at: <http://en.caam.org.cn/Index/show/catid/34/id/140.html> (accessed on 14 June 2023).

22.3.6. NEVs IN THE 13th FYP

The 13th FYP³⁴¹⁴, in Section 1 of its Chapter 23, renews the commitment of the Government to “support the development of [...] new-energy vehicles”.

In addition, in Section 4 of Chapter 23, the 13th FYP lists the actions meant to support the development of the NEV sector:

- *Promote the use of new-energy vehicles;*
- *Encourage the use of new-energy vehicles for urban public transport and taxi services;*
- *Develop all-electric vehicles and hybrid electric vehicles with a focus on making advancements in key technological areas such as battery energy density and battery temperature adaptability;*
- *Facilitate the development of a network of charging facilities and services that are compatible with each other and come under unified standards; [...]*
- *Ensure the cumulative total production and sales figures for new-energy vehicles in China reach five million;*
- *Strengthen efforts to recover and dispose of used batteries from new-energy vehicles.*

22.3.7. NEVs IN MADE IN CHINA 2025

As explained in Section 4.2.3, Made in China 2025³⁴¹⁵ is a comprehensive long-term programme issued in the context of the 13th FYP and applicable until the end of the 14th FYP. Its main goal is to shift Chinese manufacturing upwards to higher value-added products, emphasizing in particular the use of innovative manufacturing technologies. Indeed, NEVs are among the ten sectors for which Made in China 2025 specified strategic tasks and goals and laid down government support measures.

In relation to NEVs, Made in China 2025 indicates that the Government would:

Continue to support the development of electric vehicles and fuel cell vehicles, master the core technologies of low-carbon, informatized, and intelligentized automobiles, improve the engineering and industrialization capabilities of core technologies such as starter batteries, drive motors, high-efficiency internal combustion engines, advanced transmissions, lightweight materials, and intelligent controls, form a complete industrial system and innovation system from key components to complete vehicles, and promote the integration of energy-saving and new energy vehicles with independent brands at internationally advanced levels³⁴¹⁶.

More specifically, the Government would “[o]rganize and implement a number of special projects and major projects for innovation and industrialization for [...] new energy vehicles [...]”³⁴¹⁷.

³⁴¹⁴ Available at: <https://en.ndrc.gov.cn/policies/202105/P020210527785800103339.pdf> (accessed on 14 June 2023).

³⁴¹⁵ See at: https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm ; English translation available at: https://cset.georgetown.edu/wp-content/uploads/t0432_made_in_china_2025_EN.pdf (accessed on 14 June 2023).

³⁴¹⁶ Section 3(6)(6), Made in China 2025.

³⁴¹⁷ Box 5, Section 3(6), Made in China 2025.

To achieve these objectives, the Government commits to “[a]ctively leverage the advantages of policy finance [...] and increase support for key areas such as new generation IT, high-end equipment, and new materials”, as well as to “[s]upport the Export-Import Bank of China in increasing services for the manufacturing industry to go global within its business scope, encourage China Development Bank to increase loans to manufacturing enterprises, and guide financial institutions to innovate products and services that meet the characteristics of manufacturing enterprises”³⁴¹⁸.

22.3.8. THE 2017 MEDIUM AND LONG-TERM DEVELOPMENT PLAN FOR THE AUTOMOBILE INDUSTRY

In 2017 the State Council approved the Medium and Long-Term Development Plan for the Automobile Industry (*‘2017 Automobile Plan’*)³⁴¹⁹, which was published by the MIIT, together with the NDRC and the MOST.

In analysing the situation of the automobile industry at the time, the Government acknowledges that one of the issues affecting the sector is *overcapacity*³⁴²⁰ and that as the sector is undergoing a main transformation “w]ith the continuous breakthrough of energy revolution”, an essential objective is “accelerating towards the direction of new energy”³⁴²¹. On these grounds, the 2017 Automobile Plan states that “[t]here is a good foundation and favourable conditions for building a powerful automobile country” and, in particular, “[n]ew energy vehicles and intelligent connected vehicles are expected to become breakthroughs” which would lead the transformation and the upgrade of the industry.

According to the 2017 Automobile Plan, in 2016, China’s automobile production and sales exceeded 28 million units, ranking first in the world for 8 consecutive years. While sales of Chinese brand automobiles accounted for about 50% of the total sales³⁴²², the 2017 Automobile Plan envisages a special “focus on making Chinese brand cars stronger and bigger” and on developing a group of companies able to be competitive on the international level³⁴²³.

In terms of future plans, in the 2017 Automobile Plan the Government expects to reach a production of about 30 million of automobiles in 2020 and 35 million in 2025³⁴²⁴, an industrial development which would also be supported by the *‘manufacturing power strategy’* and by the BRI (see Section 4.2.4). It appears that the 2020 objective was not reached, as China produced 25.23 million of automobiles in 2020³⁴²⁵.

³⁴¹⁸ Section 4(3), Made in China 2025.

³⁴¹⁹ See at: https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/gfxwj/gfxwj2017/201705/t20170517_132856.html (accessed on 14 June 2023).

³⁴²⁰ Section 1(1), 2017 Automobile Plan.

³⁴²¹ Section 1(2), 2017 Automobile Plan.

³⁴²² Section 1(1), 2017 Automobile Plan.

³⁴²³ Section 2(1), 2017 Automobile Plan.

³⁴²⁴ Section 1(3), 2017 Automobile Plan.

³⁴²⁵ According to data of the China Association of Automobile Manufacturers reported in <http://en.caam.org.cn/Index/show/catid/27/id/42.html>. However, it is unclear if these data include also the production of NEVs. In any case, even summing up the production of NEVs in 2020, reaching 1.37 million units, the objective remains not fulfilled.

In operational terms, the 2017 Automobile Plan is supposed to be “market-led” but “government-driven”, whereby the nominal “*decisive role of the market in resource allocation*” is to be balanced by the “*guiding role of the government in macro-control, improving the legal system [...] standardizing the order of industrial development, highlighting the dominant position of enterprises, encouraging mergers and reorganizations, optimizing industrial layout*”³⁴²⁶.

The objectives of the 2017 Automobile Plan include having (i) several Chinese companies among the top ten NEV companies in the world by 2020, (ii) several Chinese automobile parts companies having a turnover of RMB 100 billion by 2020, (iii) several Chinese companies among the top ten automobile parts companies in the world by 2025, and (iv) several Chinese companies among the top ten automobile sellers in the world by 2025. It appears that the 2020 objective of having several Chinese companies among the top ten NEV companies in the world was at least partially fulfilled, as BYD and Geely were respectively the fourth and the fifth NEV producer (on an equal footing with other foreign brands) in the world by market share³⁴²⁷.

At the international level, the 2017 Automobile Plan aims (i) by 2020, to have gradually exported Chinese car brands to developed countries, (ii) by 2025, to further enhance the global influence of Chinese car brands, and (iii) by 2025, to reduce the energy consumption of NEVs to the world’s leading level. The 2020 objective appears to have been partially fulfilled with regard to NEV brands, as in 2020 China held a 10% share of global export of NEVs, almost exclusively directed – among developed countries – to the EU³⁴²⁸.

The 2017 Automobile Plan covers also batteries. It encourages “*enterprises, institutes, universities and other innovation subjects to allocate innovation resources across the industrial chain, and establish manufacturing innovation centres in the automotive field such as power batteries*”³⁴²⁹. The spread of innovation across the value chain, especially in favour of the best performing companies, should be supported by the Joint Fund for the Automobile Industry Innovation and Development (‘*Automobile Industry Joint Fund*’ – see Section 22.4.5)³⁴³⁰.

Also, FCEVs are mentioned as an area where R&D must be strengthened³⁴³¹, as well as hybrid vehicles and alternative fuel vehicles³⁴³².

More concretely, the 2017 Automobile Plan outlines the project for the establishment of innovation centers, which will follow the formulation of “*technology roadmaps for [...] pure electric vehicles and plug-in hybrid vehicles, hydrogen fuel cell vehicles [...] automotive power batteries ... and automobile manufacturing*”³⁴³³. The establishment of the innovation centres was scheduled to be completed by 2020 and they should have been devoted to innovation in the

³⁴²⁶ Section 2(2), 2017 Automobile Plan.

³⁴²⁷ See at: <https://www.iea.org/reports/global-ev-outlook-2023/corporate-strategy> (accessed on 14 June 2023).

³⁴²⁸ See at: <https://iea.blob.core.windows.net/assets/dacf14d2-eabc-498a-8263-9f97fd5dc327/GEVO2023.pdf> (accessed on 14 June 2023).

³⁴²⁹ Section 3(1), 2017 Automobile Plan.

³⁴³⁰ Section 3(1), 2017 Automobile Plan.

³⁴³¹ Section 3(1), 2017 Automobile Plan.

³⁴³² Section 3(3)(3), 2017 Automobile Plan.

³⁴³³ Column 1, 2017 Automobile Plan.

automotive industry, for example to “*power batteries*” and “*intelligent connected vehicles*”³⁴³⁴. By 2025, it was envisaged that the innovation centres would have been instrumental for the development of the industry and would have a strong international competitiveness. In this connection, two innovation centres were indeed established: the China Automotive Battery Research Institute³⁴³⁵ (which was founded already in 2016, before the issuance of the 2017 Automobile Plan) and the National Innovation Center of Intelligent and Connected Vehicles³⁴³⁶ as consortias of State entities and NEV producers.

In parallel, the strengthening of manufacturing technologies of key parts such as the “*electric drive system*” is to be encouraged³⁴³⁷ and the integration and relationship in the production of vehicles and their parts is to be developed by national science and technology plans promoted through special projects and funds³⁴³⁸. In this respect, the 2017 Automobile Plan foresees (i) by 2020, the creation of a number of Chinese automobile parts companies able to become competitive in key technological fields, and (ii) by 2025, the positioning of a number of Chinese automobile parts among the top ten automobile parts companies in the world in terms of production value.

NEVs are considered as a key sector for the industrial transformation and upgrade. The 2017 Automobile Plan provides for an acceleration of the R&D and of the industrialisation of NEV technologies. To this end, “*corporate investment, social capital, and national science and technology plans (special projects, funds, etc.)*” should be used to coordinate and organise companies, universities and scientific research institutes in order to tackle key problems “*focusing on power batteries and battery management systems, motor drives and power electronics assemblies [...] innovation chains including technology, fuel cell power system, plug-in/range -extended hybrid power system and pure electric power system*”³⁴³⁹. With specific regards to batteries, the 2017 Automobile Plan calls for an implementation of power battery upgrade projects, unleashing the potential of the Power Battery Innovation Centre (set up as the China Automotive Battery Research Institute referred to above) and of the Power Battery Industry Innovation Alliance (i.e., the NEV and battery producers involved in the creation of the Centre)³⁴⁴⁰ carrying out joint research on technologies such as “*key materials for power batteries, single batteries, and battery management systems*” and accelerating “*the realization of revolutionary breakthroughs in power batteries*”³⁴⁴¹. This focus on the development of the battery industry in the 2017 Automobile Plan is part of a wider effort of the Government to foster the development of the automobile power battery value chain, shown also by the 2017 Action Plan for Promoting the Development of the Automotive Power Battery Industry (see Section 22.3.9).

³⁴³⁴ Column 1, 2017 Automobile Plan.

³⁴³⁵ See at: <http://www.glabat.com/class/54> (accessed on 14 June 2023).

³⁴³⁶ See at: <http://www.china-icv.cn/en/about> (accessed on 14 June 2023).

³⁴³⁷ Section 3(2), 2017 Automobile Plan.

³⁴³⁸ Section 3(2), 2017 Automobile Plan.

³⁴³⁹ Section 3(3)(1), 2017 Automobile Plan.

³⁴⁴⁰ The NEV and battery producers involved in the creation of the Centre are listed here: <http://www.glabat.com/class/54> (accessed on 14 June 2023).

³⁴⁴¹ Section 3(3)(1), 2017 Automobile Plan.

More generally, the Government intends to “[i]mprove the support policy system for the promotion and application of new energy vehicles”, fostering the transition from encouraged purchases of NEVs to a use of NEVs which would be cost-effective, to “establish a long-term mechanism to promote the development of new energy vehicles” and to “guide manufacturers to continuously increase the proportion of production and sales of [NEVs]”³⁴⁴².

In terms of specific objectives for NEVs, (i) by 2020, (a) annual production and sales of NEVs was supposed to reach 2 million units, (b) the specific energy of the batteries to exceed 300 Wh/kg, aiming at reaching 350 Wh/kg, and (c) the specific energy of the system was to reach 260 Wh/kg, with costs dropping below 1 RMB/Wh, and (ii) by 2025, (a) NEVs should account for more than 20% of car production and sales, and (b) the specific energy of the batteries is supposed to reach 350 Wh/kg. It appears that the 2020 objective of NEV production and sale was reached, if the two indicators were considered cumulatively, as NEV production reached 1 366 000 million units and sales 1 367 000 units³⁴⁴³.

In the 2017 Automobile Plan, the Government further expresses the need for raising awareness for Chinese brands among consumers, based on quality control and brand strategy³⁴⁴⁴. In this endeavour, the role of the Government consists in guiding industry organisations to establish a quality brand evaluation system and to “actively promote the construction of a new international order for auto brand evaluation”. It is noteworthy that the Government promises also to support profitable companies “in the acquisition and operation management of internationally renowned brands” and its strategy to build leading companies entails also supporting profitable companies in order “to grow bigger and stronger, become a leading automobile enterprise with strong international competitiveness”³⁴⁴⁵. Beyond car producers, the Government intends to support also the growth of automobile parts, maintenance and consulting services companies with technological innovation capacities in order to develop them into ‘little giants’ (see Section 2.3.2)³⁴⁴⁶.

This Government’s strategy for the automotive sector fits in the wider Chinese ‘go out’ policy and the Belt and Road Initiative. Indeed, the 2017 Automobile Plan invites car companies to adopt a “strategic concept of international development” and to outline an “international development strategy”³⁴⁴⁷. In particular, car manufacturing companies cooperating with car parts manufacturing companies would qualify for governmental support to identify “key development areas to build automobile industrial parks” and for support related to establishing ‘overseas development alliances’³⁴⁴⁸. Furthermore, the Government is intent on promoting the setting up by car manufacturing companies of “overseas development funds for the automobile industry” and it correspondingly encourages banking institutions to establish a “credit management and loan review system suitable for the overseas development of automobile companies” and “a multi-level overseas investment guarantee system for the automobile

³⁴⁴² Section 3(3)(1), 2017 Automobile Plan.

³⁴⁴³ See at: <http://en.caam.org.cn/Index/show/catid/34/id/140.html> (accessed on 14 June 2023).

³⁴⁴⁴ Section 5(1)-(2), 2017 Automobile Plan.

³⁴⁴⁵ Section 5(4), 2017 Automobile Plan.

³⁴⁴⁶ Section 3(5)(4), 2017 Automobile Plan.

³⁴⁴⁷ Section 6(1), 2017 Automobile Plan.

³⁴⁴⁸ Section 6(2), 2017 Automobile Plan.

industry”. Concretely, the 2017 Automobile Plan calls for the establishment of Overseas Development Projects, in the context of a “*strategic framework agreement on cooperation in the automobile industry*” to be “*based on the multilateral and bilateral high-level cooperation mechanism*”³⁴⁴⁹. In short, the Government actively promotes a “*coordinated overseas expansion*” of Chinese brands³⁴⁵⁰.

Among the implementing measures, the 2017 Automobile Plan lists increased fiscal and taxation financial support. For example, relying on funding sources such as the Automobile Industry Joint Fund (see Section 22.4.5), the support for the implementation of eight major projects, including the construction of innovation centres, is foreseen in the Plan. In addition, leveraging “*policy finance and commercial finance*” and supporting the EXIM to increase its services “*for auto companies going global*” feature among the implementing measures³⁴⁵¹.

Therefore, the 2017 Automobile Plan is a comprehensive policy document which shows how important NEVs became in the wider automotive sector for the Government. The policy guidance of the Government is well shown not only by the quantitative objectives and by the channelling of R&D efforts, but also by the push for the creation of larger companies. This influence hampers ordinary competitive dynamics among market players and favours domestic producers. To these, the Government appears to offer the means for an easy access to finance, especially to fund their international expansion, granted in turn by banking institutions which follow the NEV policy and objectives of the 2017 Automobile Plan.

22.3.9. THE 2017 ACTION PLAN FOR PROMOTING THE DEVELOPMENT OF THE AUTOMOTIVE POWER BATTERY INDUSTRY

In the framework of the NEV Plan 2012-2020, in 2017 the MIIT, together with the NDRC, the MOST and the MOF, issued the Action Plan for Promoting the Development of the Automotive Power Battery Industry (‘*2017 Battery Action Plan*’)³⁴⁵². The 2017 Battery Action Plan tackles the development of the upstream part of the value chain for the production of NEVs, whereas the downstream part is the subject of the 2017 Automobile Plan. As the 2017 Automobile Plan, the 2017 Battery Action Plan foresees a development of the battery industry with a goal to serve in turn the development of the NEV industry. Therefore, the growth of the battery industry must be ‘*coordinated*’³⁴⁵³ and the R&D is directed towards the improvement of lithium-ion power batteries³⁴⁵⁴ – the main battery type used for NEVs. To achieve these goals, the 2017 Battery Action Plan provides for an “*increase [of] policy support*”³⁴⁵⁵. This policy support includes the “*guiding role of the government*” and the “[e]xemption from excise tax if the power battery product is eligible; [p]ower battery enterprises are eligible to benefit from tax incentives such as high-technology enterprises, technology transfer and technology development”³⁴⁵⁶. As for

³⁴⁴⁹ Column 8, 2017 Automobile Plan.

³⁴⁵⁰ Column 8, 2017 Automobile Plan.

³⁴⁵¹ Section 4(2), 2017 Automobile Plan.

³⁴⁵² See at: https://www.gov.cn/xinwen/2017-03/02/content_5172254.htm#2 (accessed on 12 June 2023).

³⁴⁵³ Section 1(2), 2017 Battery Action Plan.

³⁴⁵⁴ Section 2(2), 2017 Battery Action Plan.

³⁴⁵⁵ Section 4(1), 2017 Battery Action Plan.

³⁴⁵⁶ Section 4(1), 2017 Battery Action Plan.

the NEV industry, the Government intends also to “support [...] investments and the construction of factories of domestic power battery companies abroad”³⁴⁵⁷.

Therefore, the 2017 Battery Action Plan shows how the policy guidance of the Government encompasses the whole value chain of the NEVs. In particular, it shows that the development of the battery industry is directed to serve the purposes of the development of the NEV industry. Finally, it shows the preference accorded by the Government to domestic battery producers, with a view to strengthen them and encourage their market penetration abroad.

22.3.10. THE 2017 DUAL-CREDIT POLICY

In 2017, the MIIT, together with MOF, the MoC, the General Administration of Customs and the General Administration of Quality Supervision, Inspection and Quarantine, issued the Parallel Management Method for Corporate Average Fuel Consumption and New Energy Vehicles Credits for Passenger Vehicles (*‘Dual-Credit Policy’*)³⁴⁵⁸.

The Dual-Credit Policy is a system of points attributed to companies on two parallel scales: on the one side, the reduction of the average fuel consumption for all their passenger vehicles (including NEVs), on the other side, the production or import of NEVs. The Dual-Credit Policy applies only to the average fuel consumption and the production of passenger vehicles, and not to other categories of vehicles. The points can be positive, i.e. credits, or negative, i.e. debits. Positive points are generated when a company remains *below* the standard of assessment for its average fuel consumption and *above* the standard of assessment for the production volume or import volume of passenger NEVs. Negative points are generated when a company exceeds the standard for average fuel consumption or does not meet the standard for the production or imports of NEVs. Negative points can be offset by purchasing them from NEV producers with a positive balance. Failure to offset negative points implies administrative penalties, such as a compulsory stop to the production of high fuel consumption vehicles, to the registration of new vehicles and to capacity expansion. While positive and negative points are attributed on two different scales, what matters is the combination between the two. This means that, for example, a company with a high fuel consumption can still have a positive balance if it produces a lot of NEVs. Moreover, negative points appear to be calculated at consolidated level. Therefore, one producer can offset its negative points with the positive points of a related company. While this mechanism appears to be automatic for fully controlled entities³⁴⁵⁹, it is unclear if this works automatically also for minority stakes³⁴⁶⁰. For example, the need to offset its negative points is the reason why in 2017 GWM acquired a 25% stake in Yogomo (rebranded on the occasion of the share purchase as Link Tour). At the same time, Yogomo sold to GWM all its corporate average fuel consumption credits and a certain amount of NEV credits³⁴⁶¹. Thus, in this

³⁴⁵⁷ Section 4(5), 2017 Battery Action Plan.

³⁴⁵⁸ See at: https://www.gov.cn/zhengce/2022-11/27/content_5722693.htm (accessed on 12 June 2023).

³⁴⁵⁹ See at: <https://auto.cctv.com/2022/07/18/ARTIhUdJiLnh2aaBKQAhSaBL220718.shtml> (accessed on 12 June 2023).

³⁴⁶⁰ Certain sources claim that this would be the case, see at: <https://www.sciencedirect.com/science/article/pii/S0921344920300343#kwd0005> (accessed on 12 June 2023).

³⁴⁶¹ See at: <https://gasgoo66.wordpress.com/2018/07/24/yogomo-changes-name-as-link-tour-to-target-new-energy-pvs/> (accessed on 12 June 2023).

instance, while an agreement was concluded, GWM obtained more credits than it would have been entitled to consolidate with only a 25% stake.

The methodology for the calculation related to the average fuel consumption was included in the successive reviews of the Fuel Consumption Evaluation Methods and Targets for Passenger Vehicles, initially issued for other purposes in 2011³⁴⁶², then reviewed in 2014 and once more in 2019, with application as of 1 January 2021³⁴⁶³. The standard for the average fuel consumption is the ratio between the actual value of the average fuel consumption of a company in a certain year and a target value for the same company in the same year. The actual value of the average fuel consumption of a company in a certain year is calculated using the amount of fuel consumed by each individual vehicle type of the company, multiplied by the corresponding annual production or import volume, divided by the total annual production or import of passenger vehicles of the company. The target value of the average fuel consumption in the 2011 version was a certain value of fuel consumption set for each vehicle type³⁴⁶⁴, which then developed into a formula in the 2019 version³⁴⁶⁵. Therefore, in the 2019 update, the standard for the average fuel consumption in 2021 was set at 123% of the target value, progressively decreasing in the following years: in 2022 120% of the target value, in 2023 115% of the target value, in 2024 108% of the target value and finally, as of 2025, actual and target value should coincide³⁴⁶⁶.

The methodology for the calculation related to the production of NEVs was included in the Dual-Credit Policy and in the Passenger NEV Model Credit Calculation Method³⁴⁶⁷. On this scale, the points correspond to the difference between the actual production and import and the target production and import. To calculate the actual production and import, a formula in the Passenger NEV Model Credit Calculation Method ensures a certain amount of points for each type of NEV produced or imported. The target production and import of NEVs is instead established in relation to the total production and import of passenger vehicles of each company.

Points awarded to the actual production and import of NEVs in the formula have been progressively decreased, in order to compel companies to produce and import more NEVs³⁴⁶⁸.

The Dual-Credit Policy deeply affects competitive dynamics in the Chinese NEV market, as it concurs in further enlarging and reinforcing companies which are already large. Indeed, as mentioned, the focus of the Dual-Credit Policy is on the production or import, given that also the average fuel consumption depends on the NEVs or other low-emission vehicles produced or imported. Thus, companies with a good fuel performance or high production have the possibility to offset losses or obtain additional income through the sale of credits. On the

³⁴⁶² See at: https://members.wto.org/crnattachments/2014/tbt/CHN/14_4356_00_x.pdf (accessed on 12 June 2023).

³⁴⁶³ See at: https://members.wto.org/crnattachments/2019/TBT/CHN/19_5669_00_x.pdf (accessed on 12 June 2023).

³⁴⁶⁴ Article 4(2) of the 2011 Fuel Consumption Evaluation Methods and Targets for Passenger Vehicles.

³⁴⁶⁵ Article 4(2) of the 2019 Fuel Consumption Evaluation Methods and Targets for Passenger Vehicles.

³⁴⁶⁶ Article 5(3) of the 2019 Fuel Consumption Evaluation Methods and Targets for Passenger Vehicles.

³⁴⁶⁷ Attached as Annex 2 to the Dual-Credit Policy, available at: https://www.gov.cn/zhengce/2022-11/27/content_5722693.htm (accessed on 12 June 2023).

³⁴⁶⁸ See at: <https://auto.sina.com.cn/zz/wb/2022-07-08/detail-imizirav2545819.shtml> (accessed on 12 June 2023).

contrary, smaller or non-established companies, with a bad fuel consumption or low production have to invest resources in offsetting their debits, automatically reducing potential investments in R&D and production. Furthermore, companies backed by wealth investors have the means to afford the purchase of credits or shares in companies with credits, whereas start-ups and smaller companies have lower chances to offset their debits. In essence, the Dual-Credit Policy favours the consolidation of the market, contributing to the objective already outlined by the Government in the 2017 Automobile Plan³⁴⁶⁹.

22.3.11. NEVs IN THE RECOMMENDATIONS FOR THE 14th FYP

In October 2020, the CCP Central Committee approved its Recommendations for the Formulation of the 14th FYP (2021-2025) for National Economic and Social Development and the Long-Range Objectives Through the Year 2035 (*‘14th FYP Recommendations’*)³⁴⁷⁰. The 14th FYP Recommendations provide the basic guidance for the full formulation of the 14th FYP. NEVs are mentioned among the SEIs whose development the Party intends to foster and expand. Moreover, automobiles more generally are indicated as a consumer product of which the Party intends to foster consumption, promoting “*a shift from purchase management to usage management*”.

22.3.12. NEVs IN THE 14th FYP

NEVs are firstly mentioned in Article VIII of the 14th FYP, entitled “*Deepen the implementation of the manufacturing powerhouse strategy*”, and included in Part Three of the 14th FYP, dedicated to “*Accelerate the development of a modern industrial system and consolidate and strengthen the foundation of the real economy*”. NEVs are listed, together with intelligent (connected) vehicles, among the sectors for which an increase of the manufacturing core competitiveness is prescribed. The 14th FYP envisages to “*make breakthroughs in key technologies such as high-safety power batteries, high-efficiency drive motors, and high-performance power systems for new energy vehicles and accelerate the R&D of key components such as the basic technology platforms for intelligent (connected) vehicles, software and hardware systems, steer-by-wire chassis, and smart terminals*”.

Mirroring the 14th FYP Recommendations, the 14th FYP also mentions the NEVs as a strategic emerging industry in Article IX, titled “*Develop and expand strategic emerging industries*”, and specifically in Section 1 therein, dedicated to “*Build new pillars of the industrial system*”.

22.3.13. THE NEW ENERGY VEHICLE INDUSTRY DEVELOPMENT PLAN (2021-2035)

Following up on 14th FYP Recommendations for the NEV sector, the State Council approved in October 2020 the New Energy Vehicle Industry Development Plan (2021-2035) (*‘NEV Plan*

³⁴⁶⁹ See Section 2(2), 2017 Automobile Plan.

³⁴⁷⁰ Chinese version available on https://web.archive.org/web/20201104114039/http://www.xinhuanet.com/politics/zywj/2020-11/03/c_1126693293.htm, English translation available at: <https://cset.georgetown.edu/publication/proposal-of-the-central-committee-of-the-chinese-communist-party-on-drawing-up-the-14th-five-year-plan-for-national-economic-and-social-development-and-long-range-objectives-for-2030/> (accessed on 12 June 2023).

2021-2035’)³⁴⁷¹. This was not the first time that the State Council issued directives on NEVs, indeed, the NEV Plan 2021-2035 follows up on the NEV Plan 2012-2020 described in Section 22.3.4. Since 2012, the NEV industry in China experienced a substantial growth, but in 2020 the State Council acknowledged certain issues affecting the industry. These issues included weak capabilities for innovation in core technologies, the need for improvement of the systems to ensure quality, the deployment of related infrastructure still lagging behind, a flawed industrial ecosystem and increased market competition. Thus, the declared objectives of the NEV Plan 2021-2035 are to promote the high-quality development of the NEV industry and to accelerate the establishment of an automobile powerhouse.

According to Section 1 of Chapter II, the general strategy for the development of the NEV industry has a supply-side structural reform as one of its main lines of actions and focuses on integrated innovation, on key core technologies, on improving the industrial basic capabilities, on building a new industrial ecosystem, on improving the infrastructure system, on enhancing the industrial development context, on promoting a high-quality and sustainable development of the industry and on accelerating the establishment of an automobile powerhouse.

Pursuant to Section 2 of Chapter II, even though one of the basic principles of the NEV Plan 2021-2015 is the decisive role of the market in resource allocation and in companies’ positioning, this role is to be balanced by the Government’s role in the strategic planning guidance and in keeping the ‘*market order*’ and by the Government’s support offered to all operators to develop key core technologies, to increase business model innovation and to form an innovative industrial ecosystem. Moreover, advancements in the field of NEVs will be ‘*coordinated*’, both horizontally and vertically, in order to bring forward also sectors integrated with NEVs, such as energy, transports, information and communications.

Section 3 of Chapter II sets a clear target for the development of the NEV industry: by 2025, NEVs must reach 20% of the sale volume of new vehicles.

Section 1 of Chapter III, labelled “*Deepen the ‘three vertical and three horizontal’ R&D layout*”, clarifies that the 3 vertical layouts correspond to the three technologies of NEVs to which the NEV Plan 2021-20135 applies: (i) BEVs, (ii) PHEVs, and (iii) FCEV. On the contrary, the 3 horizontals correspond to the key technological components of the supply chain of NEVs: (i) power battery and management system, (ii) motor and power electronics, and (iii) networks and intelligent technologies. R&D is, therefore, a key factor for the development of the NEV industry according to the NEV Plan 2021-2035 and Section 2 of Chapter III provides for the establishment and improvement of joint R&D mechanisms of leading companies, national key laboratories and national manufacturing innovation centres.

Chapter IV, Section 1, dedicated to the “*Support the development of eco-oriented companies*”, foresees strengthening the role of leading companies in areas with a solid industrial and innovation background by promoting both upstream and downstream collaborative innovation,

³⁴⁷¹ Chinese version available at: http://www.gov.cn/zhengce/content/2020-11/02/content_5556716.htm and https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/202111/t20211101_1302487.html?code=&state=123, English overview available at: <https://theicct.org/wp-content/uploads/2021/12/China-new-vehicle-industrial-dev-plan-jun2021.pdf> (accessed on 12 June 2023).

the integrated development of large and small companies, industrial clusters capable of projecting their influence and competitiveness at international level, and the modernisation of the industrial value chains.

The NEV Plan 2021-2035 is not limited to NEVs but extends also to batteries for NEVs. Section 2 of Chapter IV labelled “*Promote the innovative application of key systems*” strives to promote the development of the whole value chain of batteries. This includes, notably, encouraging companies to secure access to key resources such as lithium, nickel, cobalt and platinum. More widely, the focus is placed on the improvement of modular standard systems of batteries, on accelerating developments in key manufacturing equipment, on improving process and production efficiency, on improving the recycling of batteries (including the efficient extraction of valuable elements of scrapped power batteries), the cascading of their use and shared recycling channels.

The NEV Plan 2021-2035 considers also the impact of the growing use of NEVs and its impact on the electric grid. The proposed solutions to improve the interaction between NEVs and the grid include strengthening the research on high-cycle life batteries and promoting the application of low-power direct current technologies. The NEV Plan 2021-2035 envisages also to “*encourage local governments*” to carry out pilot applications of the NEVs-grid interaction³⁴⁷², to coordinate the charging and discharging of NEVs and the power dispatching needs. Local governments are also empowered to fully make use of peak/valley electricity prices and preferential charging for NEVs in order to achieve an efficient NEVs-grid interaction.

In addition, the NEV Plan 2021-2035 covers hydrogen as a fuel for NEVs. In this respect, companies will be guided to rationally deploy the hydrogen refuelling infrastructure, based on the hydrogen fuel supply and on consumer demand, and to improve the safety level of operations. The use of existing facilities for supply services of oil, gas, hydrogen and electricity will be supported.

The plan is intended for the domestic NEV market, but it takes into account the international dimension as well. In fact, Section 2 of Chapter VII, labelled “*Accelerating integration into global value chains*”, states that guidance will be provided to companies to prepare international development strategies, to continuously improve their international competitiveness, to increase their international market developments and to promote cooperation between production and R&D, marketing, other value chains. Companies are also encouraged to make full use of their domestic and foreign financial resources and to internationalise the consumer credit system, in order to offer also consumers abroad an incentive to purchase Chinese NEVs. Support will also be available to companies to establish international marketing services networks and joint service platforms such as overseas warehouses and after-sales service centres in key export markets.

Concerning the domestic Chinese industry, Section 1 on “*Deepening Industry Management Reform*”, included in Chapter VIII on ‘*Implementing Measures*’, plans to improve the management of the corporate average fuel consumption and of NEV credits in the framework

³⁴⁷² Pilot applications are tests to show the relevance of a new device.

of the Dual-Credit Policy and to “*effectively undertake financial subsidy policies*”. Moreover, the intention is to reduce confusion concerning “*blindly launching*” NEV manufacturing projects. While the NEV Plan 2021-2035 refers in this respect to the market competitive dynamics, it also mentions the support for mergers and reorganizations in order to structure bigger and stronger companies and to further improve the degree of industrial concentration.

More broadly, Section 2 of the same chapter provides for the implementation of “*preferential tax policies*” for NEVs, for “*financial support*” for the deployment of public charging infrastructure and for “*preferential policies*” for NEVs, such as parking and charging. The NEV Plan 2021-2035 mandates that, by 2021, the proportion of NEVs in public areas in National Ecological Civilization Pilot Zones – selected areas established to improve the coordinated development of economy and environment – and in key areas for air pollution prevention and control was to be at least 80%. It is unclear if this target was met, but in January 2022 the Government announced that it intended to equip 80% of the National Ecological Civilization Pilot Zones and of the key areas for air pollution prevention and control with rapid charging stations by 2025³⁴⁷³.

Finally, given the importance of NEVs, in the same chapter, Section 5 on ‘*Strengthening Organizational Coordination*’ aims at strengthening the overall policy planning of NEVs and energy, transport, information and communication, standard and regulations, with a specific attention to the concrete implementation of the planning. All relevant administrative departments should formulate their own work plans and support policies and measures according to their function. The implementation of the policies will involve all regions, in light of their specific local conditions. The NEV Plan 2021-2035 also acknowledges the role of industry organizations as a bridge between companies and the Government and to coordinate cross-border exchanges and collaboration platforms (see also Section 2.3.3). In particular, the MIIT is tasked with the smooth implementation of the NEV Plan 2021-2035.

22.3.14. THE 2023 ANNOUNCEMENT ON THE CONTINUATION AND OPTIMIZATION OF THE NEW ENERGY VEHICLE PURCHASE TAX REDUCTION POLICY

In June 2023, the MOF, the State Administration of Taxation and the MIIT released their Announcement No. 10 of 2023 on the Continuation and Optimization of the New Energy Vehicle Purchase Tax Reduction Policy (‘*Purchase Tax Exemption Announcement*’)³⁴⁷⁴. In fact, NEVs would normally be subject to a 10% purchase tax. However, starting from 2014, the Government exempted the purchase of NEVs produced in China or imported, and fulfilling certain technical requirements, from the purchase tax. The purchase tax exemption was meant to expire at the end of 2020 but was prolonged until the end of 2022 in the wake of the economic impact of the COVID-19 pandemic, and then further extended to the end of 2023. The

³⁴⁷³ See at : http://english.www.gov.cn/statecouncil/ministries/202201/22/content_WS61eb3b40c6d09c94e48a415d.html (accessed on 12 June 2023).

³⁴⁷⁴ See at: http://szs.mof.gov.cn/zhengcefabu/202306/t20230620_3891500.htm (accessed on 16 June 2023).

exemptions from the purchase tax on NEVs accounted for more than RMB 80 billion (USD 11.9 billion) in 2022³⁴⁷⁵.

The Purchase Tax Exemption Announcement provides that the purchase tax exemption will last until the end of 2027. Between January 2024 and December 2025, the purchase tax will be capped at a higher amount, which will be halved between January 2026 and December 2027 with the purpose to gradually reduce the Government's support. The purchase tax exemption applies to passenger BEVs, PHEVs and FCEVs meeting the technical requirements indicated in a separate act.

The further prolongation of the purchase tax exemption shows that the Government keeps intervening into the NEV market with a view to ensuring its economic viability. Indeed, in an article reported on the State Council's website it is stated that the Purchase Tax Exemption Announcement is "*expected to further stimulate consumer buying sentiment for NEVs and inject strong impetus into the world's biggest auto market*"³⁴⁷⁶.

The purchase tax exemption on NEV prices may contribute to suppress NEV prices. This role would be even enhanced after that the purchase subsidy scheme was terminated in December 2022 (see Section 22.3.3). However, it is unclear how NEV producers would react should the tax exemption be terminated: they could either raise the prices by the corresponding 10% or they could be able to absorb the 10% increase without raising the prices or raising the prices by a lower percentage. This would mean that for the period of tax exemption in place, the NEV could producers to benefit from additional streams of income which would have been otherwise levied by the Government's tax administration.

22.3.15. THE 2023 MEASURES TO FURTHER PROMOTE THE AUTOMOBILE CONSUMPTION AND PLANS TO BOOST THE NEV INDUSTRY

In July 2023, the NDRC announced a series of measures meant to further increase the automobile consumption, and notably the purchase of NEVs³⁴⁷⁷. These measures include the reduction of the purchase and use cost of NEVs, such as through the adjustment of the price of the electricity linked to the use of NEVs, and an increased credits support, such as for the battery insurance. The set of measures also recalls the prolongation of the purchase tax exemption (see Section 22.3.14) and the measures adopted to facilitate the spread of NEVs in rural areas.

In parallel, the State Council published its Plans to boost NEV industry³⁴⁷⁸. These Plans are articulated around three pillars: (i) further promote NEV sales, (ii) facilitate the purchase of electric cars in rural areas, and (iii) improve the NEV charging infrastructure. The further promotion of NEV sales will take the form of the purchase tax exemption (see Section 22.3.14),

³⁴⁷⁵ See at: <http://www.chinatax.gov.cn/eng/c101269/c5183762/content.html> (accessed on 16 June 2023).

³⁴⁷⁶ See at: https://english.www.gov.cn/news/202306/22/content_WS6493ab47c6d0868f4e8dd1d0.html#:~:text=China%27s%20latest%20policy%20measures%20to,auto%20market%2C%20industry%20experts%20said (accessed on 12 June 2023).

³⁴⁷⁷ See at: https://english.www.gov.cn/news/202307/21/content_WS64ba4441c6d0868f4e8de048.html (accessed on 12 June 2023).

³⁴⁷⁸ See at: http://english.www.gov.cn/policies/featured/202308/12/content_WS64d6b984c6d0868f4e8de7d7.html (accessed on 12 June 2023).

with specific tax exemption provision to be adopted for NEVs with battery swap technology, and through the promotion of the use of NEVs in public transport, in the CCP and Government offices and in taxi services. The spread of NEVs in rural areas is to be achieved by improving the deployment of the charging infrastructure and of NEV sale and after-sale services, by developing NEV segments such as vans and trucks and by offering promotional coupons to rural residents. The improvement of the NEV charging infrastructure will be obtained by applying household electricity rates to battery charging and battery swapping in residential areas and by providing increased credit support, notably on battery insurance.

These measures show the Government's continued efforts to foster NEV consumption. Moreover, it shows that the Government's support widened – instead of shrinking – to ancillary aspects of the use of NEVs, such as the price of the electricity needed for their use or the safety of the batteries, which justify the focus on the credit support for battery insurance.

22.3.16. PROVINCIAL, REGIONAL, MUNICIPAL AND LOCAL PLANS

The instructions of the 14th FYP and of the NEV Plan 2021-2035 are reflected and implemented in the corresponding provincial, regional, municipal and local plans.

The provincial plans ensure the effectiveness of the implementation of the provisions of the central plans and provide more details on how the objectives of the central plans should be translated into policies within individual provinces (see also Section 4.2.1). In particular, this Report looked at the plans of the following provinces and provincial-level administrative units where NEV manufacturers are located:

- Anhui, where Chery is headquartered;
- Guangdong, where Xpeng is headquartered;
- Guizhou;
- Fujian, where CATL is headquartered;
- Jiangsu;
- Zhejiang, where Geely's main production plant is located;
- Guangxi Zhuang; and
- Shanghai, where SAIC is headquartered.

In turn, local plans implement provincial and provincial-level plans at lower administrative levels, such as the main industrial cities. Lower administrative entities analysed include:

- the city of Hefei, where NIO is located; and
- the Pingshan district in the city of Shenzhen, where BYD is headquartered.

Anhui provides an example of this cascade of plans. Anhui drafted its provincial High-quality Development Plan of Automobile Industry in Anhui Province during the 14th FYP ('*Anhui 14th Automobile Provincial Plan*')³⁴⁷⁹, with a corresponding plan put in place by Hefei, the

³⁴⁷⁹ Available at: <http://jx.ah.gov.cn/group6/M00/05/3A/wKg8BmJGrKiADusMAAY2nfCCzQM591.pdf> (accessed on 14 June 2023).

province's capital city: 14th FYP for the Development of New Energy Vehicle Industry in Hefei (*'Hefei 14th NEV Local Plan'*)³⁴⁸⁰.

The following elements included in the above sub-central plans provide a non-exhaustive overview of the planning policies by which the Chinese authorities intend to shape the development and structure of the NEVs sector.

In the Hefei 14th NEV Local Plan, the general governmental control over the industry is based on the principle of “[g]overnment guidance, market leadership”. This basic principle requires to “[g]ive full play to the role of the government in various aspects such as top-level design, platform construction, pilot applications, application and promotion, etc. Strengthen policy support and further create an environment guiding high-end production factors to concentrate towards the new energy vehicle industry”. At the same time, under this principle, the local authorities are supposed to “[be g]uided by market demand, give full play to the decisive role of the market as regards resource allocation, strengthen the key position of enterprises in the selection of technological paths and product manufacturing capacity layout, foster a better combination of an efficient market with a favourable government, and establish a dynamic development environment”³⁴⁸¹.

Still, the role of the market seems to be subordinate to the role that governmental authorities have in competitive dynamics between market players. Indeed, the 14th FYP New Energy Vehicle Industry Development Plan of the Jiangsu Province (*'Jiangsu 14th NEV Provincial Plan'*)³⁴⁸² intends to “promote industry mergers and reorganizations”³⁴⁸³ in order to foster the development of the Jiangsu NEV industry.

The Hefei 14th NEV Local Plan also set detailed quantitative production targets: “Strive to ensure that by 2025, the scale of the city's new energy automobile industry exceeds RMB 700 billion and the production capacity of complete vehicles exceeds 3 million, to foster 10 enterprises with a scale of RMB 10 billion and to ensure that the output value and output volume rank first in the country; [d]evelop a new energy vehicle and parts industry system with a comprehensive layout and a reasonable structure, the annual production capacity of batteries shall exceed 300 GWh, and the annual production capacity of drive motor systems shall exceed 3 million sets”³⁴⁸⁴.

The Hefei 14th NEV Local Plan also envisaged to support several investments to: “Strive to build by 2025, 1 national new energy vehicle industry innovation center, 5 public innovation centers, and to foster 1 business model innovation project as well as 10 new innovation platforms above the provincial level by 2025”³⁴⁸⁵.

This last provision of the Hefei 14th NEV Local Plan implements the Anhui 14th Automobile Provincial Plan, where this support was addressed also to specific industrial parks and

³⁴⁸⁰ Available at: <https://www.ahchanye.com/zc/24046.html> (accessed on 14 June 2023).

³⁴⁸¹ Chapter II, Section 2, Hefei 14th NEV Local Plan.

³⁴⁸² Available at: http://www.jiangsu.gov.cn/art/2021/11/24/art_46144_10124132.html (accessed on 14 June 2023).

³⁴⁸³ Chapter 5, Section 1, Jiangsu 14th NEV Provincial Plan.

³⁴⁸⁴ Chapter II, Section 3, Hefei 14th NEV Local Plan.

³⁴⁸⁵ *Ibid.*

companies in the area: “Accelerate and promote the construction of the Xinqiao Smart Electric Vehicle Industrial Park, and create a world-class smart electric vehicle industrial cluster with a complete industrial chain and integrating R&D and manufacturing, pilot applications and application, as well as industry and supporting services. Support NIO’s long-term development planning and layout around Xinqiao Industrial Park, and establish R&D, manufacturing, marketing and management teams within the park. Establish NIO R&D and Innovation Center, carry out innovative research and development concerning complete vehicles, core components and autonomous driving, create a globally competitive and leading innovation chain; attract R&D staff and technical workers and strive to form an innovative place gathering high-level talents. [...] After completion of the park, it is estimated that the final vehicle production capacity will be 1 million vehicles per year, and the battery production capacity will be 100GWh per year”³⁴⁸⁶.

Evidence of this support was the framework agreement signed by Hefei and NIO to jointly plan and build the Xinqiao Industrial Park, for an initial investment of RMB 5 billion³⁴⁸⁷.

An express support for specific companies was also included in the Implementation Plan for Accelerating the Development of the New Energy Vehicle Industry in Shanghai (2021-2025) (*‘Shanghai NEV Municipal Plan’*)³⁴⁸⁸, which pledged to: “Support SAIC Motor to develop new energy vehicles. By 2025, the sales of self-owned brand passenger vehicles and new energy vehicles will account for more than 30% and the group’s new energy vehicle sales will account for more than 20%, ensuring that the core technology is under independent control and a comprehensive position of strength and domestic leadership. Encourage domestic and foreign strong companies with leading technology to invest in complete vehicle manufacturing and R&D projects in Shanghai”³⁴⁸⁹. Furthermore, according to SAIC’s 2021 annual report, the company received regional subsidies for project development in excess of RMB 1.13 billion, with a significant proportion of that support being directly tied to the NEV sector³⁴⁹⁰.

The support to the growing NEV industry is not limited to government authorities, but extends also to the banking sector, as it is shown by the 14th FYP for the Development of the New Energy Automobile Industry in the Guangxi Zhuang Autonomous Region (*‘Guangxi Zhuang 14th NEV Regional Plan’*)³⁴⁹¹. Indeed, the Guangxi Zhuang 14th NEV Regional Plan endeavoured not only to “[a]ctively play a policy and commercial financial role and increase the financial support for the development of the new energy automobile industry”, but it also stated expressly that “[f]inancial institutions are encouraged to provide full-industry-based financial services for new energy automobiles”³⁴⁹².

Each province appears to support NEV producers established in its territory. In particular, marketing and branding are common concerns for lower levels of government. Typically, the

³⁴⁸⁶ Chapter III, Section 1, Column 1, Anhui 14th Automobile Provincial Plan.

³⁴⁸⁷ See NIO’s website: <https://www.nio.cn/news/neopark-officially-starts-construction> (accessed on 14 June 2023).

³⁴⁸⁸ Available at: <https://app.sheitc.sh.gov.cn/xnyqc/688177.htm> (accessed on 14 June 2023).

³⁴⁸⁹ Chapter II, Section 2, Point 1, Shanghai NEV Municipal Plan.

³⁴⁹⁰ SAIC Motor Corporation Limited - Annual Report 2021, p. 212.

³⁴⁹¹ See at: <http://www.gxzf.gov.cn/zwgk/fzgh/zxgh/t12018715.shtml> (accessed on 14 June 2023).

³⁴⁹² Chapter VI, Section 1, Guangxi Zhuang 14th NEV Regional Plan.

14th FYP for the Development of the New Energy Automobile Industry in the Zhejiang Province (*‘Zhejiang 14th NEV Provincial Plan’*)³⁴⁹³ intended to “[s]upport Geely Group’s deployment in the mid-to-high-end passenger car market and build a world-renowned brand of new energy vehicles. Promote Weima, Hezhong, Leapao, Tianji and other new car manufacturers to improve their positive development capabilities and brand marketing capabilities”³⁴⁹⁴.

Leading NEV companies are often identified in provincial and local plans as models for further development of the industry through governmental support. In the Brand-building Plan for the New Energy Automobile Industry in Pingshan District, Shenzhen (*‘Pingshan NEV Local Plan’*)³⁴⁹⁵, BYD and Kaiwo are identified as the model for the implementation of the ‘Headquarters R&D + High-end Manufacturing’ layout³⁴⁹⁶:

Relying on the research and development strong capacities of high-quality new energy automobile enterprises in the Pingshan District, such as BYD and Kaiwo, strengthen the building of colleges and universities, research institutions, national key laboratories, national engineering laboratories and engineering centers and improve innovation at the regional level. Complement the innovation chain around the new energy vehicle industry chain, improve the upstream and downstream industry chains of new energy vehicles, batteries, communication power supplies, UPS [uninterruptible power supply], charging guns, wires and cables, supercapacitor chemicals, semiconductor chemicals, etc.so as to form a complete industry chain. Ensure a high degree of clustering of the new energy vehicle industry, continue to build and introduce a number of technology industry innovation platforms that closely support new energy vehicles R&D and manufacturing, and accelerate the construction of a technological innovation system that deeply integrates production, academics, research and application. Focus on ‘integrating headquarters, R&D and production’, develop actions for listed companies to take root, actions for key enterprises to stabilize growth, and accelerate the formation of a functional layout of ‘headquarters R&D + high-end manufacturing’.

The development of the NEV industry is not based only on the development of new plants and capacities, but also on the conversion of existing automobile capacities for the production of ICEs. The Jiangsu 14th NEV Provincial Plan correspondingly intends to “[a]ccelerate the transformation of Nanjing, Xuzhou, Suzhou, Yancheng, Yangzhou and other automobile production bases to the direction of new energy vehicles”³⁴⁹⁷.

³⁴⁹³ Available at: https://www.zj.gov.cn/art/2021/6/24/art_1229540815_4671257.html (accessed on 14 June 2023).

³⁴⁹⁴ Chapter 3, Section 1, Zhejiang 14th NEV Provincial Plan.

³⁴⁹⁵ Available at: https://www.sist.org.cn/psqxnyqccyq/yqppjs/202008/t20200812_2302116.html (accessed on 14 June 2023).

³⁴⁹⁶ Chapter IV, Section 1, Point 3, Pingshan NEV Local Plan.

³⁴⁹⁷ Chapter 5, Jiangsu 14th NEV Provincial Plan.

In the Anhui 14th Automobile Provincial Plan, the support to the activity of the NEV industry and of specific NEV companies is not limited to the domestic market but directed also to exports already at provincial level:

Support the e-commerce of component supplying companies, build public overseas warehouses for export products, share channels to overseas markets and service support systems. Create tools such as import and export trade platforms, overseas industry parks as well as trade parks and guide the development of clusters of Chinese overseas investment enterprises. [...] By 2025, Chery Automobile shall export 500,000 vehicles with an export value of USD 5 billion. Foster Chery to further enhance its international competitiveness, [...] focus on expanding on strategic markets such as Europe, North America, and ASEAN countries [...] Support NIO to expand on the European market. Foster NIO to implement the 'Marco Polo Plan' [NIO's codename for its entry into the European market³⁴⁹⁸], adopt a differentiated development path and turn the 'NIO China Model' into the 'NIO Overseas Model' according to local conditions. [...] Support NIO to continue to expand on the European market, to expand on 5 national markets by 2025, and to select opportunities to build factories overseas³⁴⁹⁹.

The geographical distribution of the NEV industry is also controlled by the government authorities, as is clear from the 14th FYP for the Development of Electric Vehicle Charging Infrastructure in Guangdong Province ('Guangdong 14th EV Infrastructure Provincial Plan')³⁵⁰⁰:

Rely on Guangzhou, Shenzhen, Zhuhai, Foshan, Zhaoqing, Dongguan, Huizhou, Zhanjiang, Maoming, Shanwei, Yunfu and other cities and speed up the development pace of new energy vehicles. Guangzhou shall speed up the construction of new energy vehicle production bases and promote the quick industrialization of new energy vehicle models. Shenzhen, with Pingshan District as the core, shall build a national-level new energy vehicle industry base. Zhuhai, with Jinwan District as the core, shall focus on developing the manufacturing of complete new energy vehicles, lithium battery materials, powertrain, charging equipment and key components of new energy vehicles.

The support for key projects in the NEV industry covers also NEVs' related parts and components. The Development Plan of New Energy Automobile Industry in Fujian Province (2022-2025) ('Fujian 2022-2025 NEV Provincial Plan')³⁵⁰¹ identified the electric battery, the electric motor and the electronic control unit as the "three electric systems and other key components"³⁵⁰². Thus, as regards batteries, the government in the Fujian 2022-2025 NEV

³⁴⁹⁸ See at: <https://finance.sina.com.cn/stock/relnews/us/2020-11-01/doc-iiznezxr9218648.shtml> (accessed on 14 June 2023).

³⁴⁹⁹ Chapter VI, Section 2, Project 9, Anhui 14th Automobile Provincial Plan.

³⁵⁰⁰ Chapter III, Section 1, Column 4, Guangdong 14th EV Infrastructure Provincial Plan; available at: http://www.gd.gov.cn/zwggk/wjk/qbwj/yf/content/post_3458462.html (accessed on 14 June 2023).

³⁵⁰¹ Available at: <https://fdi.swt.fujian.gov.cn/uploadfiles/file/20220426/1650941604952489.pdf> (accessed on 14 June 2023).

³⁵⁰² Chapter I, Section 1, Fujian 2022-2025 NEV Provincial Plan.

Provincial Plan foresees to provide “[s]upport for power and storage batteries such as the [battery producers established in Fujian]”³⁵⁰³ and “to increase credit support for full car leases and battery leasing”³⁵⁰⁴. Moreover, as regards the motor and the electronic control unit, the government intends to provide “[s]upport for the development of new energy motors and electronic control systems, and [envisages that] the Xiamen Tungsten industry develops the automobile industry using the advantage of rare earth eternal magnetic materials”³⁵⁰⁵.

Similarly, the 14th FYP Development Plan for the New Energy Automobile Industry in Guizhou Province (‘Guizhou 14th NEV Provincial Plan’)³⁵⁰⁶ seeks to:

Support the construction of key projects. Speed up and foster the Guiyang BYD’s power battery project with an annual output of 10GWH, the Evergrande new energy power battery project [...], Dongfang Electric’s hydrogen fuel cell project, Anda Technology’s 30,000-ton/year lithium iron phosphate and supporting construction projects as well as its 20,000-ton/year lithium iron phosphate smart manufacturing technical transformation and expansion project, Anda Technology’s 50,000 tons/year new energy vehicle waste battery recycling technical transformation project, Wuchuan Automobile’s annual production of 1 million tons of automotive aluminium alloy die-casting projects, Baike automobile brake molds production line project, a number of key projects such as the Guizhou Aerospace Smart Manufacturing Industry Cluster Base Project in Guiyang Economic and Technological Development Zone, Zhenhua New Materials Production Line Construction Project with an annual output of 12,000 tons of lithium-ion battery cathode materials [...].

Consequently, the competitive dynamics seem to be distorted also in the industry of parts and components. Indeed, the Jiangsu 14th NEV Provincial Plan intends to “[e]ncourage key parts and components companies: to focus on increasing their market share, on mastering core technologies, on increasing quality and cost controllability etc.; and to proceed to mergers and reorganizations and speed up the fostering and emergence of automobile parts industry clusters with a systematic development, a modular manufacturing pattern and integrated supplies”³⁵⁰⁷. Moreover, authorities try to redirect the production of automobile parts and components specifically towards the NEV industry.

22.4. MARKET DISTORTIONS

The amount and detail of the regulatory and policy documents concerning NEVs and batteries in China shows the importance that the Government attaches to these industrial sectors. Due to the combination of the different measures, the level of supervision that the Government exercises is so high that its intervention directly interferes with free market forces. In this

³⁵⁰³ Section III(I), Fujian 2022-2025 NEV Provincial Plan.

³⁵⁰⁴ Section IV(III), Fujian 2022-2025 NEV Provincial Plan.

³⁵⁰⁵ Section III(I), Fujian 2022-2025 NEV Provincial Plan.

³⁵⁰⁶ Chapter III, Section 3, Column 3, Guizhou 14th NEV Provincial Plan; available at : <https://m.askci.com/news/zszc/20220317/1739301746254.shtml> (accessed on 14 June 2023).

³⁵⁰⁷ Chapter 5, Section 1, Jiangsu 14th NEV Provincial Plan.

section these measures and their application (or lack of application) are systematised based on the elements on which they could have an impact.

22.4.1. STATE OWNERSHIP AND CONTROL

State-owned companies constitute a considerable share of the NEV and battery sectors. As mentioned in Section 22.2.2, the State owns four large traditional automakers which produce also NEVs, dubbed the ‘Big Four’: SAIC, Dongfeng, FAW Group and Chang’an. In addition, it owns some important NEV producers, including NIO, Brilliance, Chery, GAC and JAC Motors.

The most notable example is NIO. Several entities controlled by the Anhui province (Hefei Construction Investment Holdings (Group) Co., Ltd., SDIC Investment Management Co., Ltd. and Anhui High-tech Industry Investment Co., Ltd. hold 24,1% of NIO (Anhui) Holdings Co., Ltd., the legal entity owning NIO’s core business and related assets in China³⁵⁰⁸. As mentioned in Section 22.2.2, the capital injection by the Anhui province happened at the same time of the move of NIO’s headquarters to Hefei at a moment when NIO was experiencing a financial reverse. Together with the capital injection, NIO received also loans from State-owned banks, as mentioned in Section 22.4.5. NIO’s story is an example of what happens also for other NEV producers, which need considerable funds for the investments for NEV production and find them in the form of equity from State lower administrative entities. Indeed, provinces and other lower levels of government are in competition to attract revenues and employment from NEV producers and try to establish and develop successful NEV companies to reach relevance in the eyes of the central Government.

In the battery sector, in addition to the State-owned NEV producers SAIC and NIO, which are also active as battery manufacturers, CALB is the main State-owned battery producer.

However, State ownership is not limited to NEV and battery manufacturers but extends also to their upstream value chain. Considering for instance lithium, one of the essential raw materials for the production of batteries, China’s Yichun city (Jiangxi) has been dubbed as “Asia’s lithium capital”³⁵⁰⁹ and several lithium mining companies are located there. In August 2022, BYD signed a strategic cooperation framework agreement with the Yichun city government, the Yichun Economic Development Zone and Yichun Mining Company, to invest RMB 28.5 billion in the construction of a 30 GWh battery plant and a 100 000 tonnes capacity lithium carbonate and lithium-containing ceramic facility³⁵¹⁰. In September 2022, Yichun BYD Mining

³⁵⁰⁸ See at: <https://www.nio.cn/news/nio-chinas-headquarters-opening-ceremony> and at: <https://www.nio.cn/news/nio-enters-definitive-agreements-establishing-nio-chinas-headquarters-hefei> (accessed on 14 June 2023).

³⁵⁰⁹ See at: <https://www.scmp.com/business/article/3202402/asias-lithium-capital-grinds-halt-output-battery-material-stops-yichun-amid-pollution-investigation?module=inline&pgtype=article> (accessed on 14 June 2023).

³⁵¹⁰ See at: https://autonews.gasgoo.com/new_energy/70021077.html (accessed on 14 June 2023).

Co., Ltd. was established. The company is jointly held by BYD and Yichun Mining Industry Co., Ltd.³⁵¹¹, a wholly State-owned company under the Yichun city government³⁵¹².

Even in the absence of equity shareholdings by the State, NEV producers still engage in cooperation with State-owned companies. This is the case of NIO, which in April 2023 signed a strategic cooperation framework agreement with China Resources (Group) Co., Ltd., a state-owned diversified holding company under the supervision of SASAC. The two parties intend to cooperate in the fields of commercial space leasing and construction, investment in and construction of charging and battery swapping infrastructure, plant and community energy management, new material applications and consumer services. This will mainly allow NIO to open centers and stores in real estate areas owned by the State-owned company³⁵¹³.

Beyond State ownership and participation in NEV producers, the Government exerts control over all NEV producers by a number of other means. Firstly, the combination of the Government's measures influences the prices of NEVs, leaves little discretion to NEV producers as regards business decisions in the R&D and product development. The technical requirements which used to allow for the disbursement of the purchase subsidy (and still does in the case of purchase subsidies granted by the Government's lower administrative levels, such as those mentioned in Section 22.4.5) and which allow to access the purchase tax exemption have an effect on the price of the NEV benefitting from them, which is lower than it would otherwise be. Beyond that, it favours certain NEV models and technologies, making them cheaper and, consequently, more attractive to customers than models which do not benefit from the subsidy and from the tax exemption. Therefore, companies are encouraged to adopt those models and technologies that benefit from governmental measures. In doing so, the Government is directing R&D and the product development in a specific direction. The technical requirements are therefore actual market drivers.

Secondly, while subsidies and tax exemptions concern the sale of the NEVs, the Dual-Credit Policy, with its negative points, acts as a sanction for non-compliance with the targets. Also in the case of the Dual-Credit Policy there are technical parameters, namely the average fuel consumption and the production or import targets. As mentioned, both of them are actually linked to the production or import, because the average fuel consumption depends on the NEVs produced or imported.

Therefore, it is virtually impossible for a company not to abide by the production targets of the Dual-Credit Policy or the technical requirements for the purchase subsidy and the purchase tax exemption. If it reaches the production targets with models not benefitting from the subsidy and the tax exemption, its sales will be negatively affected. If the company instead produces models benefitting from the tax exemption but it does not meet the production targets, it is still sanctioned with negative points, which are difficult to offset, absent wealth investors with sufficient purchasing power to acquire positive points from other companies or shares in other

³⁵¹¹ See at: <https://www.itdcw.com/news/focus/09221310602022.html> (accessed on 14 June 2023).

³⁵¹² See at: <https://www.yichun.gov.cn/yicsrmzf/xwfbh/202212/7a0202273def4e828552560fb32e10cf.shtml> (accessed on 14 June 2023).

³⁵¹³ See at: <https://www.nio.cn/news/20230426002> (accessed on 14 June 2023).

NEV producers. Therefore, the Government put in place a comprehensive system of control able to direct and determine the business strategies of the NEV producers.

22.4.2. CCP PRESENCE IN FIRMS

NEV and battery producers, as all companies in China, are obliged to host a CCP cell in their organisation (see Section 3.3.2.). The importance of this cell is confirmed by the articles of association of some of the main NEV producers. For instance, SAIC's articles of association provide for the "*establishment of party organizations and their disciplinary bodies at all [company's] levels*"³⁵¹⁴. Moreover, SAIC engages to form "*an institutional mechanism for the participation of party organizations in decision-making on important questions, and supports boards of directors, supervisors and operators in the exercise of their functions*"³⁵¹⁵. Furthermore, as of writing of this Report, SAIC's chairman is also SAIC's party secretary³⁵¹⁶. To provide a further example, in GAC, the CCP is also involved in the selection of the senior management. According to the company's articles of association: "[w]hen the board appoints the company's senior management, the party committee prepares and advises on the selection of persons nominated by the board or general manager"³⁵¹⁷. Therefore, the CCP does not have only a representative role, but it actively takes part in the strategic decision-making of NEV producers and in the selection of their senior management.

22.4.3. SPECIAL TREATMENT OF DOMESTIC NEV BRANDS AND COMPETITIVE DISTORTIONS

The regulatory framework shows that the focus of the Government's action is devoted to Chinese domestic production and, specifically, to Chinese NEV brands. This is clear from the wording of the objectives in the 2017 Automobile Plan, which refer to Chinese companies and "*Chinese brand cars*" (see Section 22.3.8). Moreover, it is noteworthy that only one foreign NEV brand – Tesla – was able to establish a production of NEVs in China not as part of a JV with a Chinese brand. Apart from Tesla, all the other producers are Chinese brands or in JVs with Chinese brands.

In a wider perspective, the Government's measures appear to unduly interfere with free competitive dynamics. Indeed, in the 2017 Automobile Plan and in the NEV Plan 2021-2035 the Government encourages a consolidation of the NEV market through mergers between the NEV producers³⁵¹⁸. The Dual-Credit Policy, insofar it allows to offset negative points by purchasing shares of a NEV producer with positive points, provides precisely for a means to achieve the Government's intended objective. As recalled in Section 22.3.10, GWM acquired a 25% stake in Yogomo with the sole objective of obtaining Yogomo's corporate average fuel consumption credits and a certain amount of its NEV credits. As explained in Section 22.3.10, the Dual-Credit Policy ultimately ensures that large companies will become even larger and

³⁵¹⁴ Article 153, SAIC's articles of association.

³⁵¹⁵ Article 155, SAIC's articles of association.

³⁵¹⁶ See at: <https://www.saicmotor.com/chinese/gsgk/dsh/index.shtml> (accessed on 15 June 2023).

³⁵¹⁷ Article 145, GAC's articles of association.

³⁵¹⁸ Section 2(2), 2017 Automobile Plan and Chapter VIII of NEV Plan 2021-2035.

that small companies will have even less resources and will eventually disappear absorbed by others through Government-induced mergers.

22.4.4. UNDERENFORCEMENT OF BANKRUPTCY LAWS

A further measure that is likely to cause market distortions in the NEV market is the Government's intervention on the occasion of the bankruptcy of NEV producers. Two notable examples can show this. First, the capital injection of the Anhui province in Nio, together with the loans granted by policy banks on the same occasion, with the condition that Nio had to move its headquarters to the Anhui province, were granted at a moment when Nio was on the brink of bankruptcy³⁵¹⁹. Second, Brilliance actually ended up in a debt restructuring procedure³⁵²⁰ and the Shenyang city government purchased all its shares³⁵²¹ to the point that Brilliance – originally called Brilliance Auto Group Holdings Co. Ltd. – even changed company name to the current one. Originally, Brilliance was already a State-owned company, being owned by the Liaoning province³⁵²², of which Shenyang is the capital. The intervention of the Shenyang city government could be seen as an attempt to retain Brilliance – together with the related employment, revenues and relevance of the area for the central Government – in the province. In other terms, the Government's intervention does not breach bankruptcy laws, but happens in a way as to prevent the full bankruptcy of the NEV producers and the dispersion of their assets. Notably, such interventions are made by State-owned actors and not by private capital. As a consequence, bankruptcy laws are enforced less frequently than they should and they end up being actually underenforced (see also Section 6.7).

22.4.5. PREFERENTIAL ACCESS TO FINANCE

The NEV industry is an innovative industry which needs continuous investments to improve the performance of NEVs so that they can become attractive to customers as a viable alternative to ICEs. Furthermore, it is a risky investment as NEV start-ups may not always be able to continue their business. In China, the NEV producers' need for investments is mainly covered by provincial and local governments in the form of equity injections and by State-owned or policy banks (see Section 6.3.3.1) in the form of loans, with the result that a significant part of the equity and debt of the NEV producers is State-owned or granted in application of the Government's policies.

The support by the Government is not channelled only through State-owned companies, but also through State funds (see in particular Section 6.5.1). In the 2017 Automobile Plan, the Automobile Industry Joint Fund is mentioned. The Automobile Industry Joint Fund was created in 2015³⁵²³. Its shareholders include the China Association of Automobile Manufacturers ('CAAM'), the National Natural Science Foundation of China and eight NEV producers: FAW

³⁵¹⁹ See at: <https://www.businessinsider.com/nio-first-limousine-fights-tesla-vw-and-sedan-china-bankruptcy-competitor-pioneer?r=US&IR=T> (accessed on 15 June 2023).

³⁵²⁰ See at: <https://www.caixinglobal.com/2021-04-07/bond-defaulter-brilliance-auto-faces-lawsuits-over-457-million-101686383.html> (accessed on 15 June 2023).

³⁵²¹ See at: <https://www.linkedin.com/pulse/brilliance-group-bankruptcy-reorganization-took-substantial-jack-duan> (accessed on 15 June 2023).

³⁵²² See at: <https://www.caixinglobal.com/2021-04-07/bond-defaulter-brilliance-auto-faces-lawsuits-over-457-million-101686383.html> (accessed on 15 June 2023).

³⁵²³ See at: https://www.gov.cn/xinwen/2015-04/08/content_2843699.htm (accessed on 15 June 2023).

Group, Dongfeng, SAIC, Chang'an, GAC, Brilliance, JAC Motors and Sinotruck³⁵²⁴. The CAAM, according to its articles of association, “adheres to the overall leadership of the Communist Party of China and, in accordance with the provisions of the Constitution of the Communist Party of China, establishes organizations of the Communist Party of China”³⁵²⁵. Moreover, the CAAM acknowledges “the business guidance, supervision and management of [...] party structure leading organs” and that “the leading organ of the Party structure is the Party Committee of the State-owned Assets Supervision and Administration Commission of the State Council”³⁵²⁶. The National Natural Science Foundation of China was established following the approval of the State Council and it is still “under the correct leadership of the Party Central Committee and the State Council, with the support of relevant departments of the State Council”³⁵²⁷. All the eight NEV producers which are shareholders in the Automobile Industry Joint Fund are State-owned. The role of the Automobile Industry Joint Fund is to “unite the strength of China’s automotive industry enterprises, promote the close integration of production, education and research [...] especially to invest in basic research and technology major innovation”³⁵²⁸. Therefore, the Government, which already directs the NEV producers towards certain R&D objectives through the technical requirements for benefitting from the purchase subsidy, the purchase tax exemption and the positive points under the Dual-Credit System, also offers direct support for R&D investments to NEV producers.

Moreover, another way the Government has to indirectly fund NEV producers is the monetisation of NEV credits under the Dual-Credit Policy. Once the Government created the system whereby negative points can be offset by purchasing positive points from performing companies, these positive points acquire a value. Many NEV producers, including Tesla, BYD and Li Auto, have increased corporate profits or made up for losses by selling NEV credits for money. Taking Li Auto as an example, according to its 2021 financial report, the company sold a total of about 70 000 positive points and the related income was RMB 200 million (EUR 26,2 million)³⁵²⁹. This shows how a system created by the Government contributes to the income of the most performing and, as seen in Section 22.4.3, largest NEV producers.

A link to the Government in the form of equity injection or other direct support is important especially for NEV start-ups, because closer ties with the Government often translate into better access to bank loans, notably from State owned and policy banks. This was the case of NIO. In July 2020, after the agreement with the Anhui province for the move of its headquarters mentioned in Section 22.4.1, the local branches of six State-owned banks³⁵³⁰ agreed to extend RMB 10.4 billion credit lines to the loss-making company in a ceremony attended by a member

³⁵²⁴ Information on the shareholders of the Automobile Industry Joint Fund is available at: https://www.gov.cn/xinwen/2015-04/08/content_2843699.htm.

³⁵²⁵ Article 3, CAAM’s articles of association, available at: http://www.caam.org.cn/chn/2/cate_8/con_5223238.html (accessed on 15 June 2023).

³⁵²⁶ Article 3, CAAM’s articles of association.

³⁵²⁷ See at: <https://www.nsfc.gov.cn/publish/portal0/jgsz/01/> (accessed on 15 June 2023).

³⁵²⁸ See at: https://www.gov.cn/xinwen/2015-04/08/content_2843699.htm (accessed on 15 June 2023).

³⁵²⁹ See at: <https://auto.sina.com.cn/zz/wb/2022-07-08/detail-imizirav2545819.shtml> (accessed on 15 June 2023).

³⁵³⁰ CCB - Anhui Branch, ICBC - Anhui Branch, BOC - Anhui Branch, ABC - Anhui Branch, Industrial Bank - Hefei Branch and China Merchants Bank - Hefei Branch

of the Hefei CCP Committee³⁵³¹. NIO raised a further USD 430 million through sales of its American depositary shares in June, with Tencent Holdings, NIO's second-largest shareholder in which the Government holds a 'golden share'³⁵³², buying a quarter of them.

Finally, the Government's financial support is not inconsequential as it has the potential to direct the companies towards the policy objectives of the Government. One of them is the market penetration of Chinese NEV producers abroad, following the 'Going Out' policy. Even if at the end of 2022 the Government stopped its purchase subsidy scheme in the attempt to scale back its intervention in the domestic market, at the same time it promised its full support to ensure the successful entry of Chinese companies into markets abroad, notably the EU market: *"The Ministry of Commerce will continue to work with relevant departments to support new energy vehicle companies to speed up the construction of overseas marketing and after-sales service networks and increase brand promotion efforts. Encourage qualified overseas institutions of Chinese-funded banks to provide overseas consumer financial products. Research to expand export transportation channels and transport new energy vehicles through China-Europe trains"*³⁵³³.

In any case, the fact that the Government stopped granting the purchase subsidy to NEV producers does not mean that such type of support stopped completely in China. Indeed, lower-level authorities continued similar schemes in the form of State funds to support NEV producers and the spread of NEVs among companies and consumers. China's 2023 WTO subsidies notification includes several examples of such funds³⁵³⁴. The following State funds and subsidies dedicated to NEV producers and to the spread of the use of NEVs among companies can be enumerated:

- the Fund for New Energy Passenger Vehicles, established by the Beijing municipality, to support NEV producers through grants. Despite its duration being foreseen from 2017 until June 2019, disbursements in application of the Fund continued in 2021 and 2022;
- the Fund for Promotion and Using of New Energy Light Trucks, established by the Beijing municipality, to encourage the use of NEVs among eligible road freight transport companies through rewards offered as of 2020;
- the Special Fund for the Development of Renewable and New Energy, established by the Shanghai municipality, to support NEVs producers through rewards offered for the period 2022-2026;
- the Fund for Promotion and Application of New Energy Vehicles, established by the city of Suzhou, in the Jiangsu province, to promote the use of NEVs among companies through grants in 2021 and 2022. It was also available to consumers;

³⁵³¹ See at: <https://www.nio.cn/news/nio-china-obtains-rmb104-billion-credit-facility> (accessed on 15 June 2023).

³⁵³² See at: <https://www.ft.com/content/65e60815-c5a0-4c4a-bcec-4af0f76462de> (accessed on 15 June 2023).

³⁵³³ See at: <https://www.sophus3.com/sophus3-briefing-paper-chinese-auto-brands-in-europe-part-1/?privacy=updated> (accessed on 15 June 2023).

³⁵³⁴ English version available at : https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=297108,292271,287660,283505,277069,276413,271399,267414,262149,257989&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False (accessed on 15 June 2023).

- the Subsidy Fund for Hydrogen Fuel Cell Industry, established by the city of Changshu, in the Jiangsu province, to support producers of FCEVs through grants in the period 2020-2022;
- the Subsidy for Promotion and Application of New Energy Vehicles, established by the city of Yangzhou, in the Jiangsu province, to promote the use of NEVs by eligible companies through grants as of 2019. It is also available to consumers;
- the Special Fund for Promotion and Application of New Energy Vehicles, established by the Hunan province, to promote the use of NEVs among eligible companies through grants. Despite its duration been foreseen from 2016 to 2020, disbursements in application of the Special Fund still occurred in 2021 and 2022;
- the Fund for New Energy Vehicle Promotion and Application Projects, established by the city of Xi'an, in the Shaanxi province, to support companies purchasing NEVs through rewards as of 2019;
- the Reward Fund for Promotion and Using of New Energy Taxi, established by the city of Hohhot, in the Inner Mongolia autonomous region, to encourage the use of NEVs among taxi operators through grants in the period 2021-2025; and
- the Subsidy for Charging Infrastructure Construction and Supporting Operation Services of New Energy Vehicles, established by the Guangxi Zhuang autonomous region, to support companies active in the deployment of the NEV charging infrastructure through grants in the period 2019-2022.

The following are instead examples of State funds dedicated to fostering the use of NEVs by consumers:

- the Fund for Promotion and Application of New Energy Vehicles, established by the city of Suzhou, in the Jiangsu province, to promote the use of NEVs among consumers through grants in 2021 and 2022. It was also available to companies;
- the Subsidy for Promotion and Application of New Energy Vehicles, established by the city of Yangzhou, in the Jiangsu province, to promote the use of NEVs by eligible consumers through grants as of 2019. It is also available to companies;
- the Subsidy for Promotion and Using of New Energy Vehicles, established by the Hainan province, to promote the use of NEVs among consumers through grants as of 2017; and
- the Fund for Promotion and Application of New Energy Vehicles, established by the city of Qingdao, in the Shandong province, to support consumers purchasing NEVs through grants. Despite the duration been foreseen from 2018 and 2020, in 2022 there were still disbursements in application of the Fund.

These funds and subsidies show that, despite the termination of the purchase subsidy scheme managed by the central Government, support for the purchase of NEVs is available to both companies and consumers offered by lower administrative levels of government. In addition, some of the funds and subsidies listed above appear to support directly NEV producers, thus adding further support layers to the investments ensured by State-owned companies and policy banks.

22.5. CHAPTER SUMMARY

This chapter shows that the lack of tradition and technology to produce ICEs brought China to develop a regulatory background for the transition to the NEV industry as early as 2005 (see Section 22.3.1). Having started this transition in advance compared to other countries, the Government is seeking the opportunity to make China the powerhouse for the production of NEVs to be exported to developed economies, reversing the roles in the ICE market. Leveraging on a comprehensive framework of support from the central and local Government throughout the value chain – from essential raw materials to batteries to the NEVs – China turned into the first producer and exporter of NEVs in the world as a matter of national interest (see Sections 22.2.1-22.2.3). Thus, after creating the industry, the Government put in place a set of measures that, when considered together, allows it to exercise control over the growth of the industry and to direct its development (see Section 22.3). At the heart of it, the Dual-Credit Policy (see Section 22.3.10) rewards NEV producers fulfilling production targets and sanctions companies failing to meet them, compelling them to offset their ‘debts’ by purchasing ‘credits’ from performing companies or the performing companies altogether. This focus on production favours larger companies and the consolidation of the market. At the same time, the Government controls also the sales by suppressing the prices of the NEV types and models it intends to favour through a purchase subsidy paid to the NEV producers (see Section 22.3.3) and a purchase tax exemption (see Section 22.3.14). The termination of the purchase subsidy granted by the central Government at the end of 2022 did not prevent the continuation of other programs and of similar subsidies granted by lower administrative levels of government (see Section 22.3.3). Indeed, the provinces and the main cities appear to be in competition amongst them to have NEV producers in their area, in order to attract employment, revenues and the attention of the central Government. Thus, many local Governments and local branches of State-owned banks provided the investments needed by NEV start-ups to develop their operations, so that considerable shares of the equity and debt of NEV producers have become State-owned (see in particular Sections 22.3.16 and 22.4.5). Against this background, the intervention of the Government at both central and local level is liable to give rise to market distortions in the Chinese NEV and battery industries.

TERMINOLOGY AND ABBREVIATIONS³⁵³⁵

13th FYP	13 th Five Years Plan (for National Economic and Social Development)
14th Circular Economy FYP	14 th Five Years Plan for Developing the Circular Economy
14th FYP	14 th Five Years Plan (the People's Republic of China 14 th Five Years Plan for National Economic and Social Development and Long-Range Objectives for 2035)
14th FYP on Revitalization of Special Areas	Revitalization and Development Plan for Special Areas during the 14 th Five Years Plan Period
14th Green Development FYP	14 th Five Years Plan on Industrial Green Development
14th Raw Materials FYP	14 th Five Years Plan on Developing Raw Materials Industry
14th FYP Recommendations	Recommendations for the Formulation of the 14 th Five Years Plan (2021-2025) for National Economic and Social Development and the Long-Range Objectives Through the Year 2035
14th Shandong FYP on Steel	14 th Five Years Plan (2021-25) on Developing Steel industry in Shandong Province
2016 Guiding Opinions	Guiding Opinions of the General Office of the State Council on Promoting the Restructuring and Reorganization of Central Enterprises
2017 Automobile Plan	Medium and Long-Term Development Plan for the Automobile Industry issued by the MIIT, NDRC and MOST
2017 Battery Action Plan	Action Plan for Promoting the Development of the Automotive Power Battery Industry
2018 Government Reform Plan	Plan for Deepening the Reform of Party and State Agencies issued by the Central Committee of the CCP
3rd Plenum Decision	Decision of the Central Committee of the CCP on Some Major Issues Concerning Comprehensively Deepening the Reform
ABC	Agricultural Bank of China
ACF	Aluminium Converter Foil
ACFTU	All-China Federation of Trade Unions
ADB	Agricultural Development Bank of China
AI	Artificial Intelligence
AMCs	Asset Management Companies
AML	Anti-Monopoly Law
AMRs	Administrations for Market Regulation

³⁵³⁵ Non-exhaustive.

Anhui 14th Automobile Provincial Plan	High-quality Development Plan of Automobile Industry in Anhui Province during the 14th Five Years Plan
AoA	Articles of Association
ASEAN	the Association of Southeast Asian Nations
ATP	Assembly, Testing and Packaging
Automobile Industry Joint Fund	Joint Fund for the Automobile Industry Innovation and Development
Banking Law	Law of the PRC on Commercial Banks
Basic Regulation	Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union
BEVs	Battery electric vehicles
Big Fund	National Integrated Circuit Industry Investment Fund
BOC	Bank of China
BOCOM	Bank of Communications
BRI or OBOR	Belt and Road Initiative
CAAC	Civil Aviation Administration of China
CAAM	China Association of Automobile Manufacturers
CAC	Cyberspace Administration of China
CAP	Protocol on the Accession of the PRC to the WTO
Carbon Peaking Plan	Building Materials Industry Carbon Peaking Implementation Plan
CBIRC	China Banking and Insurance Regulatory Commission
CBRC	China Banking Regulatory Commission
CCB	China Construction Bank
CCP or Party	Chinese Communist Party
CCP Constitution	Constitution of the Chinese Communist Party
CDB	China Development Bank
CEC	China Enterprise Confederation
CEDA	China Enterprise Directors Association
CEIC	China Energy Investment Corporation
Central Huijin	Central Huijin Investment Ltd.
CERD	the UN Committee on the Elimination of Racial Discrimination
Chaozhou Action Plan	Chaozhou City's Action Plan for Building a Hundred-billion-yuan Level Ceramic Industry Cluster
Chaozhou Implementation Plan	Implementation Plan for Promoting the High-quality Development of the Ceramic Industry in Chaozhou City
China or PRC	People's Republic of China
China Minmetals	China Minmetals Corporation
China Railway	China State Railway Group Co., Ltd.

Chongqing Plan	Chongqing municipality's 14th Five Years Plan on the High-Quality Development of Manufacturing Industry
CII	Critical Information Infrastructure
CIRC	China Insurance Regulatory Commission
CISA	Chinese Iron and Steel Association
CJV Law	Law on Sino-Foreign Contractual Joint Ventures
Classification GO	Guiding Opinions on the Functional Definition and Classification of State-owned Enterprises
CNC	Computer Numerical Control
CNCR	China National Cotton Reserves Corporation
CNIA	China Non-Ferrous Metals Industry Association
CNFA	China Non-Ferrous Metals Fabrication Industry Association
CNR	China Northern Rail Group
COMAC	Commercial Aircraft Corporation of China, Ltd.
Complaints Rules	Rules on Handling Complaints of Foreign Invested Enterprises
Concession Rules	Legal framework for infrastructure and public utility-related work and service concessions, covering energy, transportation, water conservancy, environmental protection, municipal engineering and other fields of infrastructure and public utilities within Chinese territory
Constitution	Constitution of the People's Republic of China
Corporate Governance GO	State Council Guiding Opinions on SOE Corporate Governance from April 2017
CPC	Centralised Procurement Catalogue
CPPCC	Chinese People's Political Consultative Conference
CRCC	China Railway Construction Corporation Limited
CREC	China Railway Engineering Corporation
CRRC	CRRC Corporation Limited
CRRC ZELC	CRRC Zhuzhou Electronic Locomotives Co. Ltd.
CRSC	China Railway Signal & Communication Corporation
CSCS	Corporate Social Credit System
CSIS	Center for Strategic and International Studies
CSR	China Southern Rail Group
CSRC	China Securities Regulatory Commission
Decision No. 40	The Decision of the State Council Regarding Promulgating the Implementation of Interim Provisions on the Promotion of Industrial Restructuring
Draft GPL Revision	Second draft revision of the GPL
Draft TBL Revision	Revised version of the TBL
DRCs	Development and Reform Commissions

Dual-Credit-Policy	Parallel Management Method for Corporate Average Fuel Consumption and New Energy Vehicles Credits for Passenger Vehicles
ECL	Export Control Law
EIT	Enterprise Income Tax
EJV Law	Law on Sino-Foreign Equity Joint Ventures
EMUs	Electric multiple unit trains
Encouraged FI Catalogue	Catalogue of Industries for Encouraged Foreign Investment
EPL	Employment Protection Legislation
ETS	Emissions Trading System
EUCCC	European Chamber of Commerce in China
EXIM	Export-Import Bank
FAIC	Financial Asset Investment Company
FCEVs	Fuel Cell Electric Vehicles
FIEs	Foreign Invested Enterprises
FIL	Foreign Investment Law
FI Negative List	Special Administrative Measures (Negative List) for Foreign Investment Access
FITs	Feed-in Tariffs
Foreign Investment Catalogue	Catalogue of Industries for Guiding Foreign Investment
FSDC	Financial Stability and Development Committee
Fujian Plan	14 th Five Years Plan on the High-Quality Development of Manufacturing Industry in Fujian Province
Fujian 2022-2025 NEV Provincial Plan	Development Plan of New Energy Automobile Industry in Fujian Province (2022-2025)
FYPs	Five Years Plans
Gansu Plan	Gansu 14 th Raw Material Industry Development Plan
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GEM	Growth Enterprise Market
General Program of the CCP Constitution	General Program of the Constitution of the Chinese Communist Party
GGFs	Government Guidance Funds
GFSEC	Global Forum on Steel Excess Capacity
GHP	Geothermal Heat Pumps
GPA	WTO Agreement on Government Procurement
GPL	Government Procurement Law

Guangdong Plan	Guangdong's 14 th FYP on the High-Quality Development of Manufacturing Industry
Guangdong 14th EV Infrastructure Provincial Plan	14 th Five Years Plan for the Development of Electric Vehicle Charging Infrastructure in Guangdong Province
Guangxi Zhuang 14th NEV Regional Plan	14 th Five Years Plan for the Development of the New Energy Automobile Industry in the Guangxi Zhuang Autonomous Region
Guiding Opinion or GO	Various pieces of legislation in the form of Guiding Opinion concerning an issue specified in the corresponding section of the Report
Guizhou 14th NEV Provincial Plan	the 14 th Five Years Development Plan for the New Energy Automobile Industry in Guizhou Province
Hefei 14th NEV Local Plan	14 th Five Years Plan for the Development of New Energy Vehicle Industry in Hefei
Henan Plan	Henan Steel, Aluminium, Coal, Chemical and Cement Industry Upgrade and Development Action Plan 2018-2020
HEVs	Hybrid electric vehicles
H₂EVs	Hydrogen electric vehicles
HKSE	Hong Kong Stock Exchange
HNTEs	High- and New-Technology Enterprises
HREEs	Heavy Rare Earth Elements
HRF	Hot-Rolled Flat products
Huawei	Huawei Technologies Co., Ltd.
ICs	Integrated Circuits
ICBC	Industrial and Commercial Bank of China
ICEs	Internal Combustion Engine Vehicles
ICT	Information and Communication Technologies
IDM	Integrated Device Manufacturer
IEA	International Energy Agency
IGBT	Insulated-gate Bipolar Transistors
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
INE	Shanghai International Energy Exchange
IOM	International Organisation for Migration
IP	Intellectual Property
IPOs	Initial Public Offerings
IPR	Intellectual Property Right
IT	Information Technology
ITIF	Information Technology & Innovation Foundation
ITUC	International Trade Union Confederation

Jiangsu 14th NEV Provincial Plan	14 th Five Years New Energy Vehicle Industry Development Plan of the Jiangsu Province
Jiangsu Steel Industry Work Plan	Jiangsu Work Plan for Layout Optimization in the Transformation and Upgrading of the Steel Industry Throughout the Province
Jiangxi Plan	14 th Five Years Plan for the High-Quality Development of Non-Ferrous Metals Industry of Jiangxi Province
JRC	Commission's Joint Research Centre
JVs	Joint Ventures
LGFVs	Local Government Financing Vehicles
Little Giants Initiative	Small and medium-sized companies selected for government support in line with corresponding legislation and policies
LME	London Metals Exchange
LPR	Loan Prime Rate
LREEs	Light Rare Earth Elements
LSFO	Low Sulphur Fuel Oil
LTAR	Less Than Adequate Remuneration
LUR	Land Use Rights
M&A	Mergers and Acquisitions
MA Negative List	Market Access Negative List
Made in China 2025	Made in China 2025 Initiative
Made in China 2025 Roadmap	Made in China 2025 Roadmap, issued originally in 2015
MCA	Ministry of Civil Affairs
MEE	Ministry of Ecology and Environment
MEMS	Microelectromechanical Systems
MEP	Ministry of Environmental Protection
Mergers GO	Guiding Opinions on Accelerating the Promotion of Mergers and Reorganizations of Enterprises in Key Industries
MFA	Ministry of Foreign Affairs
MFN	Most-Favoured Nation [treatment]
MIIT	Ministry of Industry and Information Technology
MLCC	Multilayer Ceramic Capacitors
MLR	Ministry of Land and Resources
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOHRSS	Ministry of Human Resources and Social Security
MOST	Ministry of Science and Technology
MPS	Ministry of Public Security
MSS	Ministry of State Security
MW	Megawatt

NAFMII	National Association of Financial Market Institutional Investors
NASSP	National Administration of State Secret Protection
NBER	National Bureau of Economic Research
NDC	Nationally Determined Contribution
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEVs	New Energy Vehicles
NEV Plan 2012-2020	Energy-Saving and New Energy Vehicle Industry Development Plan (2012-2020)
NEV Plan 2021-2035	New Energy Vehicle Industry Development Plan (2021-2035)
NFRA	National Financial Regulatory Administration
NFSRA	National Food and Strategic Reserves Administration
NMSAC	National Manufacturing Strategic Advisory Committee
Notice	Various pieces of legislation in the form of a Notice concerning an issue specified in the corresponding section of the Report
NPC	National People's Congress
NPLs	Non-Performing Loans
NRTA	National Radio and Television Administration
OCS	Organic Coated Steel
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations High Commissioner for Human Rights
OSCCA	Office of State Commercial Cryptography Administration
OTC transactions	Over-the-counter transactions
P/E	Price-to-Earnings
Party or CCP	Chinese Communist Party
PBOC	People's Bank of China
PHEVs	Plug-in Hybrid Electric Vehicles
Pingshan NEV Local Plan	Brand-building Plan for the New Energy Automobile Industry in Pingshan District, Shenzhen
POEs	Privately Owned Enterprises
PPPs	Public-Private Partnerships
PPT	Prescribed Procurement Threshold
PRC or China	People's Republic of China
Project Approval Catalogue	Catalogue of Investment Projects Subject to Government Approval
PSBC	Postal Savings Bank of China
Purchase Subsidy Notice	Notice on the Pilot Subsidy Scheme for the Private Purchase of New Energy Vehicles
Purchase Tax Exemption Announcement	Announcement No. 10 of 2023 on the Continuation and Optimization of the New Energy Vehicle Purchase Tax Reduction Policy

PV	Photovoltaic
RCAP	Regulatory Consistency Assessment Program
R&D	Research and Development
REEVs	Range Extended Electric Vehicles
RMB	Chinese Yuan (renminbi)
Restructuring Catalogue	NDRC's Catalogue for Guiding Industrial Restructuring
S&T MLP	National Medium- and Long-term Program for Science and Technology Development (2006-2020)
SAFE	State Administration of Foreign Exchange
SAMR	State Administration for Market Regulation
SASAC	State Assets Supervision and Administration Commission
SASAC Notice	Notice on Forwarding the Plan of the State-owned Assets Supervision and Administration Commission of the State Council on Promoting the Transformation of Functions by Primarily Focusing on Capital Management
SASAC Regulation	Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, adopted at the Eighth Executive Meeting of the State Council on 13 May 2003
SEEE	Shanghai Environment and Energy Exchange
SEIs	Strategic Emerging Industries
Semis	Semi-finished Products
Shandong Plan	14 th Five Years Plan on Aluminium Industry Development of the Shandong Province
Shanghai NEV Municipal Plan	Implementation Plan for Accelerating the Development of the New Energy Vehicle Industry in Shanghai (2021-2025)
Shanghai Plan	14 th Five Years Plan for the Development of the Chemical Industry Zone in Shanghai
SHFE	Shanghai Futures Exchange
SHSE	Shanghai Stock Exchange
SIA	Chinese Semiconductor Industry Association
SIC	State Information Center
Sinosure	China Export & Credit Insurance Corporation
SMEs	Small and Medium-sized Enterprises
SMIC	Semiconductor Manufacturing International Corp.
SOEs	State-owned Enterprises
SOE Law	Law on the State-Owned Assets of Enterprises
SPC	Supreme People's Court
SPIC	State Power Investment Corporation
SRB	States Reserve Bureau
SSSR	Supply-Side Structural Reform
STAR	Shanghai Stock Exchange Science and Technology Innovation Board

STEs	State Trading Enterprises
SZSE	Shenzhen Stock Exchange
TBL	Tendering and Bidding Law
TDI	Trade Defence Instrument
Rail Fund	China Railway Development Fund Co., Ltd.
Three-year Plan	Three-year Action Plan on SOE Reforms 2020-2022
UNFCCC	United Nations Framework Convention on Climate Change
UNIFE	Association of the European Rail Industry
USCC	United States – China Economic and Security Review Commission
US ITA	US International Trade Administration
USTR	US Trade Representative
VAT	Value Added Tax
VLSI	Very Large Scale Integrated Circuit
WMPs	Wealth Management Products
Working Party Report	WTO Report of the Working Party on the Accession of China
WTO	World Trade Organization
XUAR	the Xinjiang Uygur Autonomous Region
Zhejiang 14th NEV Provincial Plan	14 th Five Years Plan for the Development of the New Energy Automobile Industry in the Zhejiang Province
ZTE	ZTE Corporation



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Órgano de Examen de las Políticas Comerciales

EXAMEN DE LAS POLÍTICAS COMERCIALES

INFORME DE LA SECRETARÍA

CHINA

El presente informe, preparado para el noveno examen de las políticas comerciales de China, ha sido redactado por la Secretaría de la OMC bajo su responsabilidad. Como exige el Acuerdo por el que se establece el Mecanismo de Examen de las Políticas Comerciales (Anexo 3 del Acuerdo de Marrakech por el que se establece la Organización Mundial del Comercio), la Secretaría ha pedido aclaraciones a China sobre sus políticas y prácticas comerciales.

Cualquier pregunta técnica que se plantee en relación con este informe puede dirigirse al Sr. Masahiro Hayafuji (tel. 022 739 5873), al Sr. Arne Klau (tel. 022 739 5706) o al Sr. Michael Kolie (tel. 022 739 5931).

En el documento [WT/TPR/G/458](#) figura la exposición de políticas presentada por China.

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RESUMEN

1. Durante el período objeto de examen, China siguió siendo un importante motor del crecimiento económico mundial. La economía se recuperó bien de las perturbaciones relacionadas con la pandemia, y las exportaciones e importaciones del país siguieron aumentando. El crecimiento del comercio de bienes intermedios superó con creces el crecimiento del comercio de mercancías en general, lo que indica una mayor integración de China en las cadenas de suministro internacionales. No obstante, se detuvo el cambio estructural emprendido anteriormente para pasar de la industria a los servicios.

2. En los últimos decenios, las reformas orientadas al mercado realizadas por China, su liberalización económica y su integración en la economía mundial han permitido una mejora considerable del nivel de vida, la aparición de una gran clase media y la erradicación de la pobreza extrema. El PIB per cápita aumentó de USD 10.144 en 2019 a USD 12.614 en 2023. Sin embargo, el fuerte crecimiento de China ha ido también acompañado de niveles elevados de desigualdad de ingresos y de grandes contrastes entre zonas urbanas y rurales en lo relativo a la riqueza.

3. Si se compara a nivel internacional, la tasa de ahorro de China sigue siendo muy elevada, debido principalmente a la importancia del ahorro preventivo. El consumo se podría impulsar a largo plazo mediante reformas de las pensiones, la atención sanitaria y la vivienda, así como mediante la liberalización de los servicios. La deuda pública aumentada ascendió al 116% del PIB en 2023, frente al 99% en 2020.

4. La estabilidad de los precios sigue siendo el principal objetivo de la política monetaria de China. Las tasas de inflación han permanecido bajas en los últimos años, con un máximo del 2,9% en 2019. China ha mantenido su régimen de tipo de cambio flotante dirigido. El tipo de cambio del yuan (CNY) se determina en función de una cesta de monedas de conocimiento público. El Banco Popular de China (PBOC) solo interviene en el mercado cambiario para evitar fluctuaciones excesivas a corto plazo. El yuan es plenamente convertible para las transacciones por cuenta corriente y parcialmente convertible para algunas transacciones por cuenta de capital. A finales de febrero de 2024, las reservas de divisas notificadas oficialmente ascendían a USD 3,2 billones.

5. El superávit por cuenta corriente de China aumentó considerablemente entre 2018 y 2022, año en que ascendió al 2,24% del PIB, pero en 2023 disminuyó hasta situarse en el 1,5% del PIB. El aumento del superávit por cuenta corriente hasta 2022 se explica principalmente por el aumento del superávit del comercio de mercancías, y la considerable disminución del déficit de la balanza de servicios, debida en gran medida a la caída del turismo emisor. El déficit de la cuenta financiera (excluidos los activos de reserva) puede deberse a las presiones generadas por la salida de capital, causadas principalmente por las diferencias con los tipos de interés de otras grandes economías, la preocupación por las perspectivas de crecimiento de China y el aumento de los riesgos geopolíticos.

6. Las exportaciones de mercancías aumentaron de USD 2.589 millones en 2020 a USD 3.594 millones en 2022, pero disminuyeron en 2023 a USD 3.380 millones. Los Estados Unidos y la Unión Europea siguen siendo los destinos más importantes para las exportaciones de mercancías de China. Las importaciones de mercancías también aumentaron significativamente, de USD 2.069 millones en 2020 a USD 2.716 millones en 2022, pero después disminuyeron en 2023 a USD 2.557 millones. Entre el 40% y el 50% de las importaciones de China proceden de Asia y Oceanía. La Unión Europea, el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu (Taipei Chino), el Japón y los Estados Unidos son las fuentes más importantes de las importaciones. El sector de la maquinaria y el equipo eléctrico representa una proporción importante del comercio total de mercancías de China. Los productos agropecuarios solo desempeñan una función menor en las exportaciones de China y representan menos del 10% de las importaciones. Las exportaciones de servicios también aumentaron significativamente de 2020 a 2022, pero disminuyeron en 2023, mientras que las importaciones de servicios se incrementaron de manera considerable entre 2020 y 2023.

7. Las corrientes de inversión extranjera en China disminuyeron entre 2022 y 2023, pasando de USD 189.000 millones a USD 163.000 millones. El sector manufacturero sigue siendo el mayor receptor de inversión extranjera directa (IED). El volumen total de las entradas de IED en China ascendió a USD 3,8 billones en 2022 (el último año para el que se disponía de datos), frente

a USD 1,9 billones en 2020, mientras que las salidas de IED de China ascendieron a casi USD 3 billones en 2022, frente a USD 2,6 billones en 2020.

8. En el marco del Programa Quinquenal de Reforma de los Tribunales Populares para 2019-2023, China siguió revisando su sistema judicial con el fin, entre otros, de fortalecer la observancia de los derechos de propiedad, asegurar la previsibilidad jurídica, mejorar la eficiencia y reducir las costas procesales. Las autoridades han perseguido principalmente esos objetivos promoviendo la resolución en línea y estableciendo tribunales especializados (por ejemplo, tribunales centrados en asuntos de propiedad intelectual, cuestiones marítimas y cuestiones financieras). Además, se han realizado esfuerzos con objeto de mejorar el entorno empresarial para las empresas extranjeras mediante la aplicación de mecanismos alternativos de solución de diferencias, como el arbitraje y las jurisdicciones comerciales internacionales.

9. Con miras a poner fin a la protección local y las barreras regionales dentro de China, se adoptaron varias normas y mecanismos para revisar rigurosamente las medidas administrativas regionales, con objeto de establecer un mercado nacional armonizado. En 2021 se adoptó el 14º Plan Quinquenal de Desarrollo Económico y Social de China (2021-2025), en el que se exponen varias visiones en relación con la apertura del marco de comercio e inversión del país.

10. Las autoridades han seguido expresando su apoyo a un sistema multilateral de comercio que funcione adecuadamente, y han subrayado la importancia de, entre otras cosas, la reforma de la OMC, la facilitación de las inversiones para el desarrollo, el comercio electrónico y la reglamentación nacional en el ámbito de los servicios. China también ha ampliado su red de acuerdos comerciales regionales (ACR), que considera un complemento del sistema multilateral de comercio. A finales de 2023, China había firmado 22 ACR con 29 asociados. También mantiene regímenes unilaterales de preferencias arancelarias para los países menos adelantados.

11. China ha seguido liberalizando su marco de inversión extranjera. En principio, la Ley de Inversión Extranjera de 2020 protege a los inversores extranjeros frente a la expropiación, las restricciones a las remesas transfronterizas, la infracción de los derechos de propiedad intelectual (DPI) y la transferencia forzosa de tecnología. Las listas negativas de inversiones extranjeras se redujeron a 31 entradas. Además, se ha incluido un número creciente de sectores en el Catálogo de Sectores en los que se Incentiva la Inversión Extranjera del país, lo que les brinda la oportunidad de beneficiarse de determinados paquetes de incentivos. La versión actual del Catálogo refleja el compromiso de las autoridades de mejorar la posición de China en las cadenas de suministro en esferas como los semiconductores y el sector de la energía limpia.

12. Según las autoridades, el plazo de despacho de aduana para las importaciones y exportaciones era de 36,64 horas y 1,74 horas en 2021 y de 40,18 horas y 1,26 horas en 2022, respectivamente; en el primer trimestre de 2023, era de 33,05 horas y 1,05 horas, respectivamente. El 1 de enero de 2021 se eliminó el requisito de inspección previa a la expedición de los desechos importados como materias primas, y se prohibió la importación de desechos sólidos. Desde el anterior examen no se han introducido cambios importantes en las normas y procedimientos de valoración en aduana del país. China ha ratificado el Acuerdo sobre Facilitación del Comercio (AFC) y ha notificado sus compromisos de las categorías A y B. Según la Base de Datos del AFC de la OMC, China ha aplicado plenamente el Acuerdo. Desde su anterior examen, China no ha introducido cambios en las leyes o reglamentos relativos a las normas de origen.

13. La estructura del Arancel no ha registrado apenas variaciones desde el anterior examen. El promedio aritmético de los tipos NMF aplicados en 2024 fue del 7,0%, frente al 7,1% en 2021. Los aranceles fueron más elevados en el caso de los productos agropecuarios (definición de la OMC), del 12,6%. El arancel medio aplicado a los productos no agropecuarios se redujo al 6,1% (frente al 6,2% en 2021). El porcentaje de aranceles superiores al 15% (crestas arancelarias internacionales) fue del 4,3% (en 2021 fue del 4,5%). El porcentaje de aranceles sujetos a crestas arancelarias nacionales fue del 1,9% (sin cambios desde 2021). China impone contingentes arancelarios de importación universales a determinados productos, como el trigo (7 líneas arancelarias), el maíz (5 líneas), el arroz (14 líneas), el algodón (2 líneas), el azúcar (7 líneas), la lana y la lana peinada (9 líneas) y los abonos químicos (3 líneas). Aplica aranceles preferenciales en el marco de sus arreglos comerciales preferenciales (ACPR) y acuerdos comerciales regionales (ACR). Hong Kong, China y Macao, China están sujetos a los tipos arancelarios más bajos en promedio, seguidos de Chile y Nueva Zelanda. El porcentaje de líneas arancelarias libres de derechos en los ACR de China oscila entre el 99,2% (Hong Kong, China y Macao, China) y el 23,4%

(Taipei Chino). No se dispone de datos sobre la utilización de aranceles preferenciales en el marco de los ACR y los ACPR. Desde el examen anterior, no ha habido cambios en lo que se refiere a las exenciones, reducciones o concesiones de derechos.

14. Los tipos actuales del IVA no han variado desde el examen anterior y son del 13%, el 9%, el 6% y el 3%. El impuesto sobre el consumo sigue aplicándose a los productos que se consideran perjudiciales para la salud humana, el orden público y el medio ambiente; los bienes suntuarios; los productos que consumen mucha energía y los productos con un alto grado de elaboración; y los productos del petróleo no renovables y no reemplazables. En noviembre de 2022, China introdujo un impuesto sobre el consumo de cigarrillos electrónicos a un tipo del 36% en la etapa de producción e importación y del 11% en la etapa de venta al por mayor. En virtud de la Ley del Impuesto sobre la Compra de Vehículos de 2019, China aplica un impuesto del 10% a los vehículos de producción nacional y a los importados, sin variaciones desde el examen anterior.

15. En agosto de 2023, China anunció la suspensión de la importación de todos los productos acuáticos, incluidos los animales acuáticos comestibles, originarios del Japón. China notificó a la OMC las prohibiciones a la importación aplicadas durante el período 2020-2022; esas prohibiciones se aplicaban a determinadas sustancias tóxicas y productos de animales silvestres; determinados equipos mecánicos y eléctricos viejos o de segunda mano; determinados productos químicos peligrosos, plaguicidas, contaminantes orgánicos persistentes, y productos con mercurio añadido; los desechos sólidos; la ractopamina; determinados tipos de lámparas de filamento; y el carbón vegetal importado de Somalia. La lista más reciente de productos prohibidos se publicó en diciembre de 2023.

16. En 2024 había 24 categorías de productos sujetas a prescripciones en materia de licencias automáticas de importación aplicadas por el Ministerio de Comercio (MOFCOM), y otras 21 categorías de productos estaban sujetas a prescripciones de ese tipo aplicadas por los departamentos de comercio locales competentes a nivel provincial o las oficinas de electromecánica locales y departamentales, por autorización del MOFCOM. En el período objeto de examen se añadieron al Catálogo de Mercancías sujetas al Régimen de Licencias Automáticas de Importación el tetracloroetileno, el cloruro de polivinilo (PVC) y el neopreno. En 2024, en el Catálogo de Mercancías sujetas al Régimen de Licencias de Importación figuraban 149 líneas arancelarias al nivel de 10 dígitos del SA a las que era aplicable el régimen de licencias no automáticas de importación (frente a 118 líneas arancelarias al nivel de 10 dígitos del SA en 2020). En el período objeto de examen se introdujeron en el Catálogo algunos ajustes en relación con las sustancias que agotan la capa de ozono. Las importaciones sujetas a licencias no automáticas consisten principalmente en el equipo mecánico y electrónico usado y las sustancias que agotan la capa de ozono.

17. Entre enero de 2021 y diciembre de 2023, China inició tres investigaciones antidumping. Al final de diciembre de 2023, China aplicaba 120 medidas antidumping definitivas. El número de investigaciones en materia de derechos compensatorios iniciadas por China, y el número de medidas en vigor, han disminuido gradualmente en los últimos años. En el período objeto de examen, China no inició ninguna nueva investigación en materia de salvaguardias.

18. El 1 de enero de 2023, 102 líneas arancelarias estaban sujetas a derechos de exportación legales, el mismo número que desde 2015, y 67 líneas arancelarias estaban sujetas a derechos provisionales, frente a 75 líneas en 2021. El tipo más alto (del 50%) se aplica a los minerales de estaño y sus concentrados.

19. Al igual que en el anterior examen, China impone restricciones y prohibiciones a la exportación de determinados productos con miras, entre otras cosas, a proteger la seguridad nacional y el interés público, la salud y seguridad humanas, la vida y salud animal y vegetal y el medio ambiente; preservar los recursos naturales que escasean en el país o pueden agotarse en el futuro; mantener el sistema comercial; proteger determinadas ramas de producción y la balanza de pagos; y cumplir las obligaciones contraídas en virtud de tratados y acuerdos internacionales.

20. El Anuncio de 2023 del Catálogo de Mercancías sujetas al Régimen de Licencias de Exportación, cuya aplicación está prevista para 2024, contiene 43 categorías (el mismo número que desde 2020). La mayor parte del contenido de estas categorías no ha variado desde 2020, mientras que se han añadido algunos productos de las categorías de regaliz y sus productos, productos químicos, algunos materiales de grafito y sus productos, sustancias que agotan la capa de ozono,

algunos vehículos aéreos no tripulados, algunos motores de aviación, algunos artículos de galio y germanio, madera aserrada y algunos automóviles. China aplica un sistema de gestión de licencias para la exportación de determinados productos de doble uso; durante el período objeto de examen, China impuso un control de las exportaciones de productos relacionados con el perclorato de potasio, los cañones de agua a alta presión, el galio y el germanio y los productos relacionados con drones, y realizó ajustes a las medidas temporales de control aplicables a la exportación de grafito. El MOFCOM y el Ministerio de Ciencia y Tecnología modificaron el Catálogo de Tecnologías sujetas a Restricciones o Prohibiciones de Exportación en diciembre de 2023.

21. En 2023, el volumen total de importaciones y exportaciones en las 22 zonas francas experimentales alcanzó los CNY 7,67 billones (con un incremento interanual del 2,7%), lo que representó el 18,4% del comercio total del país. Entre los beneficios disponibles para las empresas que operan en zonas francas experimentales figuran un tipo reducido del impuesto sobre la renta de las sociedades del 15% que se aplicará durante cinco años desde su constitución y trámites aduaneros simplificados para las importaciones y exportaciones en esas zonas de las empresas que se dediquen a productos o tecnologías esenciales en esferas clave como los circuitos integrados, la inteligencia artificial, la biomedicina y la aviación civil.

22. En 2022, el Banco EXIM realizó operaciones por valor de CNY 1.418,6 millones en concepto de liquidación internacional (CNY 843.600 millones), garantía (CNY 88.800 millones) y financiación del comercio (CNY 486.200 millones); el saldo pendiente de los préstamos al comercio exterior del Banco registró un aumento interanual del 20%. El Banco EXIM proporciona préstamos en apoyo de la Iniciativa "Cinturón y Ruta" (BRI). A finales de 2022, el saldo de los préstamos en apoyo a la BRI ascendía a CNY 2,2 billones, con una cobertura de más de 130 países. En 2022, la cuantía total de los seguros de crédito a la exportación fue de USD 753.000 millones, gran parte de los cuales eran seguros de crédito a la exportación a corto plazo. En 2021 y 2022, los seguros de crédito a la exportación proporcionados por la Corporación de Seguros de Crédito y Exportación de China representaron el 20,3% y el 21,0%, respectivamente, de las exportaciones totales.

23. En el período considerado China siguió proporcionando apoyo financiero y otros incentivos a diferentes sectores y ramas de producción. En agosto de 2021 y julio de 2023 China notificó sus programas de apoyo para los períodos 2019-2020 y 2021-2022, respectivamente. Las notificaciones contienen información sobre numerosos programas de nivel central y subcentral. Las dos notificaciones presentadas a la OMC durante el período considerado y las respuestas dadas por China no permiten a la Secretaría tener una visión general clara de los programas de ayuda de China. En particular, la Secretaría no ha podido conocer con mayor profundidad los niveles de apoyo financiero para determinados sectores de intensa actividad comercial, como los del aluminio, los vehículos eléctricos, el vidrio, la construcción naval, los semiconductores o el acero. La bases de datos comerciales disponibles documentan niveles importantes de apoyo público a las empresas en sectores clave, con una fuerte concentración en el sector manufacturero, así como aumentos significativos del apoyo desde 2018. Los llamados "fondos gubernamentales de orientación", o "fondos gubernamentales de inversión", siguen utilizando recursos públicos para realizar inversiones de capital en sectores y actividades que el Gobierno considera importantes. Las autoridades no han facilitado información sobre la dotación total de esos fondos, que según diferentes estimaciones realizadas en el marco de estudios académicos y por empresas de capital privado está comprendida entre CNY 1,89 billones y CNY 6,51 billones. En general, los incentivos proporcionados por esos fondos no se han notificado a la OMC; las autoridades afirman que esos fondos operan con arreglo a los principios del mercado. Si bien es necesario seguir trabajando en esta esfera para poder tener una visión más clara, la falta general de transparencia en lo que respecta a la ayuda del Gobierno de China también puede contribuir a generar debates sobre lo que algunos perciben como un exceso de capacidad en determinados sectores.

24. La Ley de Normalización (1988) y el Reglamento de Aplicación de la Ley de Normalización (1990) son los principales textos jurídicos de China en materia de normas; no han experimentado ningún cambio durante el período considerado. La Administración Estatal de Reglamentación del Mercado (SAMR) está a cargo de la elaboración de las normas y de velar por el cumplimiento de la legislación, así como de la supervisión del mercado en lo que concierne a la calidad de los productos, la inocuidad de los alimentos, la metrología, la certificación, la acreditación y las normas. El plan Normas de China 2035 proyecta establecer normas mundiales en materia de tecnologías emergentes, como la internet 5G, la internet de las cosas y la inteligencia artificial. Entre enero de 2021 y febrero de 2024 China presentó 315 notificaciones OTC, principalmente en virtud del artículo 2.9 del Acuerdo OTC. La mayoría de los reglamentos técnicos notificados tiene por objeto

proteger la salud y la seguridad humanas, establecer prescripciones en materia de calidad, o prevenir prácticas que puedan inducir a error a los consumidores. Entre enero de 2021 y febrero de 2024 los Miembros plantearon a China un total de 21 preocupaciones comerciales específicas relacionadas con los OTC. Ocho de esas preocupaciones se planteaban por primera vez.

25. En lo que concierne a las medidas sanitarias y fitosanitarias, China pretende establecer una gobernanza eficaz de la inocuidad de los alimentos, como piedra angular del desarrollo de la industria alimentaria. Entre las esferas a las que se orientó la reforma se incluían el aumento de las inspecciones y pruebas, la mejora de las normas sobre inocuidad de los alimentos y su integración con las normas internacionales pertinentes, el aumento de la capacidad de investigación y realización de pruebas y el fortalecimiento de las medidas para garantizar la observancia de las leyes y reglamentos en materia de inocuidad de los alimentos. Entre abril de 2021 y marzo de 2024 China notificó 101 medidas sanitarias y fitosanitarias a la OMC, de las cuales 2 eran medidas de emergencia que afectaban a Miembros específicos. Durante el período considerado se plantearon 13 preocupaciones comerciales específicas relacionadas con medidas chinas en el Comité MSF de la OMC.

26. Las Ley Antimonopolio de China se modificó en 2022 para incluir normas de "puerto seguro" para los acuerdos verticales y reforzar el régimen de observancia, en particular aumentando las sanciones por infracción. También hay nuevas normas que elevan los umbrales para la notificación de fusiones y adquisiciones. En 2021 se estableció la Administración Antimonopolio, dependiente de la Administración Estatal de Reglamentación del Mercado (SAMR).

27. Las empresas comerciales del Estado de China tienen el derecho exclusivo de importar o exportar los siguientes productos: tabaco, petróleo crudo y elaborado, carbón refinado, abonos químicos, tungsteno y sus productos, antimonio y sus productos y plata. Además, las empresas comerciales no estatales con derechos registrados pueden utilizar parte del contingente de importación para determinados productos, como el trigo, el maíz, el arroz, el azúcar y el algodón. La propiedad estatal sigue siendo muy importante en la economía; incluso en muchos sectores de orientación comercial las empresas de propiedad estatal siguen teniendo cuotas de mercados sustanciales y representan una gran proporción del activo y los beneficios totales de esos sectores. No ha tenido lugar ninguna privatización importante durante el período objeto de examen; la reforma de las empresas públicas tuvo lugar casi exclusivamente en el contexto de la propiedad mixta. En el período considerado el número de empresas de propiedad estatal ha aumentado tanto el sector industrial como en el de la construcción. Aunque las empresas de propiedad estatal pueden servir de instrumento para aplicar las políticas gubernamentales, apoyar los objetivos industriales nacionales y mantener el control estatal de sectores esenciales, las autoridades afirman que las empresas de propiedad estatal de China basan sistemáticamente su actuación en consideraciones comerciales y participan en las actividades empresariales ateniéndose a criterios de mercado y al imperio de la ley.

28. No han tenido lugar cambios importantes en el marco legislativo e institucional de China en materia de contratación pública desde el anterior examen. La Ley de Contratación Pública y sus normas de aplicación siguen siendo el principal instrumento legislativo que rige las actividades de contratación pública. El régimen no se aplica a las compras de las empresas de propiedad estatal. El valor total de la contratación pública en China ascendió a CNY 3,5 billones en 2022, lo que representa un 2,9% del PIB. La licitación pública es el principal método de contratación pública. La mayor parte de la contratación pública, con amplia diferencia, tiene lugar a nivel de los Gobiernos subcentrales. En el período considerado se han hecho progresos limitados en lo que concierne a la adhesión de China al Acuerdo sobre Contratación Pública.

29. China ha llevado a cabo varias reformas en su régimen de propiedad intelectual durante el período objeto de examen, en particular una revisión de la Ley derecho de Autor, que entró en vigor en junio de 2021, modificaciones de la Ley de Patentes y una nueva Ley de Semillas, vigente desde marzo de 2022. En 2022 se concedieron más de 1,6 millones de patentes, de las que aproximadamente 155.000 se otorgaron a no residentes. Los ingresos por exportación de propiedad intelectual aumentaron acusadamente durante el período considerado. En lo que concierne a la exigencia del cumplimiento, los tribunales examinan más de 500.000 asuntos relacionados con la propiedad intelectual cada año. La SAMR también organiza periódicamente operaciones nacionales para destruir productos infractores, falsificados o de deficiente calidad.

30. En el período considerado se han revisado o introducido diversas leyes relacionadas con la agricultura, como la Ley de Fomento de la Revitalización del Medio Rural (adoptada en 2021), la Ley de Protección de la Tierra Negra (adoptada en 2022) y la Ley de Ganadería (revisada en 2022). La estrategia agrícola de China se establece principalmente el Documento Central Nº 1 sobre el Desarrollo Agrícola y Rural, que se publica cada año. Los productos agropecuarios (definición de la OMC) están sujetos a tipos aplicados *ad valorem*, con excepción de algunos productos de origen animal. En 2024 el arancel NMF medio aplicado a los productos agropecuarios era del 12,6% (12,7% en 2021). Entre los grupos de productos que se benefician de una protección arancelaria superior a la media figuran los azúcares y artículos de confitería (30,6%); los cereales y las preparaciones alimenticias (20,2%); las bebidas y el tabaco (15,8%); el algodón, la seda y la lana (14,2%); y el café, el té, el cacao y las especias (12,7%). China aplica un tipo provisional en forma de derecho móvil, que no puede exceder del 40%, a una determinada cantidad de algodón sin peinar (SA 5201.00.00) importado fuera del contingente. Desde 2020 la tasa de utilización de los contingentes arancelarios ha fluctuado en el caso de algunos productos, entre ellos el trigo, el arroz, la lana y el algodón. Las autoridades han indicado que las fluctuaciones de las tasas de utilización se deben a los cambios en las condiciones de los mercados interno e internacional. China ha notificado a la OMC que en los años civiles 2020 y 2022 no se concedieron subvenciones a la exportación de productos agropecuarios. China ofrece programas de financiación de las exportaciones (créditos a la exportación, garantías de créditos a la exportación y programas de seguro) que abarcan los productos agropecuarios. China ha indicado en sus respuestas al cuestionario sobre la competencia de las exportaciones que ofrece programas de financiación de las exportaciones (por ejemplo, apoyo a corto plazo a la financiación del comercio para la exportación de productos agropecuarios sobre la base de facturas, recibos o cartas de crédito, etc.; préstamos de capital de explotación para proveedores; seguros de crédito a la exportación a medio y largo plazo, seguros de inversión en el extranjero y seguros de crédito a la exportación a corto plazo) que abarcan los productos agropecuarios.

31. En 2024 el promedio aritmético de los aranceles aplicados al pescado y los productos de pescado (definición de la OMC) fue del 6,8%, con tipos comprendidos entre el 0% y el 15%. En 2021 el Ministerio de Agricultura y Asuntos Rurales publicó el 14º Plan Quinquenal para el Desarrollo de la Pesca Nacional, en el que se especifica que para 2025 la producción nacional de pesca marítima se limitará a 10 millones de toneladas. Tanto el Gobierno central como los Gobiernos locales y provinciales prestan ayuda al sector. La última notificación presentada por China a la OMC abarca el período 2021-2022 y contiene tres programas de incentivos o de apoyo aplicados a nivel del Gobierno central, que guardan relación con un fondo de subvenciones para el desarrollo del sector pesquero y con el pago de transferencias para fines generales. Veintidós de los programas relativos al sector pesquero adoptados por los Gobiernos locales durante el período 2021-2022 también se han notificado a la OMC. China aceptó formalmente el Protocolo del Acuerdo sobre Subvenciones a la Pesca depositando su instrumento de aceptación ante la OMC el 27 de junio de 2023. En 2021 China suprimió las subvenciones a los combustibles.

32. Entre las prioridades de China en el sector minero figuran reducir la producción de minerales para los que hay exceso de capacidad y garantizar el suministro de minerales en las industrias emergentes estratégicas. Entre las medidas comerciales adoptadas en este sector se incluye la introducción de un régimen de licencias de exportación para determinados minerales. Aunque en China se permite a los particulares o empresas extranjeros la titularidad de derechos de explotación minera, se les prohíbe invertir, de manera directa o indirecta, en la prospección o explotación de volframio (tungsteno), tierras raras y minerales radiactivos. Para satisfacer las necesidades de consumo de energía se sigue dependiendo principalmente del carbón, pero China prevé apartarse de esta fuente. No obstante, las autoridades reconocen que el carbón sigue siendo esencial para preservar la seguridad energética, en particular en períodos en que se reduce la disponibilidad de energía. La importancia relativa del consumo de carbón ha ido disminuyendo en los últimos años. China ha seguido mejorando su cesta energética al favorecer el uso las fuentes de energía no fósiles, como la energía hidroeléctrica, la nuclear, la eólica y la fotovoltaica. Para apoyar la inversión en energías limpias, China ha introducido mecanismos como las subvenciones en forma de tarifas reguladas

33. El sector manufacturero aportó entre el 26% y el 28% del PIB en el período objeto de examen. En los últimos decenios China se ha convertido en un importante centro manufacturero a nivel mundial. Los notables resultados de China en el sector manufacturero pueden atribuirse a su creciente integración en las cadenas de valor mundiales, impulsada por la liberalización del comercio y las inversiones, la abundancia y productividad de la mano de obra, el vasto mercado interno, la

alta calidad de la infraestructura y la innovación. Los productos manufacturados constituyen más del 95% de las exportaciones de China. La iniciativa "Made in China 2025" (o China Manufacturing 2025) es el principal programa de fomento del sector. El sector manufacturero de China es un receptor significativo de donaciones, financiación para investigación y concesiones fiscales. Varios fondos gubernamentales de orientación se centran específicamente en el sector manufacturero.

34. El comercio de servicios de telecomunicaciones ha seguido expandiéndose en los últimos años, impulsado principalmente por la innovación digital y el aumento de la demanda de servicios digitales. En los servicios de telecomunicaciones fijas y móviles la presencia del Estado es sustancial, aunque ha disminuido durante el período considerado. Los segmentos de telecomunicaciones emergentes, como los centros de datos de internet, la computación en la nube y la internet de las cosas, son explotados principalmente por empresas privadas. La proporción de participación extranjera en los servicios de telecomunicaciones de valor añadido (con exclusión del comercio electrónico, las comunicaciones nacionales entre múltiples partes, los servicios de almacenamiento y reenvío y los centros de atención telefónica) está limitada a un máximo del 50%. Las autoridades han adoptado recientemente un conjunto de medidas de ciberseguridad para reducir los riesgos de seguridad derivados de la transformación digital. China también ha puesto en marcha la Iniciativa Mundial para la Gobernanza de la IA, con el objetivo de promover un enfoque de la inteligencia artificial que equilibre el desarrollo de esa tecnología con la seguridad en su utilización.

35. La estructura del sector financiero sigue caracterizándose por una preponderancia significativa de los bancos sobre los otros tipos de instituciones financieras; el activo de los seis mayores bancos de propiedad estatal constituía el 40,8% del total. La evolución del sector financiero ha estado marcada por una profundización de la liberalización, que ha permitido aumentar la participación extranjera y atraer capital a largo plazo para operaciones e inversiones en China. Se han hecho esfuerzos significativos para promover la financiación verde en el país. A este respecto se han adoptado diversas políticas, en particular instrumentos de política monetaria estructural y pruebas de resistencia relativas a los riesgos climáticos, así como proyectos piloto específicos.

36. En el sector de transporte aéreo, China se propone desarrollar un sector de la aviación civil que observe prácticas respetuosas del medio ambiente y cumpla exigentes criterios de desempeño. En el período considerado se han adoptado varias medidas para promover la construcción de aeropuertos verdes e inteligentes. También se ha adoptado un plan de trabajo con el objetivo de seguir reduciendo en el transporte aéreo la contaminación causada por los plásticos. La construcción y la explotación de los aeropuertos civiles han de estar bajo el control de empresas chinas, lo que limita las posibilidades de inversión extranjera. China se propone establecer un sector de transporte marítimo de alta calidad para 2035, con especial atención a los sistemas de gobernanza modernos, el ahorro de energía y los procesos inteligentes, con el objetivo de seguir consolidando la competitividad del sector. Aunque en general está permitida la inversión extranjera en la industria, en las empresas nacionales de transporte por vía acuática la participación mayoritaria debe pertenecer a una persona u organización china.

37. En resumen, durante el período objeto de examen la importancia de China en la economía y el comercio mundiales ha seguido acentuándose. De cara al futuro, el FMI ha previsto un tasa de crecimiento del 4,6% —menor, pero aún sustancial— para 2024, así como la posibilidad de un posterior descenso a largo plazo, a causa del envejecimiento de la población, la disminución de la población activa y la desaceleración de los aumentos de la productividad. Otros riesgos de deterioro en los próximos años son las tensiones geopolíticas, una contracción más profunda de lo previsto en el sector inmobiliario y un crecimiento mundial más débil de lo esperado que afecte a la demanda. Si continúan las reformas estructurales dictadas por el mercado, así como la liberalización económica y la integración internacional, el comercio será probablemente un factor crucial para las perspectivas de crecimiento de China en el futuro.

1 ENTORNO ECONÓMICO

1.1 Principales características de la economía

1.1. Durante el período objeto de examen, China mantuvo su importancia como motor del crecimiento económico mundial, con un PIB per cápita de USD 12.614 en 2023, frente a USD 10.144 en 2019. Aunque la economía experimentó una gran variabilidad en el crecimiento del PIB real, debido principalmente a la pandemia de COVID-19 y a las políticas conexas, China sigue siendo una importante fuerza motriz del crecimiento mundial.

1.2. El crecimiento de China durante el período objeto de examen siguió siendo superior al de otros países con niveles de desarrollo similares. Las reformas orientadas al mercado, la liberalización económica y la integración en la economía mundial han permitido la mejora del nivel de vida, la aparición de una gran clase media y la erradicación de la pobreza extrema. En consecuencia, China ha pasado a ser la segunda mayor economía del mundo en dólares de los Estados Unidos y, según el Banco Mundial, la mayor en términos de paridad de poder adquisitivo (PPA).¹

1.3. El fuerte crecimiento de China ha ido acompañado tradicionalmente de niveles relativamente elevados de desigualdad de ingresos y de contrastes entre zonas urbanas y rurales en lo relativo a la riqueza, aunque recientemente la diferencia de ingresos entre los residentes en zonas urbanas y rurales se ha ido reduciendo. Según datos del Banco Mundial, el coeficiente de Gini disminuyó hasta el 37,1 en 2020.²

1.4. A finales de 2023, la población de China ascendía a 1.410 millones de habitantes. En 2022, se contrajo por primera vez desde 1961, en 850.000 habitantes. También en 2022, por primera vez desde 1949, nacieron menos de 10 millones de niños. La tasa de natalidad ha seguido disminuyendo; a finales de 2022 era de 6,77 por cada 1.000 habitantes. El porcentaje de la población que tiene 65 años o más aumentó del 12,6% en 2020 al 13,6% en 2022. Más del 65% de la población vive en zonas urbanas; en 2021, la esperanza de vida se estimaba en unos 78 años.³ En este contexto, las autoridades atribuyen gran importancia al envejecimiento de la población que conlleva, entre otras cosas, la previsión de aumentar gradualmente la edad de jubilación obligatoria.⁴

1.5. Si se comparan a nivel internacional, las tasas de ahorro de China son muy elevadas, debido principalmente a la importancia del ahorro preventivo.⁵ Las reformas en materia de pensiones, atención médica y vivienda, así como la liberalización de los servicios, pueden impulsar el consumo a largo plazo.⁶

1.6. En el marco de la Iniciativa "Cinturón y Ruta" (BRI), emprendida en 2013, el Gobierno se propone conectar casi 140 países y regiones mediante grandes proyectos de infraestructura. En ese contexto, China ha concedido cuantiosos préstamos para la construcción de infraestructuras en países en desarrollo. Las autoridades indican que el Banco de Desarrollo de China y el Banco de Exportación e Importación de China han establecido préstamos especiales para la BRI y un servicio de financiación dotado con CNY 350.000 millones, respectivamente, con el fin de prestar apoyo a la comercialización de los proyectos en el marco de la BRI. Según un estudio, a finales de 2023 el gasto total en el marco de la BRI ascendía a USD 1,053 billones, frente a USD 640.000 millones en 2021.⁷ Aunque algunos estudios han señalado que la BRI puede afectar negativamente a la carga

¹ Banco Mundial, *GDP, PPP (Current International \$) – China*. Consultado en: <https://datos.bancomundial.org/indicador/NY.GDP.MKTP.PP.CD?locations=CN>.

² Banco Mundial, *Índice de Gini – China*. Consultado en: <https://datos.bancomundial.org/indicador/SI.POV.GINI?locations=CN>.

³ Banco Mundial, *Life Expectancy at Birth, Total (Years) – China*. Consultado en: <https://datos.bancomundial.org/indicador/SP.DYN.LE00.IN?locations=CN>.

⁴ Esto se ha reflejado, en primer lugar, en el Plan Nacional de Respuesta Activa al Envejecimiento de la Población a Medio y Largo Plazo, adoptado en 2019.

⁵ FMI (2024), *People's Republic of China: Staff Report for the 2023 Article IV Consultation*, IMF Country Report Nº 24/38.

⁶ FMI. Consultado en: <https://www.imf.org/en/News/Articles/2024/05/28/pr24184-china-imf-staff-completes-2024-art-iv-mission>.

⁷ Centro de Financiación y Desarrollo Verdes (2024). *China Belt and Road Initiative (BRI) Investment Report 2023*. Consultado en: <https://greenfdc.org/china-belt-and-road-initiative-bri-investment-report-2023/>.

de la deuda de los países beneficiarios⁸, las autoridades no están necesariamente de acuerdo con esta opinión.

1.2 Evolución económica reciente

1.2.1 Crecimiento económico

1.7. En general, la economía de China se ha recuperado bien de las perturbaciones relacionadas con la pandemia que experimentó en 2020. Tras una impresionante recuperación de los efectos iniciales de la pandemia, con una tasa de crecimiento superior al 8% en 2021, el crecimiento se ralentizó al 3% en 2022, debido en parte a los efectos de la pandemia de COVID-19 (cuadro 1.1).⁹ En 2023, tras la reapertura en el período posterior a la COVID-19, el PIB real creció a un ritmo del 5,2%, en consonancia con el objetivo de crecimiento de las autoridades del 5%. Entre las principales fuerzas impulsoras de la recuperación cabe citar el aumento del consumo privado, la flexibilización de la política monetaria y las desgravaciones fiscales.¹⁰

1.8. En los últimos años, según el FMI, el elevado ahorro de los hogares de China se destinó en gran medida a la financiación de inversiones en bienes inmuebles e infraestructura; no obstante, el rendimiento de las inversiones en infraestructura ha ido disminuyendo con el tiempo, lo que ha contribuido a un crecimiento más lento de la productividad y, en consecuencia, al aumento de los desequilibrios internos (por ejemplo, el aumento de la deuda entre los promotores y los Gobiernos locales).¹¹ Esos desequilibrios y el debilitamiento de las perspectivas de crecimiento, así como la ralentización de la productividad y el rápido envejecimiento, pueden aumentar las vulnerabilidades. Sin embargo, las autoridades consideran que el rendimiento de las inversiones en infraestructura no es el principal factor que afecta a la productividad.

Cuadro 1.1 Determinados indicadores macroeconómicos, 2018-2023

	2018	2019	2020	2021	2022	2023
PIB nominal (miles de millones de CNY)	91.928,1	98.651,5	101.356,7	114.923,7	120.472,4	126.058,2
PIB nominal (miles de millones de USD)	13.894,9	14.280,0	14.687,7	17.820,5	17.963,2	17.006,3
PIB per cápita (CNY)	65.534,0	70.078,0	71.828,0	81.370,0	85.310,0	89.358,0
PIB per cápita (USD)	9.905,4	10.143,9	10.408,7	12.617,5	12.662,6	12.614,1
Cuentas nacionales						
PIB real (variación porcentual)	6,7	6,0	2,2	8,4	3,0	5,2
Demanda interna total	7,4	5,3	1,7	6,6	2,0	4,3
Consumo	7,9	6,3	-0,3	9,8	1,6	4,7
Inversión fija	7,3	5,3	3,4	3,5	2,4	4,0
Contribución al crecimiento del PIB ^a						
Consumo	4,3	3,5	-0,2	4,9	1,2	4,3
Inversión	2,9	1,7	1,8	1,7	1,4	1,5
Exportaciones netas	-0,5	0,7	0,6	1,9	0,4	-0,6
Tasa de desempleo (%) ^b	4,9	5,2	5,5	5,1	5,5	5,1
Precios y tipos de interés						
Inflación (IPC, variación porcentual)	2,1	2,9	2,4	1,0	2,0	0,2
Tipo de interés del crédito (%, promedio del período)	4,35	4,19	3,91	3,85	3,69	3,55
Tipo de interés de los depósitos (%, promedio del período)	1,50	1,50	1,50	1,50	1,50	..
Tipo de recompra a siete días (%)	4,6	3,0	2,7	2,2	2,3	1,9
Tipo de interés de los bonos del Estado a 10 años (%)	4,6	3,7	3,2	3,0	3,1	2,8
Tipo de cambio						
CNY por USD (promedio del período)	6,62	6,90	6,901	6,45	6,73	7,05
Tipo de cambio efectivo nominal (variación porcentual)	1,6	-1,7	0,9	5,4	3,8	-3,4
Tipo de cambio efectivo real basado en el índice de precios al consumo ^c (variación porcentual)	1,4	-0,6	2,0	3,0	-1,2	-8,2
Indicadores monetarios						
Crédito interno neto (variación porcentual, final del período)	10,3	10,7	13,3	10,3	9,6	9,5
Dinero en sentido amplio, M2 (variación porcentual, final del período)	8,1	8,7	10,1	9,0	11,8	9,7

⁸ OCDE (2019), *OECD Economic Surveys: China 2019*. Consultado en: https://www.oecd-ilibrary.org/docserver/eco_surveys-chn-2019-en.pdf?expires=1714031119&id=id&accname=ocid195767&checksum=95B967FD8115A65BC5CC5AEDA0219253.

⁹ FMI (2024), IMF Country Report N° 24/38.

¹⁰ FMI (2024), IMF Country Report N° 24/38.

¹¹ FMI (2024), IMF Country Report N° 24/38.

	2018	2019	2020	2021	2022	2023
Política fiscal^d (% del PIB)						
Déficit financiero	-4,1	-4,9	-6,2	-3,8	-4,7	-4,8
Ingresos totales	19,9	19,3	18,0	17,6	16,8	18,0
Ingresos fiscales	17,0	16,0	15,2	15,0	13,8	15,0
Gastos totales	24,0	24,2	24,2	21,4	21,5	22,8
Deuda bruta de las administraciones públicas	56,7	60,4	70,1	71,8	77,0	..
Ahorro e inversión (fuente: Oficina Nacional de Estadística)						
PIB calculado por el método del gasto (miles de millones de CNY)	91.577,4	99.070,8	102.562,8	114.528,3	120.247,1	..
Gasto de consumo final (miles de millones de CNY)	50.613,5	55.263,2	56.081,1	61.968,8	64.382,8	..
Hogares	35.412,4	38.718,8	38.718,6	43.801,5	45.046,8	..
Rurales	7.675,9	8.205,7	8.310,0	9.293,1	9.656,2	..
Urbanos	27.736,5	30.513,1	30.408,6	34.508,5	35.390,6	..
Administración pública	15.201,1	16.544,4	17.362,5	18.167,3	19.336,0	..
Formación bruta de capital (miles de millones de CNY)	40.258,5	42.667,9	43.955,0	49.578,4	51.979,3	..
Exportaciones netas de bienes y servicios (miles de millones de CNY)	605,3	917,3	2.450,8	2.981,1	3.885,0	..
Ahorro (miles de millones de CNY)	40.963,9	43.807,7	46.481,7	52.559,5	55.864,3	..
Ahorro (% del PIB calculado por el método del gasto)	44,7	44,2	45,3	45,9	46,5	..
Inversión (% del PIB calculado por el método del gasto)	44,0	43,1	42,9	43,3	43,2	..
Diferencia entre ahorro e inversión (% del PIB calculado por el método del gasto)	0,8	1,2	2,5	2,6	2,4	..
Ahorro e inversión (fuente: FMI)						
Ahorro nacional bruto (% del PIB)	44,1	43,8	44,5	45,3	45,7	44,0
Inversión bruta (% del PIB)	44,0	43,1	42,9	43,3	43,5	42,5
Diferencia entre ahorro e inversión (% del PIB)	0,2	0,7	1,7	2,0	2,2	1,5
Sector externo (% del PIB, salvo indicación en contrario)						
Saldo de la cuenta corriente	0,2	0,7	1,7	2,0	2,2	1,5
Comercio neto de mercancías	2,7	2,8	3,5	3,2	3,7	3,4
Valor de las exportaciones	17,4	16,7	17,1	18,0	18,6	17,8
Valor de las importaciones	14,7	14,0	13,6	14,9	14,9	14,4
Balanza de servicios	-2,1	-1,8	-1,0	-0,6	-0,5	-1,3
Cuenta de capital	0,0	0,0	0,0	0,0	0,0	0,0
Cuenta financiera (excluidos los activos de reserva)	1,1	0,2	-0,6	-1,2	-1,7	-1,3
Inversión directa, neta	0,7	0,4	0,7	0,9	0,2	..
Activos de reserva	-0,1	0,1	-0,2	-1,1	-0,6	-0,1
Exportaciones de mercancías ^e (variación porcentual)	0,1	-1,3	5,2	28,1	4,1	-5,0
Importaciones de mercancías ^e (variación porcentual)	17,1	-2,1	0,3	32,7	0,9	-4,0
Exportaciones de servicios ^e (variación porcentual)	9,6	4,6	-6,3	48,3	8,7	-12,4
Importaciones de servicios ^e (variación porcentual)	11,4	-3,8	24,5	15,5	4,7	19,8
Reservas oficiales brutas ^f (miles de millones de USD; final del período)	3.168,0	3.222,9	3.356,5	3.426,9	3.306,5	3.449,7
Reservas de divisas (miles de millones de USD; final del período)	3.072,7	3.107,9	3.216,5	3.250,2	3.127,7	3.238,0
Deuda externa total (miles de millones de USD; final del período)	1.982,8	2.070,8	2.400,8	2.746,6	2.452,8	2.447,5
Coefficiente del servicio de la deuda ^g	5,5	6,7	6,5	5,9	10,5	7,6

.. No disponible.

a El crecimiento del PIB multiplicado por el porcentaje respectivo de contribución.

b Desempleo en zonas urbanas, según las encuestas. Durante el período objeto de examen, se suspendió la publicación de las tasas de desempleo registradas.

c Un incremento positivo del tipo de cambio efectivo real implica una apreciación del yuan con respecto a las demás monedas importantes del índice.

d Incluidos el Gobierno central y los Gobiernos locales.

e Las tasas de crecimiento del comercio de bienes y servicios se basan en el valor en dólares de los Estados Unidos.

f Incluidas las reservas de divisas, la posición de reserva en el FMI, los derechos especiales de giro y el oro.

g Por coeficiente del servicio de la deuda se entiende la relación entre el pago del principal y del interés de la deuda externa y los ingresos en divisas procedentes del comercio exterior y los servicios no comerciales en el año en curso.

Fuente: Oficina Nacional de Estadística, *Yearbook*. Consultado en:

<https://www.stats.gov.cn/english/Statisticaldata/yearbook/>; Administración Estatal de Divisas, *Data and Statistics*. Consultado en: <https://www.safe.gov.cn/en/DataandStatistics/index.html>; Banco Popular de China, *Money and Banking Statistics*; y FMI, *China: Datasets*. Consultado en: <https://www.imf.org/external/datamapper/profile/CHN>.

1.9. El crecimiento en general y la recuperación posterior a la pandemia en concreto han contado con el firme apoyo del crecimiento del consumo, sostenido por una clase media cada vez más numerosa y con mayores ingresos medios. Según el FMI, la inversión pública y la inversión privada en el sector manufacturero han impulsado la inversión total y han compensado las carencias de la inversión en bienes inmuebles.¹²

1.10. El FMI prevé que, para 2024, el crecimiento del PIB de China se ralentice hasta el 4.6%.¹³ De cara a los próximos años, es probable que el crecimiento económico siga siendo elevado, pero se ralentizará con el envejecimiento de la población, la disminución de la fuerza de trabajo y la desaceleración del aumento de la productividad. Por consiguiente, para que crezca la productividad interna, será fundamental llevar a cabo reformas estructurales orientadas al mercado.¹⁴ Entre los riesgos para el mantenimiento de las elevadas tasas de crecimiento cabe citar las tensiones geopolíticas, una contracción más profunda de lo previsto en el sector inmobiliario y un crecimiento mundial más débil de lo previsto.

1.11. La tasa de desempleo declarada oficialmente se mantuvo baja durante el período objeto de examen, en torno al 5%. No obstante, el desempleo juvenil sigue siendo muy elevado, con tasas superiores al 20% en las zonas urbanas.¹⁵ Se han introducido nuevas reformas del sistema *hukou*¹⁶, principalmente a nivel provincial, aunque siguen en vigor restricciones en materia de residencia en las ciudades más grandes y en las capitales de provincia.

1.12. En lo que respecta a la composición sectorial del PIB de China, durante el período objeto de examen se detuvo el cambio estructural a largo plazo anterior para pasar de la industria a los servicios (cuadro 1.2). La contribución de la agricultura al PIB se mantuvo constante, entre el 7,5% y el 8%. La contribución de la industria aumentó ligeramente después de la pandemia, hasta situarse en torno al 33% en 2022, y luego disminuyó ligeramente hasta el 31,7% en 2023. Los servicios representaron cerca del 55% del PIB de China en 2023, la misma proporción que en 2020. Los sectores de servicios que crecieron con mayor rapidez durante el período objeto de examen fueron los de transmisión de información, programas informáticos e intermediación financiera, mientras que la importancia relativa del sector inmobiliario disminuyó.

Cuadro 1.2 PIB por sectores, 2018-2023

	2018	2019	2020	2021	2022	2023
PIB por sectores, a precios constantes (variación porcentual anual)						
Agricultura, ganadería, silvicultura y pesca	3,6	3,2	3,3	7,1	4,4	4,2
Industria ^a	6,1	4,8	2,4	10,4	2,7	4,2
Manufacturas	6,1	4,6	2,5	11,3	1,7	4,4
Construcción	4,8	5,2	2,7	1,1	2,9	7,1
Servicios	8,0	7,2	1,9	8,5	3,0	5,8
Comercio al por mayor y al por menor	6,7	5,6	-0,9	11,0	2,5	6,2
Actividades de alojamiento y servicio de comidas	6,7	5,5	-16,8	15,6	-2,8	14,5
Transporte, almacenamiento y comunicaciones	8,3	6,5	0,8	15,1	-0,7	8,0
Intermediación financiera	4,8	6,6	5,9	4,0	3,1	6,8
Servicios inmobiliarios	3,5	2,6	1,3	3,5	3,9	1,3
Servicios de transmisión de información, programas informáticos y tecnología de la información	27,8	21,7	18,3	17,4	12,2	11,9
Arrendamiento y servicios a las empresas	10,9	8,7	-2,5	11,2	4,3	9,3
Otros ^b	7,6	6,9	0,9	6,8	4,5	4,2
Participación de los principales sectores en el PIB corriente (%)						
Agricultura, ganadería, silvicultura y pesca	7,3	7,5	8,0	7,6	7,7	7,5
Industria ^a	32,8	31,6	30,9	32,6	32,8	31,7
Manufacturas	27,8	26,8	26,3	27,5	27,1	26,2
Construcción	7,1	7,2	7,1	6,9	6,7	6,8
Servicios	52,8	53,8	54,0	53,0	53,4	54,6
Comercio al por mayor y al por menor	9,7	9,7	9,5	9,6	9,5	9,8

¹² FMI (2024), IMF Country Report N° 24/38.

¹³ FMI (2024), IMF Country Report N° 24/38.

¹⁴ FMI (2024), IMF Country Report N° 24/38.

¹⁵ China dejó de publicar las tasas de desempleo juvenil en junio de 2023, cuando alcanzaron un máximo sin precedentes del 21,3%. Reanudó la publicación en 2024, con una metodología diferente. Utilizando esta metodología, el desempleo juvenil fue del 14,9% en diciembre de 2023.

¹⁶ El *hukou* es un sistema de registro de residencia. Las reformas del sistema *hukou* son una forma importante de ampliar la red de seguridad social, y permiten a los trabajadores migrantes y a sus familias acceder a los servicios públicos y las ayudas de que disponen los residentes en zonas urbanas.

	2018	2019	2020	2021	2022	2023
Actividades de alojamiento y servicio de comidas	1,8	1,8	1,5	1,6	1,5	1,7
Transporte, almacenamiento y comunicaciones	4,4	4,3	4,0	4,2	4,2	4,6
Intermediación financiera	7,7	7,7	8,2	7,9	7,7	8,0
Servicios inmobiliarios	7,0	7,1	7,2	6,7	6,1	5,8
Servicios de transmisión de información, programas informáticos y tecnología de la información	3,1	3,4	3,8	3,9	4,1	4,4
Arrendamiento y servicios a las empresas	3,2	3,3	3,2	3,3	3,3	3,5
Otros ^b	15,9	16,4	16,5	15,9	16,2	16,3

a Con inclusión de las industrias extractivas, las manufacturas y la producción y el suministro de electricidad.

b Abarca las siguientes esferas: investigación científica y servicios técnicos; gestión de la conservación de aguas, medio ambiente y servicios públicos; servicios de reparación y otros servicios prestados por residentes; enseñanza; atención sanitaria y servicios sociales; cultura, deporte y ocio; gestión pública; y seguridad social y organizaciones sociales.

Fuente: Oficina Nacional de Estadística de China. Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=B01>.

1.2.2 Política monetaria y cambiaria

1.13. La estabilidad de los precios sigue siendo el principal objetivo de la política monetaria. Con arreglo a la Ley del Banco Popular de China (PBOC), la finalidad de la política monetaria es preservar la estabilidad del valor de la moneda y fomentar así el crecimiento económico. Las tasas de inflación se han mantenido muy bajas en los últimos años, con un máximo del 2,9% en 2019 y tasas más bajas en los años siguientes. La política monetaria fue en general flexible en el período de recuperación posterior a la pandemia.

1.14. La vigilancia de las corrientes transfronterizas de capital por el Banco Popular de China y la Administración Estatal de Divisas (SAFE) puede afectar a las corrientes de divisas. Las empresas deben informar a la SAFE de cualquier pago en el extranjero para la liquidación de los pagos de importación que estén previstos en un plazo de 90 días contados desde la fecha indicada en el formulario de declaración de importación.

1.15. China ha mantenido su régimen de tipo de cambio flotante dirigido. El tipo de cambio del yuan se determina en función de una cesta de monedas cuya composición es de conocimiento público. La paridad central del yuan se establece a diario como una paridad "fija". El Banco Popular de China solo interviene para evitar fluctuaciones excesivas a corto plazo.¹⁷ El yuan viene depreciándose frente al dólar de los Estados Unidos desde 2022, y la depreciación fue relativamente fuerte en 2023 (cuadro 1.1).

1.16. Hasta la fecha, el yuan es plenamente convertible para las transacciones por cuenta corriente y parcialmente convertible para algunas transacciones por cuenta de capital. Los residentes y los no residentes pueden utilizar el yuan en la inversión extranjera directa.

1.17. China ha proseguido sus esfuerzos por internacionalizar el yuan y su utilización como moneda de reserva; por ejemplo, según algunas obras académicas, aumentando el número de préstamos denominados en yuan que concede a países de ingresos bajos y medianos.¹⁸ Sin embargo, las autoridades afirman que los bancos comerciales determinan los destinos de los préstamos en el extranjero de forma independiente con arreglo al principio de orientación al mercado. El uso internacional del yuan sigue siendo muy limitado, con alrededor del 4% de todos los pagos transfronterizos a nivel mundial. Desde 2014, el PBOC ha desarrollado también una moneda digital denominada yuan digital (e-yuan).

1.18. A finales de febrero de 2024, las reservas de divisas notificadas oficialmente ascendían a USD 3,2 billones, un valor ligeramente superior al de 2016. La SAFE y el PBOC gestionan las reservas de divisas.

¹⁷ FMI (2024), IMF Country Report N° 24/38.

¹⁸ A. Gelpern *et al.* (2021), "How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments", *Economy Policy*, volumen 38, N° 114, páginas 345-416.

1.19. Según el FMI, las vulnerabilidades del sector financiero son elevadas y aumentaron en 2023 debido al mayor riesgo de los créditos y la menor rentabilidad de los bancos.¹⁹ Al mismo tiempo, los datos facilitados por las autoridades indican que la proporción de préstamos fallidos de los bancos comerciales fue del 1,59% al final de cuarto trimestre de 2023, lo que supone una disminución interanual de 0,04 puntos porcentuales.

1.2.3 Política fiscal

1.20. Durante la pandemia, la política fiscal de apoyo contó con un paquete equivalente al 3% o el 4% del PIB. Desde 2022, el objetivo de la política fiscal ha sido apoyar la recuperación después de la pandemia mediante la ampliación de la inversión pública y una serie de medidas fiscales y otras medidas de alivio.

1.21. La relación entre los impuestos y el PIB de China fue del 14% en 2022, frente al 17% en 2018. No se ha facilitado información sobre la contribución de cada impuesto a los ingresos fiscales totales.

1.22. La relación entre la deuda total y el PIB de China siguió aumentando acusadamente durante el período objeto de examen, tras una breve estabilización anterior a la pandemia. La deuda pública aumentada²⁰ ascendió al 116% del PIB en 2023, frente al 99% en 2020²¹, debido principalmente a la deuda extrapresupuestaria del Gobierno central y a la deuda presupuestaria de los Gobiernos locales. La deuda de las empresas, principalmente la deuda de las empresas de propiedad estatal, también aumentó notablemente durante el período objeto de examen, mientras que el crédito a los hogares disminuyó ligeramente. En un contexto de rápida acumulación de deuda desde 2008, escaso margen de actuación fiscal y rápido envejecimiento de la población, es importante mantener la consolidación fiscal a medio plazo.²²

1.2.4 Medidas estructurales

1.23. Las reformas estructurales llevadas a cabo desde el anterior examen de China incluyen eliminación de las restricciones a la participación extranjera en los sectores de telecomunicaciones y financiero (secciones 4.4.1 y 4.4.2), el establecimiento de tribunales especializados para acelerar la liquidación de empresas estatales ineficientes (sección 3.3.5) y algunas reducciones arancelarias moderadas (sección 3.1.3).

1.24. La gran participación del Estado sigue siendo una característica importante de la economía de China; incluso en los sectores con orientación comercial, las empresas de propiedad estatal tienen cuotas de mercado sustanciales y una posición dominante en el mercado. Durante el período objeto de examen, la reforma de las empresas estatales se llevó a cabo casi exclusivamente en el contexto de la propiedad mixta; no tuvo lugar ninguna privatización importante (sección 3.3.5).

1.2.5 Balanza de pagos

1.25. El superávit por cuenta corriente de China aumentó considerablemente entre 2018 y 2022, año en que ascendía a USD 402 billones, cifra equivalente al 2,24% del PIB (cuadro 1.3). En 2023, el superávit disminuyó hasta situarse en el 1,5% del PIB. El aumento del superávit por cuenta corriente se explica por el fuerte aumento del superávit del comercio de mercancías, con un crecimiento de las exportaciones que superó al crecimiento de las importaciones en muchos momentos, y la considerable disminución del déficit de la balanza de servicios, debido en gran medida a la caída del turismo emisor. La participación de las exportaciones e importaciones de mercancías en el PIB fue del 32,2% en 2023, frente al 30,5% en 2020, lo que indica la mayor apertura de la economía.

¹⁹ FMI (2024), IMF Country Report N° 24/38.

²⁰ Según la definición del FMI, el déficit aumentado incluye las entidades de financiación de los Gobiernos locales, los fondos dirigidos por el Estado y otras actividades extrapresupuestarias. FMI (2024), IMF Country Report N° 23/67, página 54.

²¹ FMI (2024), IMF Country Report N° 24/38.

²² FMI (2024), IMF Country Report N° 24/38.

Cuadro 1.3 Balanza de pagos, 2018-2023

(En millones de USD)

	2018	2019	2020	2021	2022	2023 ^a
Cuenta corriente	24.131	102.910	248.836	352.886	401.855	264.200
Balanza de bienes y servicios	87.905	131.844	358.573	461.494	576.330	378.600
Balanza comercial	380.074	392.993	511.103	562.706	668.633	608.000
Exportaciones	2.417.443	2.386.640	2.510.015	3.215.838	3.346.875	3.179.600
Importaciones	2.037.369	1.993.647	1.998.912	2.653.132	2.678.242	2.571.600
Balanza de servicios	-292.168	-261.149	-152.530	-101.212	-92.303	-229.400
Exportaciones	233.567	244.359	228.883	339.393	368.953	323.200
Importaciones	525.735	505.508	381.414	440.605	461.256	552.600
Ingresos	-61.365	-39.184	-118.192	-124.476	-193.607	-129.600
Créditos	268.496	273.514	245.502	327.316	190.246	240.000
Remuneración de los empleados	18.109	14.258	14.714	17.118	20.429	..
Renta de la inversión	248.295	257.464	227.941	306.814	165.763	..
Otros	2.092	1.792	2.847	3.383	4.054	..
Débitos	329.861	312.699	363.695	451.792	383.853	369.600
Remuneración de los empleados	9.946	11.157	14.530	18.501	14.082	..
Renta de la inversión	319.616	300.820	348.344	432.632	368.903	..
Otros	299	722	820	659	868	..
Transferencias corrientes	-2.410	10.250	8.455	15.868	19.132	15.200
Créditos	27.757	25.907	36.019	48.794	44.710	37.600
Transferencias personales	6.196	4.037	4.162	5.361	5.677	..
Otros	21.560	21.871	31.857	43.433	39.033	..
Débitos	30.167	15.657	27.563	32.927	25.578	-22.400
Transferencias personales	6.602	3.979	3.766	4.457	4.174	..
Otros	23.565	11.679	23.797	28.470	21.404	..
Cuenta de capital	-569	-327	-76	94	-310	-300
Cuenta financiera	153.795	26.598	-89.997	-218.514	-310.989	-243.900
Activos	-362.039	-260.532	-675.185	-894.905	-281.539	..
Pasivos	515.835	287.130	585.188	676.392	-29.450	..
Cuenta financiera, excluidos los activos de reserva	172.682	7.308	-61.147	-30.288	-211.028	-228.300
Inversión directa	92.338	50.260	99.375	165.277	30.475	..
Activos	-143.027	-136.910	-153.721	-178.798	-149.692	..
Pasivos	235.365	187.170	253.096	344.075	180.167	..
Inversión de cartera	106.874	57.948	95.539	51.366	-281.113	..
Activos	-53.507	-89.419	-151.236	-125.262	-173.193	..
Participaciones de capital	-17.712	-29.332	-131.383	-84.732	-47.697	..
Títulos de deuda	-35.795	-60.087	-19.852	-40.530	-125.496	..
Pasivos	160.381	147.366	246.775	176.628	-107.920	..
Participaciones de capital	60.668	44.906	80.335	82.901	34.388	..
Títulos de deuda	99.713	102.460	166.440	93.727	-142.308	..
Derivados financieros (distintos de reservas) y opciones de compra de acciones por parte de empleados	-6.153	-2.355	-10.821	10.237	-5.812	..
Activos	-4.816	1.393	-5.064	17.082	2.698	..
Pasivos	-1.338	-3.748	-5.757	-6.845	-8.510	..
Otras inversiones	-20.376	-98.545	-245.239	-257.168	45.422	..
Activos	-141.803	-54.886	-336.314	-419.701	138.610	..
Otras participaciones de capital	-1.493	-1.491	-494	-555	-201	..
Moneda y depósitos	-14.999	-101.750	-146.258	-166.149	12.493	..
Préstamos	-81.830	25.962	-135.190	-139.766	101.091	..
Seguros, pensiones y mecanismos normalizados de garantía	-573	-1.168	-3.163	-4.350	-5.568	..
Créditos y anticipos comerciales	-65.300	36.800	-37.116	-61.086	10.345	..
Otras cuentas por cobrar	22.392	-13.240	-14.093	-47.796	20.449	..
Pasivos	121.427	-43.659	91.074	162.534	-93.187	..
Moneda y depósitos	51.436	-55.734	92.237	66.305	-52.760	..
Préstamos	32.115	42.540	-18.270	9.575	-17.838	..
Seguros, pensiones y mecanismos normalizados de garantía	210	1.803	3.102	3.302	2.455	..
Créditos y anticipos comerciales	40.800	-28.750	7.816	33.377	-31.415	..

	2018	2019	2020	2021	2022	2023 ^a
Otras cuentas por pagar	-3.135	-3.517	6.189	8.363	6.371	..
Activos de reserva	-18.887	19.291	-28.850	-188.226	-99.961	-15.600
Errores y omisiones netos	-177.358	-129.181	-158.763	-134.466	-90.557	-20.000

.. No disponible.

a Datos preliminares.

Nota: En la cuenta financiera, un valor positivo de los activos representa una disminución neta, mientras que un valor negativo representa un aumento neto. Un valor positivo de los pasivos representa un aumento neto, mientras que un valor negativo representa una disminución neta.

Fuente: Administración Estatal de Divisas. Consultado en: <http://www.safe.gov.cn/>.

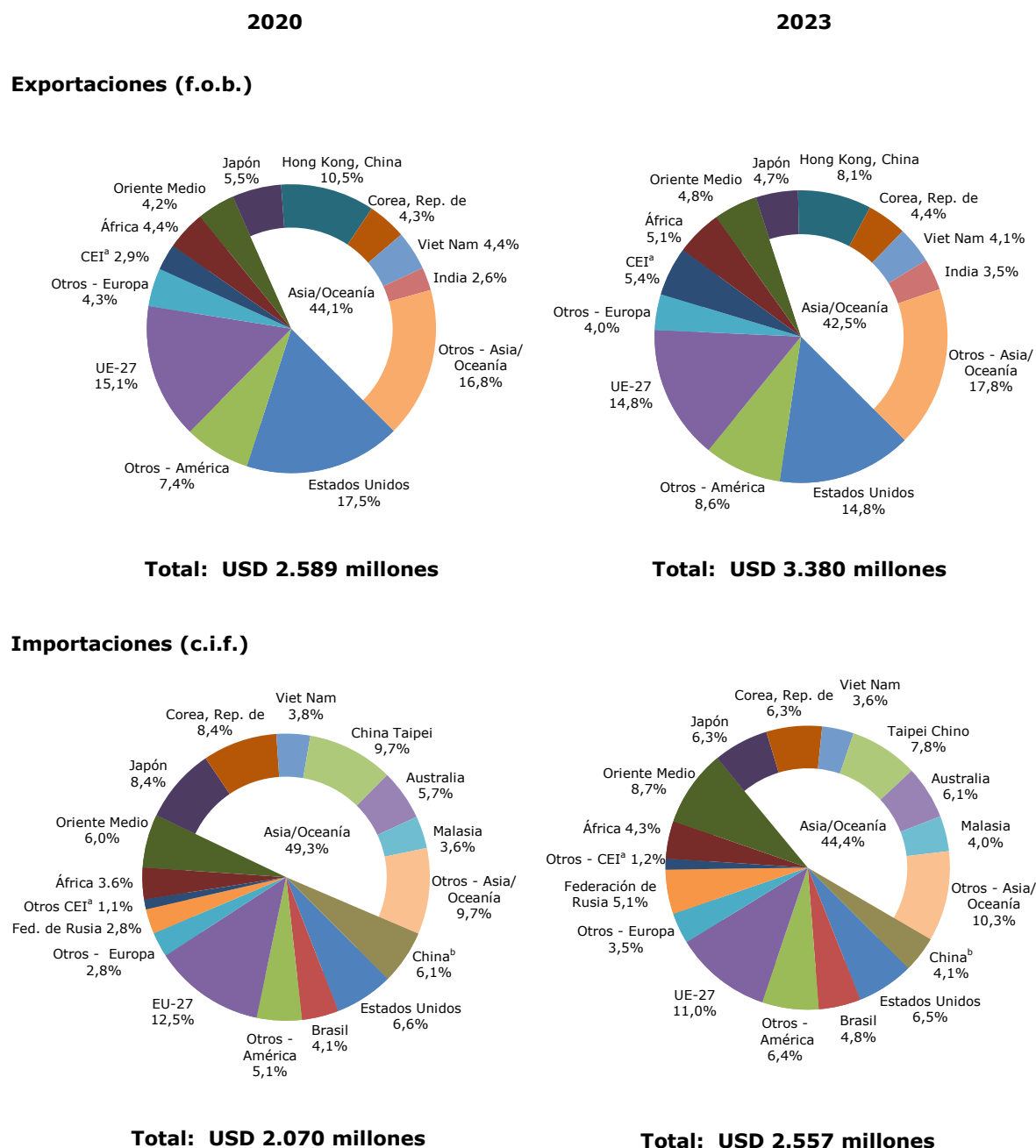
1.26. La cuenta financiera (excluidos los activos de reserva) viene registrando un déficit desde 2020, que puede deberse a la crecientes presiones generadas por la salida de capital, como la ampliación de las diferencias con los tipos de interés de otras grandes economías en 2022 y 2023, la preocupación por las perspectivas de crecimiento de China y el aumento de los riesgos geopolíticos. En 2022, el déficit aumentó a USD 311.000 millones, pero en 2023 disminuyó hasta unos USD 244.000 millones. La inversión directa registró un superávit en cada uno de los últimos años. Los proyectos en el marco de la BRI siguieron desempeñando un papel importante en las inversiones en el exterior.

1.3 Evolución del comercio y la inversión

1.3.1 Tendencias y estructura del comercio de mercancías y servicios

1.27. Las exportaciones de mercancías de China aumentaron significativamente, de USD 2.589 millones en 2020 a USD 3.594 millones en 2022, pero disminuyeron en 2023 (cuadro A1. 1 y gráfico 1.1). Las exportaciones a algunas regiones, como las Américas y Europa, disminuyeron en términos relativos, mientras que las exportaciones a África, Oriente Medio y la Federación de Rusia aumentaron sus porcentajes durante el período objeto de examen, si bien partían de niveles más bajos. A pesar de su relativa disminución, los Estados Unidos y la Unión Europea siguen siendo los destinos individuales más importantes para las exportaciones de mercancías de China. Entre el 40% y el 45% de las exportaciones de mercancías se destina a Asia y Oceanía. África y Oriente Medio representan aproximadamente el 5% de las exportaciones, con una tendencia ligeramente al alza.

1.28. Las importaciones de mercancías de China también experimentaron un sólido aumento, de USD 2.069 millones en 2020 a USD 2.716 millones en 2022, pero disminuyeron en 2023 (cuadro A1. 2 y gráfico 1.1). La Unión Europea, el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu (Taipei Chino), el Japón y los Estados Unidos son las fuentes geográficas individuales más importantes de las importaciones de mercancías de China. Entre el 40% y el 50% de las importaciones proceden de Asia y Oceanía, aproximadamente el 17% de las Américas, aproximadamente el 14% de Europa, alrededor del 9% de Oriente Medio y aproximadamente el 5% de África.

Gráfico 1.1 Distribución geográfica del comercio de mercancías, 2020 y 2023

a Comunidad de Estados Independientes, incluidos determinados Estados asociados y antiguos Estados miembros.

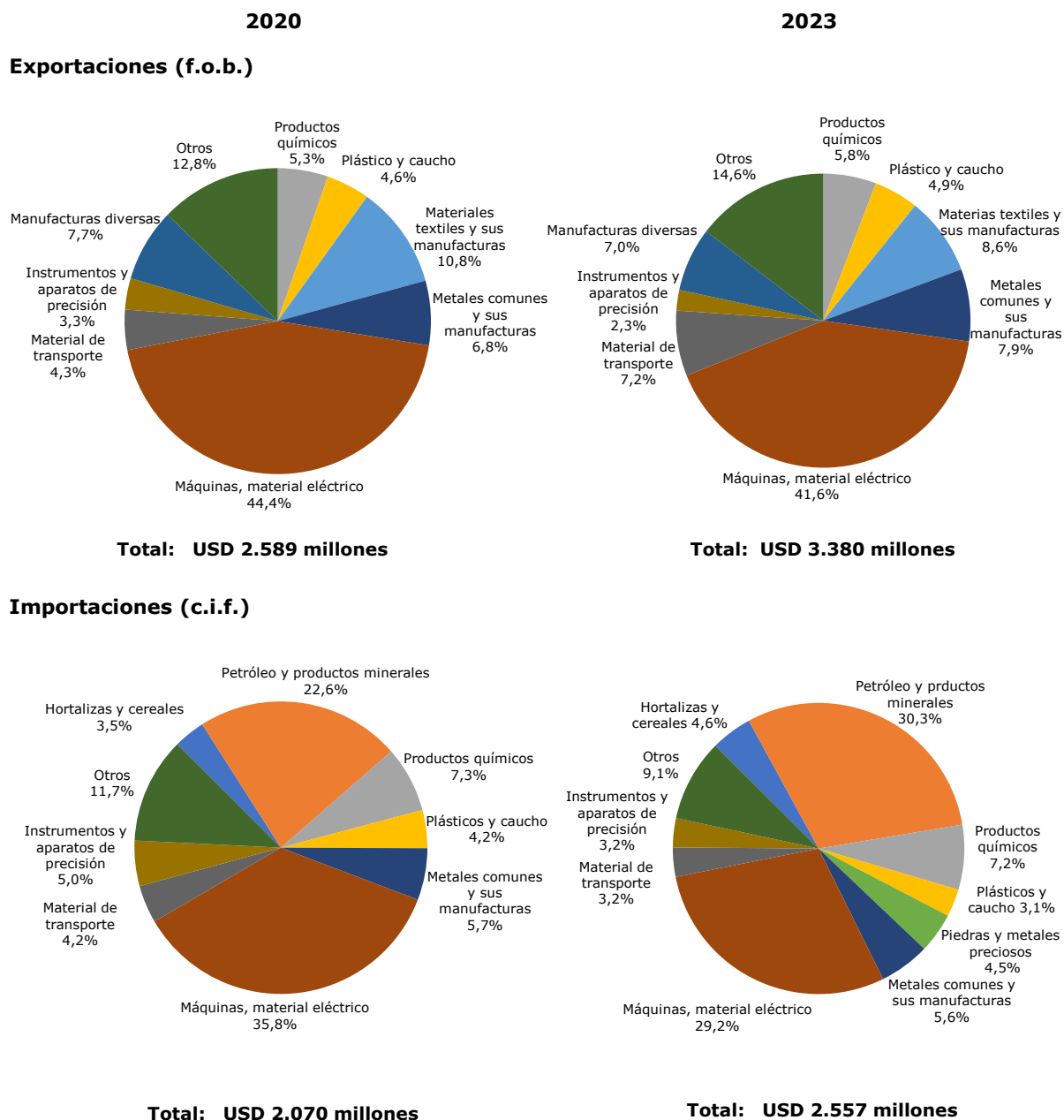
b Incluidos los bienes exportados de China y posteriormente reimportados a China.

Fuente: Cálculos de la Secretaría de la OMC a partir de la base de datos UN Comtrade e información de la Administración General de Aduanas de la República popular China (GACC)

1.29. La maquinaria y el equipo eléctrico siguen constituyendo una gran parte de las exportaciones de China, con una participación de más del 40% en cada año del período objeto de examen; la maquinaria eléctrica representó por sí sola más del 26% (cuadro A1. 3 y gráfico 1.2). La participación de las materias textiles y sus manufacturas continuó su tendencia descendente durante el período objeto de examen y representó menos del 9% en 2023. Los productos químicos mantuvieron su participación de entre el 5% y el 7%, mientras que los productos agropecuarios representaron únicamente una participación menor en las exportaciones de China.

1.30. La maquinaria y el equipo eléctrico también ocupan una participación importante en las importaciones totales de China, aunque su participación cayó a menos del 30% en 2023 (cuadro A1. 4 y gráfico 1.2). La participación de los productos minerales en las importaciones de mercancías de China aumentó del 23% en 2018 a más del 30% en 2023, lo que es atribuible principalmente a los aumentos del precio de los combustibles minerales y petróleo. Los productos agropecuarios representan menos del 10% de las importaciones.

Gráfico 1.2 Composición del comercio de mercancías por principales Secciones del SA, 2020 y 2023



Fuente: Cálculos de la Secretaría de la OMC a partir de la base de datos UN Comtrade e información de la GACC.

1.31. El crecimiento del comercio de bienes intermedios superó con creces el crecimiento del comercio de mercancías en general, lo que indica una mayor integración de China en las cadenas de suministro internacionales (cuadro A1. 5). Los bienes intermedios más importantes objeto de comercio internacional son las partes, accesorios y demás suministros industriales.

1.32. Las exportaciones de servicios aumentaron considerablemente, de USD 229.000 millones en 2020 a USD 369.000 millones en 2022, pero disminuyeron a USD 323.000 millones en 2023 (cuadro 1.4). El aumento fue especialmente notable en el caso de los servicios de transporte, debido al sólido crecimiento de la demanda y al incremento de los precios del sector. Las importaciones de servicios de China se contrajeron después de 2018, aunque a partir de un nivel elevado, y se recuperaron hasta un valor de USD 553.000 millones en 2023. El bajo nivel de turismo de salida, que comenzó antes de la pandemia, fue un factor importante de la disminución de las importaciones de servicios de China entre 2020 y 2022.

1.33. Los principales interlocutores comerciales de China para los servicios son los Estados Unidos; Hong Kong, China; el Japón; Singapur; y la República de Corea.²³

Cuadro 1.4 Comercio internacional de servicios, por sector, 2018-2023

	2018	2019	2020	2021	2022	2023
Crédito total (en miles de millones de USD)	233,6	244,4	228,9	339,4	369,0	323,2
	% del crédito total					
Servicios de manufactura en insumos físicos	7,5	6,4	5,8	4,2	3,9	4,0
Servicios de mantenimiento y reparación	3,1	4,2	3,4	2,3	2,2	3,1
Transporte	18,1	18,9	24,8	37,9	39,7	26,9
Viajes	17,3	14,7	4,3	3,3	2,6	4,9
Construcción	5,8	5,9	5,5	4,5	3,9	4,9
Servicios de seguros y pensiones	2,1	2,0	1,3	1,5	1,2	2,1
Servicios financieros	1,4	1,6	2,1	1,3	1,3	1,4
Cargos por el uso de la propiedad intelectual	2,4	2,7	3,7	3,5	3,6	3,4
Servicios de telecomunicaciones, informática e información	12,9	14,3	17,0	14,9	15,1	18,0
Otros servicios prestados a las empresas	28,3	28,3	30,5	25,6	25,6	30,4
Servicios personales, culturales y de esparcimiento	0,4	0,4	0,4	0,4	0,4	0,4
Bienes y servicios públicos	0,8	0,6	1,1	0,5	0,5	0,5
Débito total (en miles de millones de USD)	525,7	505,5	381,4	440,6	461,3	552,6
	% del débito total					
Servicios de manufactura en insumos físicos	0,1	0,1	0,1	0,2	0,2	0,2
Servicios de mantenimiento y reparación	0,5	0,7	0,9	0,9	0,9	1,1
Transporte	20,8	20,8	24,8	33,3	36,6	31,3
Viajes	52,7	50,4	34,4	24,8	24,9	35,6
Construcción	1,6	1,8	2,1	2,2	1,6	1,4
Servicios de seguros y pensiones	2,2	2,2	3,3	4,4	4,3	2,9
Servicios financieros	0,4	0,5	1,1	1,0	0,8	0,7
Cargos por el uso de la propiedad intelectual	6,8	6,8	9,9	10,6	9,6	7,7
Servicios de telecomunicaciones, informática e información	4,5	5,3	8,5	9,1	8,2	7,0
Otros servicios prestados a las empresas	8,9	9,9	13,2	12,0	11,4	10,9
Servicios personales, culturales y de esparcimiento	0,6	0,8	0,8	0,7	0,6	0,7
Bienes y servicios públicos	0,9	0,7	0,9	0,8	0,8	0,5

Fuente: Administración Estatal de Divisas. Consultado en: <http://www.safe.gov.cn/>.

1.3.2 Tendencias y estructura de la inversión extranjera directa

1.34. Las corrientes de inversión extranjera en China siguieron siendo importantes durante el período objeto de examen, y aumentaron a USD 189.000 millones en 2022; en 2023 se redujeron

²³ SAFE, *China Balance of Payment Report*, varios años; y Banco Mundial, *WITS Data, China Trade Balance, Exports and Imports by Country 2021*. Consultado en: <https://wits.worldbank.org/CountryProfile/en/Country/CHN/Year/2021/TradeFlow/EXPIMP/Partner/by-country>.

a USD 163.250 millones.²⁴ Hong Kong, China es, con diferencia, la principal fuente de IED en China (cuadro 1.5). Otras fuentes importantes son Singapur, las Islas Vírgenes Británicas, la República de Corea, el Japón y los Países Bajos. Según datos de la UNCTAD, el volumen de las entradas de IED en China ascendió a USD 3,8 billones en 2022, un aumento con respecto a USD 1,9 billones en 2020.²⁵

Cuadro 1.5 Entradas de inversión extranjera directa, por interlocutor, 2018-2022

(En miles de millones de USD)

	2018	2019	2020	2021	2022	
						% del total de IED
Total	134,97	138,13	144,37	173,48	189,13	
Hong Kong, China	89,92	96,30	105,79	131,76	137,24	72,6
Singapur	5,21	7,59	7,68	10,33	10,60	5,6
Islas Vírgenes Británicas	4,71	4,96	5,20	5,28	6,63	3,5
Corea, Rep. de	4,67	5,54	3,61	4,04	6,60	3,5
Japón	3,80	3,72	3,37	3,91	4,61	2,4
Alemania	3,67	1,66	1,35	1,68	2,57	1,4
Islas Caimán	4,07	2,56	2,77	2,46	2,42	1,3
Estados Unidos	2,69	2,69	2,30	2,47	2,21	1,2
Reino Unido	2,48	0,86	0,98	1,20	1,60	0,9
Francia	1,01	0,79	0,51	0,71	0,76	0,4
Taipei Chino	1,39	1,59	1,00	0,94	0,66	0,4
Países Bajos	1,27	1,80	2,55	1,11	..	..
Macao, China	1,28	1,74	2,20	2,19	..	..
Samoa	1,55	1,19	0,80	0,62	..	..
Suiza	0,60	0,64	0,65	0,73	..	..
Otros	6,64	4,52	3,57	4,05	13,24	7,0

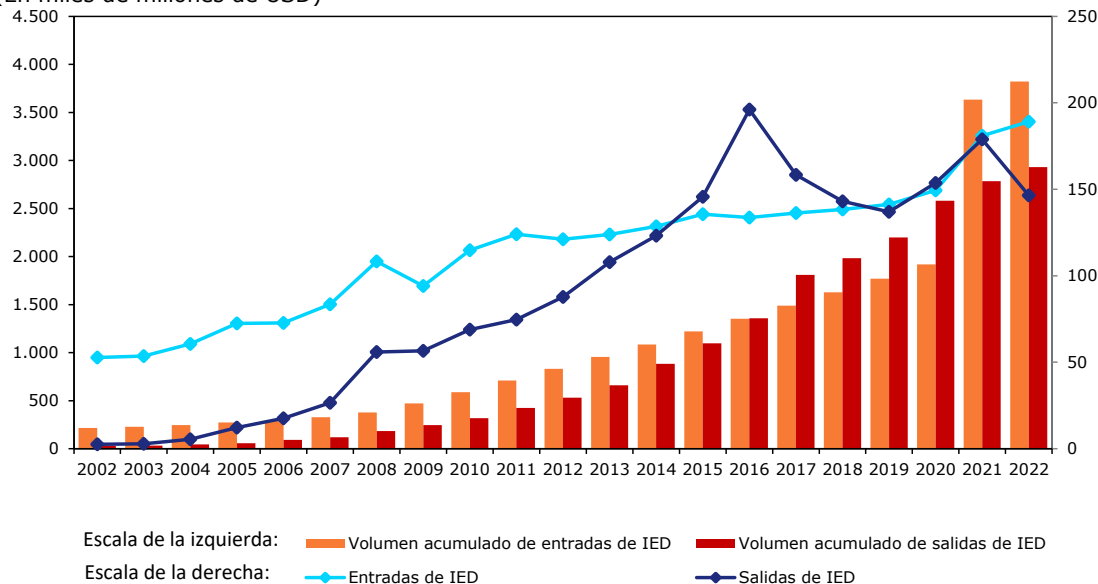
.. No disponible.

Nota: Las cifras se refieren al capital extranjero realmente utilizado.

Fuente: Cálculos de la Secretaría de la OMC a partir de datos de la Oficina Nacional de Estadística de China. Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

Gráfico 1.3 Inversión extranjera directa, 2002-2022

(En miles de millones de USD)



Fuente: UNCTAD (2023), *Informe sobre las inversiones en el mundo 2023*.

²⁴ Para 2023 solo se dispone de los datos relativos a las entradas totales de IED; no se dispone de datos desglosados por sector o por fuente de la IED.

²⁵ UNCTAD, *Foreign Direct Investment: Inward and Outward Flows and Stock, Annual*. Consultado en: <https://unctadstat.unctad.org/datacentre/dataviewer/US.FdiFlowsStock>.

1.35. El sector manufacturero sigue siendo el mayor receptor de IED en China, seguido de los servicios de arrendamiento financiero y servicios prestados a las empresas y los servicios de investigación científica y técnicos (cuadro 1.6). Sectores como la agricultura, la minería y la construcción tienen poca importancia para la IED.

Cuadro 1.6 Entradas de inversión extranjera directa, por sector, 2018-2022

(En miles de millones de USD)

	2018	2019	2020	2021	2022	
						% del total de IED
Total	134,97	138,13	144,37	173,48	189,13	100,0
Agricultura, silvicultura y pesca	0,80	0,56	0,58	0,83	1,24	0,6
Minería	1,23	2,19	0,66	2,58	1,54	0,81
Manufacturas	41,17	35,37	31,00	33,73	49,67	26,26
Electricidad, gas y agua	4,42	3,52	3,11	3,80	4,15	2,19
Construcción	1,49	1,22	1,82	2,27	1,79	0,95
Comercio mayorista y minorista	9,77	9,05	11,84	16,72	14,56	7,7
Transporte, almacenamiento y correos	4,73	4,53	5,00	5,33	5,32	2,81
Hoteles y servicios de comidas	0,90	0,97	0,82	1,26	0,52	0,28
Transmisión de información, informática y programas informáticos	11,66	14,68	16,43	20,10	23,87	12,62
Intermediación financiera	8,70	7,13	6,48	4,54	6,85	3,63
Servicios inmobiliarios	22,47	23,47	20,33	23,61	14,15	7,48
Servicios de arrendamiento financiero y servicios prestados a las empresas	18,87	22,07	26,56	33,09	33,06	17,48
Investigación científica, servicios técnicos y prospección geológica	6,81	11,17	17,94	22,75	30,18	15,96
Conservación del agua, medio ambiente y servicios públicos	0,47	0,52	0,57	1,32	0,71	0,38
Otros	1,46	1,67	1,22	1,56	1,52	0,8

Nota: Las cifras se refieren al capital extranjero realmente utilizado.

Fuente: Cálculos de la Secretaría de la OMC a partir de datos de la Oficina Nacional de Estadística de China. Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

1.36. Según las autoridades, los proyectos en el marco de la BRI siguen siendo receptores significativos de la inversión saliente de China. Los datos facilitados por las autoridades indican que, en 2023, las inversiones directas no financieras de empresas chinas en países de la BRI ascendieron aproximadamente a CNY 224.000 millones, un aumento del 28,4% con respecto al año anterior; en términos de proyectos contratados en el extranjero, el valor de nuevos proyectos contratados firmados por empresas chinas en los países de la BRI fue de aproximadamente CNY 1.600,7 millones, un aumento del 10,7%.²⁶ Una estimación muestra que el 34% del volumen total de IED de China se invierte en proyectos relacionados con la BRI; estas inversiones tienen una amplia distribución geográfica, con una concentración en Asia Central y Sudoriental, y normalmente se centran en infraestructura.²⁷

1.37. En términos de salidas de IED, China sigue siendo un importante inversor en el extranjero. Tras una significativa disminución de las salidas de IED china entre 2017 y 2019, hubo aumentos en 2020 y 2021, y otra reducción en 2022. Los principales destinos son Hong Kong, China; las Islas Vírgenes Británicas; Singapur; los Estados Unidos; e Indonesia (cuadro 1.7). Las salidas de IED se centraron en cuatro sectores fundamentales: servicios de arrendamiento financiero y servicios prestados a las empresas, comercio mayorista y minorista, manufacturas e intermediación financiera (cuadro 1.8). Las salidas de IED de China ascendieron a casi USD 3 billones en 2022, un aumento con respecto a USD 2,6 billones en 2020.

²⁶ MOFCOM. Consultado en: <http://fec.mofcom.gov.cn/article/fwydy/tjsj/202401/20240103469623.shtml>.

²⁷ Dezan Shira & Associates (2023), "China's Outbound Investment: Recent Developments, Opportunities, and Challenges", *China Briefing*, 13 de noviembre de 2023. Consultado en: <https://www.china-briefing.com/news/chinas-outbound-investment-odi-recent-developments-opportunities-and-challenges/>.

Cuadro 1.7 Salidas de inversión extranjera directa, por interlocutor, 2018-2022

(En miles de millones de USD)

	2018	2019	2020	2021	2022	
						% del total de IED
Total	143,04	136,91	153,71	178,82	163,12	100,0
Hong Kong, China	86,87	90,55	89,15	101,19	97,53	59,8
Islas Vírgenes Británicas	7,15	8,68	6,98	13,97	9,12	5,6
Singapur	5,47	-4,36	8,56	10,75	8,30	5,1
Estados Unidos	6,41	4,83	5,92	8,41	7,29	4,5
Indonesia	7,48	3,81	6,02	5,58	5,76	3,5
Australia	1,86	2,22	2,20	4,37	4,55	2,8
Viet Nam	1,47	1,46	1,38	2,71	3,25	2,0
Alemania	1,15	1,65	1,88	2,21	2,82	1,7
Tailandia	1,99	2,09	1,20	1,92	2,79	1,7
Reino Unido	1,03	1,10	0,92	1,90	2,13	1,3
Japón	0,74	1,37	1,88	1,49	1,98	1,2
Macao, China	1,56	0,47	0,21	0,93	1,85	1,1
Corea, Rep. de	0,81	0,59	0,83	0,88	1,70	1,0
Islas Caimán	0,47	0,67	0,49	0,76	1,61	1,0
Otros	16,70	20,81	25,86	20,41	12,44	7,6

Fuente: Cálculos de la Secretaría de la OMC a partir de datos de la Oficina Nacional de Estadística de China.
Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

Cuadro 1.8 Salidas de inversión extranjera directa, por sector, 2018-2022

(En miles de millones de USD)

	2018	2019	2020	2021	2022	
						% del total de IED
Total	143,04	136,91	153,71	178,82	163,12	100,0
Servicios de arrendamiento financiero y servicios prestados a las empresas	50,78	41,88	38,73	49,36	43,48	26,7
Manufacturas	19,11	20,24	25,84	26,87	27,15	16,6
Intermediación financiera	21,72	19,95	19,66	26,80	22,12	13,6
Comercio mayorista y minorista	12,24	19,47	23,00	28,15	27,17	13,0
Minería	4,63	5,13	6,13	8,41	15,1	9,3
Transporte, almacenamiento y correos	5,16	3,88	6,23	12,23	15,04	9,2
Electricidad, gas y agua	4,70	3,87	5,77	4,39	5,45	3,3
Investigación científica, servicios técnicos y prospección geológica	3,80	3,43	3,73	5,07	4,82	3,0
Otros	4,49	3,07	0,79	2,26	2,74	1,68
Servicios inmobiliarios	3,07	3,42	5,19	4,10	2,21	1,4
Transmisión de información, informática y programas informáticos	5,63	5,48	9,19	5,14	1,69	1,0
Construcción	3,62	3,78	8,09	4,62	1,45	0,9
Agricultura, silvicultura y pesca	2,56	2,44	1,08	0,93	0,51	0,3
Conservación del agua, medio ambiente y servicios públicos	0,18	0,27	0,16	0,22	0,18	0,1
Hoteles y servicios de comidas	1,35	0,60	0,12	0,27	0,01	..

.. No disponible.

Fuente: Cálculos de la Secretaría de la OMC a partir de datos de la Oficina Nacional de Estadística de China.
Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

2 RÉGIMENES DE COMERCIO E INVERSIÓN

2.1 Marco general

2.1. El marco jurídico e institucional general de China apenas ha cambiado durante el período objeto de examen. En la Constitución de la República Popular China se establecen las funciones y responsabilidades del Congreso Nacional del Pueblo y su Comité Permanente (poder legislativo), el Consejo de Estado (órgano ejecutivo y órgano supremo de administración del Estado) y el poder judicial, constituido por el Tribunal Supremo del Pueblo, los tribunales populares locales en los diferentes niveles y los tribunales especializados. También se establece que los congresos populares y los gobiernos populares locales ejercerán y aplicarán el poder estatal en el ámbito local.

2.2. Los proyectos de ley y de reglamento se publican en línea en chino durante un mínimo de 30 días para que el público pueda formular observaciones, salvo que el Consejo de Estado decida que se debe mantener su carácter confidencial. En la Gaceta de Comercio Exterior y Cooperación Económica de China, editada por el Ministerio de Comercio (MOFCOM), se publican las leyes, los reglamentos y las normas de China relacionados con el comercio.¹ En diversas ocasiones China también publica las políticas adoptadas en el sitio web del Gobierno, entre otros lugares.²

2.3. Las decisiones administrativas pueden ser objeto de recurso, salvo que se relacionen con cuestiones comerciales que afecten a la seguridad nacional. Los comerciantes pueden solicitar una revisión judicial de asuntos comerciales ante los tribunales pertinentes. Cuando se realizó el examen anterior, las autoridades indicaron que se habían establecido varias comisiones de reexamen administrativo independientes con carácter experimental. El 1 de septiembre de 2023, se promulgó la Ley de Reexamen Administrativo, que entró en vigor el 1 de enero de 2024. Se prevé que en virtud de esta ley se dispondrá el establecimiento de comités de reexamen administrativo integrados por representantes de los departamentos gubernamentales pertinentes, expertos, académicos y otros individuos, entre otras cosas. Estos comités ofrecerán asesoramiento para la gestión de los casos de reexamen administrativo y emitirán opiniones sobre cuestiones conexas. Las autoridades han indicado que los órganos de reexamen administrativo del Consejo de Estado están adoptando disposiciones respecto de la composición de los comités y sus facultades. Las autoridades han señalado que, en la próxima etapa, se establecerán comités de reexamen administrativo a nivel de los gobiernos locales.

2.4. La principal novedad que se produjo en relación con el marco jurídico general de China durante el período objeto de examen fue la puesta en marcha del programa de reforma judicial. El quinto Programa Quinquenal de Reforma de los Tribunales Populares (2019-2023) sigue orientando diversas reformas judiciales. Este documento estratégico se centra, entre otras cosas, en las medidas que se han de adoptar para mejorar el entorno empresarial de China mediante una aplicación coherente y previsible de los principios jurídicos pertinentes.³ En el marco de este plan, las autoridades prevén i) establecer mecanismos de apoyo para salvaguardar los derechos de propiedad y ii) reforzar los sistemas de observancia, en particular en los casos que involucren a empresas. El quinto Programa Quinquenal de Reforma Judicial de China incluye el establecimiento de tribunales especializados en asuntos de propiedad intelectual, así como cuestiones marítimas y financieras. Estos tribunales especializados tienen por objeto promover la especialización funcional y mejorar la aplicación de los principios jurídicos en el contexto del desarrollo económico y social. Cuando se realizó el examen anterior, ya se había avanzado considerablemente en la especialización en determinadas cuestiones⁴, como las relacionadas con el comercio electrónico, al haberse

¹ Ministry of Commerce (MOFCOM), *China Foreign Trade and Economic Cooperation Gazette*. Consultado en: <http://english.mofcom.gov.cn/article/policyrelease/gazette/>.

² Consejo de Estado, información pública del Gobierno. Consultado en: <https://www.gov.cn/zhengce/xxgk/>; y Boletín del Consejo de Estado. Consultado en: https://www.gov.cn/qongbao/2024/issue_11206/.

³ Por ejemplo, Chemin constató que las reformas judiciales pueden mejorar la productividad de las empresas y contribuir al desarrollo económico general. M. Chemin (2020), "Judicial Efficiency and Firm Productivity: Evidence from a World Database of Judicial Reforms", *The Review of Economics and Statistics*, vol. 102, N°1, páginas 49-64. Consultado en: <https://direct.mit.edu/rest/article-abstract/102/1/49/58536/Judicial-Efficiency-and-Firm-Productivity-Evidence?redirectedFrom=fulltext>.

⁴ Desde 2019, se han establecido tribunales de propiedad intelectual en Beijing, Shanghai, Guangzhou y el Puerto Franco de Hainan.

establecido tribunales de Internet en Hangzhou, Beijing y Guangzhou.⁵ Las autoridades han indicado que, al promover mecanismos de solución de diferencias especializados y herramientas de apoyo inteligentes, los tribunales de Internet han contribuido significativamente a mejorar la eficiencia y reducir el costo de los litigios. Por ejemplo, a finales de 2023 las audiencias duraban un promedio de 34,13 minutos y los procesos judiciales se completaban en 64,78 días, lo que permitía ahorrar una cuarta parte del tiempo en comparación con los litigios que no se desarrollaban en línea. Las autoridades también han señalado que se está trabajando para racionalizar aún más el funcionamiento de los tribunales de Internet, con miras a proporcionar una mayor protección judicial para el desarrollo de la economía digital y la gobernanza del ciberespacio.

2.5. Como parte de los esfuerzos realizados por las autoridades para promover el derecho mercantil internacional, el Tribunal de Comercio Internacional de China (CICC), establecido en 2018, resuelve los casos relativos al comercio internacional. El Primer Tribunal de Comercio Internacional se sitúa en Shenzhen (provincia de Guangdong), y el Segundo Tribunal de Comercio Internacional se ubica en Xi'an (provincia de Shaanxi). El CICC examina los casos relativos al comercio internacional admitidos a trámite en primera instancia en los que las partes optan por someter el asunto al Tribunal Supremo del Pueblo y cuya cuantía supera CNY 300 millones, los casos relativos al comercio internacional admitidos a trámite en primera instancia que tienen importantes repercusiones a nivel nacional y los casos relativos al comercio internacional que, a juicio del Tribunal Supremo del Pueblo, han de ser resueltos por los tribunales de comercio internacional. Según las autoridades, en febrero de 2024 los tribunales habían aceptado 34 casos, cuyas partes involucraban a 14 entidades. Las diferencias se referían a cuestiones relacionadas con la distribución de las utilidades de las empresas, la determinación de la condición de los accionistas, el establecimiento de responsabilidad por el menoscabo de intereses empresariales y la transferencia de capital.

2.6. Por lo que se refiere al arbitraje, las autoridades han indicado que se están realizando esfuerzos por promover la puesta en marcha experimental del Centro de Arbitraje Comercial Internacional, centrado en establecer instituciones de arbitraje internacional plenamente operativas. Se ha establecido un mecanismo para que el CICC y las instituciones de mediación y arbitraje puedan funcionar de manera integrada.⁶ El objetivo es que algunas diferencias se puedan resolver mediante métodos alternativos, cuando proceda, en lugar de recurrir a litigios.

2.7. En cuanto al marco jurídico e institucional relacionado con la gestión empresarial, la Ley de Sociedades de China establece que las empresas que emplean a miembros del Partido Comunista integrarán a organizaciones del Partido en su estructura.⁷ En septiembre de 2020, el Partido y el Consejo de Estado emitieron conjuntamente un dictamen destinado a mejorar los intercambios institucionales informales entre el Partido y el sector privado.⁸ Según las autoridades, el objetivo de esta iniciativa era alentar a las empresas del sector privado a adoptar un "sistema empresarial moderno" que se ajustara a las "características chinas" únicas y gestionar, servir y unir a los miembros del Partido, orientándolos para que respeten las leyes, los reglamentos y el código de conducta de las empresas. En 2016 se utilizó un enfoque similar con respecto a las empresas de propiedad estatal, en el marco de lo cual las autoridades chinas señalaron que las "características chinas" entrañaban la integración de la dirección del Partido en todas las facetas de la gestión de las empresas de propiedad estatal y una especificación de la condición jurídica de las organizaciones del Partido en la estructura de gestión de dichas empresas.⁹

2.8. Las autoridades señalan que, para promover una mayor interacción entre el Partido y el sector privado, se ha de promover la actividad empresarial y se ha de asesorar a las empresas privadas sobre cómo lograr un desarrollo estable en medio de los riesgos que van surgiendo en el ámbito

⁵ Los tribunales de Internet se encargan principalmente de casos relacionados con los derechos en materia de datos, las transacciones en línea, la gestión de plataformas, la utilización de algoritmos y la protección de la información personal en Internet.

⁶ Hasta la fecha, se han adherido a ese mecanismo 10 organizaciones de arbitraje comercial internacional y organizaciones de mediación comercial internacional.

⁷ "En una empresa, se establecerá una organización del Partido Comunista de China para llevar a cabo las actividades del Partido de conformidad con la carta del Partido Comunista de China. La empresa proveerá las condiciones necesarias para las actividades de la organización del Partido". (artículo 19 de Ley de Sociedades).

⁸ State Council, "Opinions on Strengthening the United Front Work of the Private Economy in the New Era". Consultado en: https://www.gov.cn/zhengce/2020-09/15/content_5543685.htm.

⁹ Discurso del Presidente en la Conferencia Nacional sobre el Desarrollo del Partido en las Empresas de Propiedad Estatal, 10 de octubre de 2016. Consultado en https://www.sohu.com/a/307762296_364628.

internacional. También señalan que para establecer la "economía de mercado socialista" deseada, es fundamental que el mercado funcione de manera fluida y de acuerdo a normas coherentes. En este sentido, durante el período objeto de examen China aplicó medidas para mejorar el funcionamiento de su mercado nacional. En el marco de estas medidas se abordaron las discrepancias que había en los marcos reglamentarios de comercio e inversión de las diversas provincias del país. Como se puso de relieve en el examen anterior, esta situación dio lugar a que algunas autoridades locales adoptaran ciertas medidas proteccionistas a nivel provincial con el fin de favorecer el comercio y las inversiones locales con respecto a otras provincias. Según las autoridades, durante el período objeto de examen, la Comisión Nacional de Desarrollo y Reforma (NDRC) estableció un sistema para recopilar y notificar casos de infracción de la Lista Negativa para el acceso a los mercados, con miras a mantener la coherencia en el mercado nacional.

2.9. En 2022 se emitió el Dictamen sobre la aceleración del establecimiento de un mercado unificado nacional, que tenía por objeto "poner fin al proteccionismo local y las barreras regionales" y eliminar los obstáculos administrativos entre las provincias de China.¹⁰ Las autoridades han señalado que, en consonancia con este objetivo, en 2022 las administraciones y departamentos locales revisaron más de 615.000 medidas de política, entre las que había 163.700 medidas nuevas que se examinaron antes de su adopción, examinaron 452.000 medidas existentes, y derogaron, revisaron y corrigieron más de 20.000 medidas que eran incompatibles con las leyes y reglamentos estatales pertinentes.

2.10. La política de competencia de China también se ha ajustado para tener en cuenta el imperativo de "unificar el mercado" (sección 3.3.4). Se revisaron las Disposiciones Provisionales sobre la Prohibición de Eliminar o Restringir la Competencia mediante un Abuso de las Facultades Administrativas y se emitieron las Disposiciones sobre la Prohibición de Eliminar o Restringir la Competencia mediante un Abuso de las Facultades Administrativas (Anuncio N° 64 de la Administración Estatal de Reglamentación del Mercado, de 2023), que entraron en vigor el 15 de abril de 2023.¹¹ En estas se aclaran en mayor medida las prácticas de abuso de las facultades administrativas que impiden la competencia, como la coacción de operadores no locales respecto de inversiones locales o el establecimiento de sucursales y la exclusión de determinados operadores de los procesos de licitación o una limitación de su capacidad a estos efectos.

2.11. Las autoridades señalan que los departamentos encargados de regular la competencia investigan los abusos de las facultades administrativas que restringen la competencia, y también han realizado una rectificación a nivel nacional de los derechos y las cargas que se habían aplicado indebidamente a determinadas empresas. Las autoridades consideran que estas medidas han reducido los costos de las transacciones en la economía nacional y han creado un entorno propicio para las pequeñas y medianas empresas.

2.2 Formulación y objetivos de la política comercial

2.12. El marco institucional que rige la formulación de la política comercial de China no cambió durante el período objeto de examen. La NDRC y el MOFCOM son los principales órganos encargados de gestionar la elaboración de las medidas comerciales y los reglamentos conexos. La NDRC coordina las tareas relacionadas con la planificación económica de China, y define en particular los objetivos y las reformas necesarias en el marco de los Planes Quinquenales de Desarrollo Económico y Social Nacional, y el MOFCOM gestiona principalmente la coordinación y la promulgación de políticas y reglamentos relativos al comercio, la inversión y la cooperación económica.

2.13. También contribuyen a formular y ejecutar la política comercial varios otros órganos, en particular en el ámbito de la agricultura, la sostenibilidad ambiental, las telecomunicaciones, las finanzas, la industria y la tecnología y el transporte.

2.14. Las autoridades son conscientes de que el comercio puede contribuir de manera fundamental a mejorar el nivel de vida de la población. Señalan que es fundamental que China siga fomentando

¹⁰ State Council, "The Opinions of the Central Committee of the Communist Party of China and the State Council on Accelerating the Construction of a National Unified Market". Consultado en: https://www.gov.cn/xinwen/2022-04/10/content_5684388.htm.

¹¹ Decreto N° 64 de la Administración Estatal de Reglamentación del Mercado, de 10 de marzo de 2023. Consultado en: https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_b96953818d5a4737a60527c675c1d1cb.html.

una amplia apertura mediante un aumento del comercio de bienes y servicios, un desarrollo del comercio digital, una intensificación de la colaboración económica y comercial a nivel internacional y una consolidación de su marco de gestión de riesgos. Además, abogan por una evolución paralela de la demanda interna y extranjera, así como de las importaciones y exportaciones, para contribuir a lograr un desarrollo continuo.

2.15. La orientación estratégica de las políticas de China en materia de comercio e inversión se define principalmente en el 14º Plan Quinquenal de Desarrollo Económico y Social Nacional (2021-2025), adoptado por el Congreso Nacional del Pueblo el 11 de marzo de 2021. Con arreglo a la estrategia, China se propone promover una mayor apertura de su mercado y crear asociaciones comerciales beneficiosas para todas las partes. Las autoridades consideran que China seguirá flexibilizando su marco de comercio e inversión, como demuestra una mayor liberalización del acceso a los mercados para el comercio y la inversión mediante la reducción del número de elementos que integran la lista negativa de inversiones extranjeras, entre otras cosas (sección 2.4.1).

2.16. La liberalización gradual del marco de inversión de China también forma parte de la intención del país de promover la participación extranjera en su economía. Durante este 14º bloque quinquenal, China procurará adoptar medidas graduales para reducir las restricciones a la inversión extranjera en todos los sectores de la economía, centrándose en especial en los servicios. Se estima que la plena aplicación de la Ley de Inversión Extranjera permitirá establecer un entorno de mercado justo e imparcial al reforzar las disposiciones sobre trato nacional y mejorar la protección de los derechos de propiedad intelectual.

2.17. En su visión estratégica, las autoridades recuerdan que el creciente proteccionismo y unilateralismo afectan a la economía mundial, y que diversas fuentes de tensión siguen poniendo a prueba las cadenas de suministro mundiales. En respuesta, estas prevén seguir apoyando el sistema multilateral de comercio y participar activamente en las reformas de la OMC con miras a promover un sistema de gobernanza económica mundial razonable y más equitativo.¹²

2.18. Las zonas de desarrollo de China, integradas por las zonas económicas especiales, las zonas de desarrollo económico y tecnológico, las zonas de desarrollo industrial de alta tecnología y las zonas francas experimentales, siguen desempeñando una función fundamental, puesto que obran como campo de pruebas para la liberalización del comercio y la inversión a nivel nacional y la simplificación de los reglamentos aplicables. En estas zonas se aplican políticas preferenciales para facilitar la importación, manipulación, fabricación y exportación de bienes y servicios. Estas políticas incluyen incentivos fiscales, la libre circulación y el intercambio de capitales y procedimientos acelerados para las inversiones.

2.19. Con el fin de alcanzar sus objetivos de lograr su nivel máximo de emisiones de dióxido de carbono antes de 2030 y la neutralidad en emisiones de carbono antes de 2060, China está aplicando activamente diversas medidas, como la optimización de sus fuentes de energía a través de varias medidas relacionadas con el comercio (impuestos, subvenciones y diversos reglamentos) y el establecimiento de un mercado para el comercio de derechos de emisión de carbono.

2.20. Las autoridades indican que su objetivo es elaborar una estrategia de desarrollo con bajas emisiones de carbono a largo plazo a nivel nacional, sectorial y local, y adoptar medidas específicas en esferas como la financiación de los créditos de carbono, a fin de que China esté a la altura de las responsabilidades que le incumben como país que contribuye de manera importante a las soluciones adoptadas a nivel mundial para hacer frente al cambio climático. Entre los esfuerzos concretos que se han realizado en los últimos años cabe destacar las iniciativas gubernamentales (incluidos los programas de formación) destinadas a alentar a diversas entidades a formular normas para la fabricación de productos ecológicos y con bajas emisiones de carbono, y a mejorar la sensibilización y capacidad de las empresas para proseguir un desarrollo ecológico y con bajas emisiones de carbono. Durante el período objeto de examen, las autoridades formularon normas nacionales y aplicaron un sistema nacional de certificación de productos ecológicos para los tableros de madera y los suelos de madera; las pinturas; los artículos sanitarios de cerámica; los productos de vidrio para acristalamiento; los sistemas de calentamiento solar de agua; los muebles; el aislamiento térmico; los productos de impermeabilización y sellado; las baldosas de cerámica; los productos de

¹² Chinese People's Institute for Foreign Affairs, *The 14th Five-Year Plan: China Advances High-Level Opening-Up and Brings New Opportunities for the World*. Consultado en: <https://www.cpifa.org/en/cms/book/333>.

madera y plástico; los productos textiles; los productos de plástico; el papel y los productos de papel; los productos para lavar ropa; los embalajes utilizados para envíos urgentes; los refrigeradores, los acondicionadores de aire y las lavadoras; los neumáticos; los equipamientos para baño y cocina; y los aparatos de gas de uso doméstico.

2.21. Según las autoridades, en febrero de 2024, el Gobierno había habilitado a 90 organismos de certificación para que llevaran a cabo las certificaciones de productos ecológicos y había expedido 26.000 certificados de productos ecológicos correspondientes a más de 6.000 empresas certificadas. En 2025 se prevé establecer un sistema de certificación a mayor escala, con miras a apoyar los objetivos generales de China en lo que respecta al logro de un nivel máximo de carbono y la neutralidad en emisiones de carbono.

2.3 Acuerdos y arreglos comerciales

2.3.1 OMC

2.22. China considera que la OMC y el sistema multilateral de comercio son fundamentales para el comercio y el crecimiento económico. Se ha reconocido ampliamente que, desde que China se adhirió a la OMC en 2001, su economía se ha beneficiado en gran medida de la apertura del comercio en el marco de la OMC y de la previsibilidad que ofrece el sistema multilateral de comercio.¹³ China sigue desempeñando un papel importante en las negociaciones comerciales y contribuye de manera significativa al sistema multilateral de comercio.

2.23. Dado que China es una de las principales economías comerciales del mundo, algunos Miembros de la OMC esperan que "asum[a] más responsabilidad en el respeto y la defensa de los principios de la OMC, en consonancia con su peso comercial".¹⁴ Las autoridades afirman que la OMC apoya de manera crucial el multilateralismo y constituye una plataforma importante para la gobernanza económica mundial. Además, ponen de relieve los esfuerzos que han realizado recientemente para examinar la reforma de la OMC, y subrayan el compromiso de China con la apertura, así como su determinación a defender el sistema multilateral de comercio centrado en la OMC.

2.24. China participa en los debates sobre la reforma de la OMC y en los últimos años ha presentado documentos de posición y propuestas al respecto.¹⁵ China se ha adherido al procedimiento arbitral multipartito de apelación provisional (PAMAP), el mecanismo alternativo que se ha establecido para resolver las diferencias en la OMC respecto de las cuales un Miembro haya planteado una apelación en ausencia de un Órgano de Apelación de la OMC activo. Durante el período objeto de examen, China también ha colaborado con otros Miembros para hacer avanzar los debates sobre la facilitación de las inversiones para el desarrollo, el comercio electrónico y la reglamentación nacional en el ámbito de los servicios. China participa en los diálogos informales sobre la contaminación producida por los plásticos y el comercio de plásticos ambientalmente sostenible, el empoderamiento económico de las mujeres, y el comercio y la sostenibilidad ambiental.

2.25. Durante el período objeto de examen, China presentó varias notificaciones a la OMC (Cuadro A2. 1). Por lo que se refiere a las diferencias, desde el 13 de abril de 2021 China ha participado en cinco casos de solución de diferencias como reclamante, y en seis como demandado (cuadro A2. 2).

2.3.2 Acuerdos regionales y preferenciales

2.3.2.1 Acuerdos recíprocos

2.26. Las autoridades consideran que los acuerdos comerciales regionales (ACR) complementan de una manera valiosa el sistema multilateral de comercio y permiten crear una red mundial de zonas de libre comercio de alto nivel que contribuyen a establecer una economía mundial abierta. Los

¹³ Véanse, por ejemplo, el documento [WT/TPR/S/230](#) de la OMC, de 2 de junio 2010; y Foro Económico Mundial (2015), *How Did China's WTO Entry Affect Its Companies?* Consultado en: <https://www.weforum.org/agenda/2015/06/how-did-chinas-wto-entry-affect-its-companies/>.

¹⁴ OMC, Observaciones formuladas por el Presidente a modo de conclusión, examen de las políticas comerciales de China, 22 de octubre de 2021. Consultado en: https://www.wto.org/spanish/tratop_s/tptr_s/tp515_crc_s.htm.

¹⁵ Documento [WT/GC/W/773](#) de la OMC, de 13 de mayo de 2019.

acuerdos tienen un alcance cada vez más amplio, principalmente en lo que respecta a temas relacionados con el comercio, lo que permite a China profundizar aún más la cooperación comercial y la convergencia normativa con los interlocutores comerciales. Al negociar algunos de sus acuerdos comerciales, China contrae compromisos respecto de paquetes limitados, por ejemplo, la liberalización del comercio de mercancías en la etapa inicial, que posteriormente se profundizan y amplían para abarcar esferas como los servicios, la política en materia de competencia, los derechos de propiedad intelectual y la inversión.

2.27. China aplica su arancel medio preferencial más bajo en el marco del Acuerdo para Establecer una Asociación Económica más Estrecha con Hong Kong, China, y Macao, China (cuadro 3.3).

2.28. A finales de 2023, China había firmado 22 ACR con 29 asociados.¹⁶ El más reciente se firmó el 17 de octubre de 2023 entre China y Serbia. Una vez que se aplique plenamente, el acuerdo reducirá a cero los aranceles aplicados a alrededor del 90% de las mercancías importadas en cada país, a saber, 10.412 productos serbios (líneas arancelarias) y 8.930 productos chinos. Se prevé un plazo de liberalización de 10 años para la mayoría de los productos, y de 15 años para los demás. El Acuerdo aún no ha entrado en vigor.

2.29. En mayo de 2023 China firmó un acuerdo de libre comercio con el Ecuador, cuyas negociaciones se habían puesto en marcha en febrero de 2022. Si bien el acuerdo prevé principalmente una reducción de los aranceles, también incluye disposiciones sobre normas de origen, procedimientos aduaneros y facilitación del comercio, medidas comerciales correctivas, medidas sanitarias y fitosanitarias, obstáculos técnicos al comercio, la cooperación en materia de inversiones, la promoción del comercio electrónico, la competencia, la transparencia la solución de diferencias y la cooperación económica. En virtud del acuerdo, China y el Ecuador eliminarán los aranceles sobre el 90% de sus productos, y el 60% se eliminarán inmediatamente después de que el ALC entre en vigor. China y el Ecuador han puesto en marcha sus respectivos procedimientos internos para la ratificación y aplicación del acuerdo. Se prevé un plazo de liberalización de 10 años para la mayoría de los productos, y de 15 a 20 años para los demás.

2.30. El 12 de julio de 2022, las autoridades chinas y nicaragüenses firmaron un acuerdo sobre resultados iniciales como prelude de un ALC. El acuerdo entró en vigor en mayo de 2023 y las autoridades anunciaron conjuntamente que iniciarían las negociaciones para concluir un ACR entre ambos países. También firmaron un Memorando de Entendimiento sobre el Establecimiento de una Comisión Mixta de Cooperación en Asuntos Económicos, Comerciales y de Inversiones entre China y Nicaragua, por el que se estableció oficialmente un mecanismo intergubernamental bilateral de cooperación económica y comercio. A partir del 1 de mayo de 2023, algunos productos procedentes de Nicaragua pudieron entrar en China libres de aranceles en el marco del acuerdo sobre resultados iniciales. En julio de 2022 se iniciaron negociaciones formales para la conclusión de un ACR, y el 31 de agosto de 2023 se firmó un acuerdo que entró en vigor el 1 de enero de 2024. Alrededor del 60% de las mercancías objeto de comercio bilateral pasan a estar exentas de aranceles desde la entrada en vigor del acuerdo, y los aranceles aplicados a más del 95% de los productos se reducirán gradualmente a cero (la mayoría de las líneas se liberalizarán en un plazo de 10 años, y las demás en un período de 15 años).¹⁷ En el marco del acuerdo, China procederá por primera vez a abrir su mercado al comercio transfronterizo de servicios y la inversión con sujeción a una lista negativa.

2.31. Durante el período objeto de examen anterior, China firmó un ALC con Camboya y se adhirió a la Asociación Económica Amplia Regional (RCEP), y ambos acuerdos entraron en vigor en enero de 2022.¹⁸ En enero de 2021 entró en vigor el ALC entre China y Mauricio. Además, el 26 de enero de 2021 se firmó el Protocolo de Actualización del Acuerdo de Libre Comercio entre China y Nueva Zelanda, que entró en vigor el 7 de abril de 2022.

¹⁶ MOFCOM, China FTA Network. Consultado en: <http://fta.mofcom.gov.cn/english/index.shtml>.

¹⁷ MOFCOM, China FTA Network: China-Nicaragua FTA. Consultado en: <http://fta.mofcom.gov.cn/topic/ennicaragua.shtml>; y State Council Information Office of the People's Republic of China (2023), "China, Nicaragua Ink Free Trade Deal to Boost Economic Ties", 31 de agosto de 2023. Consultado en: http://english.scio.gov.cn/pressroom/2023-08/31/content_110366496.htm.

¹⁸ Documento WT/TPR/S/415 de la OMC, de 22 de octubre de 2021.

2.32. Según las autoridades, se están celebrando debates con miras a firmar o actualizar los ALC concluidos con Belarús, Honduras, el Consejo de Cooperación del Golfo, Islandia, Israel, la República de Corea, la República de Moldova, Noruega, Palestina, Panamá, el Perú y Sri Lanka.

2.3.2.2 Preferencias unilaterales

2.33. China mantiene un régimen de preferencias arancelarias para los países menos adelantados (PMA), cuyo alcance se ha ampliado recientemente de conformidad con acuerdos diplomáticos suscritos con países específicos. En noviembre de 2021, el Presidente de China indicó en el discurso introductorio que pronunció en la octava Conferencia Ministerial del Foro de Cooperación entre China y África que China ampliaría el alcance de los productos abarcados por el régimen de franquicia arancelaria aplicable a las exportaciones a China procedentes de 44 PMA que habían establecido relaciones diplomáticas con China.

2.34. La Comisión Arancelaria del Consejo de Estado ha emitido los instrumentos pertinentes para poner en funcionamiento el régimen de franquicia arancelaria actualizado, que ahora abarca el 98% de las líneas arancelarias correspondientes a productos originarios de 34 PMA que han firmado acuerdos bilaterales con China. Entre estos instrumentos figuran la lista de productos que se benefician del trato preferencial y las normas de origen aplicables para el trato preferencial.

2.35. El régimen de trato arancelario preferencial se empezó a aplicar el 1 de septiembre de 2022 para Bangladesh, Camboya, el Chad, la República Centroafricana, Djibouti, Eritrea, Guinea, Kiribati, la República Democrática Popular Lao, Mozambique, Nepal, Rwanda, las Islas Salomón, el Sudán, el Togo y Vanuatu; el 1 de diciembre de 2022 para el Afganistán, Benin, Burkina Faso, Guinea-Bissau, Lesotho, Malawi, Santo Tomé y Príncipe, Tanzania, Uganda y Zambia; y el 1 de marzo de 2023 para Angola, Burundi, la República Democrática del Congo, Etiopía, Gambia, Malí, Madagascar, Mauritania y Níger.

2.36. La Exposición Internacional de Importaciones de China (CIIE), puesta en marcha en Shanghái en 2018, es una plataforma importante que tiene por objeto impulsar las importaciones en China.¹⁹ La CIIE, organizada por el MOFCOM y el gobierno municipal de Shanghái, se centra en facilitar la adquisición de mercancías importadas por las empresas chinas. Además, las autoridades chinas han aprovechado la CIIE para ofrecer a las empresas de los PMA la posibilidad de explorar oportunidades de entrar o ampliar su presencia en el mercado chino. Esta iniciativa les permite entrar en contacto con posibles inversores y facilita la colaboración empresarial.

2.37. Teniendo en cuenta que Vanuatu se graduó de la categoría de PMA en diciembre de 2020, el 1 de enero de 2024 se suprimió al país de la lista de PMA a los que China concedía preferencias unilaterales.

2.3.3 Otros acuerdos y arreglos

2.38. Las autoridades han señalado que tienen la intención de adherirse al Tratado Integral y Progresista de Asociación Transpacífico y al Acuerdo de Asociación sobre Economía Digital. También señalan que, en el contexto de la ASEAN, en 2022 se completó un estudio conjunto de viabilidad para seguir mejorando el Acuerdo de Libre Comercio entre China y la ASEAN (CAFTA 3.0). En 2022 se iniciaron las negociaciones orientadas a mejorar dicho acuerdo, en las cuales se abarcaron diversos temas, como la economía digital, la economía ecológica y las cadenas de suministro.

2.4 Régimen de inversión

2.4.1 Marco reglamentario y acceso a los mercados

2.39. Durante el período objeto de examen, los obstáculos a las inversiones extranjeras siguieron reduciéndose significativamente tras la promulgación de la Ley de Inversión Extranjera en 2020. En principio, la Ley protege a los inversores extranjeros frente a la expropiación, las restricciones a las remesas transfronterizas, la infracción de los DPI y la transferencia forzosa de tecnología.

¹⁹ CIIE, *About Us*. Consultado en: <https://www.ciie.org/zh/en/AboutUs/Inten/>.

2.40. Puede haber más margen para mejorar el entorno de inversión de China a fin de atraer inversión extranjera. En determinados sectores sigue habiendo restricciones y/o requisitos en materia de propiedad en el sentido de que hay que establecer empresas conjuntas con entidades locales. Las autoridades señalan que la Ley de Inversión Extranjera ha establecido un sistema de trato nacional previo al establecimiento y de lista negativa y, aparte de la Lista Negativa, no hay restricciones a la inversión y la propiedad de los inversores extranjeros; la Lista Negativa de 2021 se ha reducido a 31 partidas.

2.41. Algunas empresas extranjeras han planteado preocupaciones en relación con el trato preferencial percibido otorgado a las empresas de propiedad estatal, en particular en esferas como la contratación pública y los préstamos bancarios.²⁰ Como parte de los esfuerzos de las autoridades para mejorar el marco de inversión extranjera, en agosto de 2023, el Consejo de Estado publicó un nuevo conjunto de opiniones (los 24 artículos sobre inversión extranjera) que impulsaron el aumento del apoyo fiscal para las empresas financiadas con capital extranjero y mejoraron el servicio para las empresas con inversión extranjera; también proporciona directivas para hacer frente a los desafíos a los que se enfrentan las empresas extranjeras en China, entre ellos el acceso desigual a la contratación pública, la infracción de los DPI y los procedimientos engorrosos de transferencia transfronteriza de datos.²¹ Se adoptaron varias medidas específicas para aplicar la orientación proporcionada en el conjunto de opiniones. Las autoridades señalan, por ejemplo, que la Oficina Estatal de la Propiedad Intelectual y el Ministerio de Justicia publicaron, el 15 de septiembre de 2023, los Dictámenes sobre el Fortalecimiento de la Resolución Judicial de Diferencias relacionadas con la Infracción de Patentes en la Nueva Era para seguir mejorando el sistema de resolución administrativa.²² Además, la SAMR publicó un aviso de trabajo para aplicar diversas políticas destinadas a evitar la discriminación contra las empresas con financiación extranjera. Según las autoridades, en febrero de 2024 el MOFCOM celebró una mesa redonda sobre la aplicación de los 24 artículos sobre inversión extranjera, a la que se invitó a varias asociaciones empresariales extranjeras en China. Las autoridades han publicado anteriormente documentos similares para impulsar la inversión extranjera y mejorar el entorno empresarial.²³

2.42. La Administración del Ciberespacio de China (CAC) sigue regulando Internet, incluidas determinadas plataformas de noticias y redes sociales, con miras a asegurar su conformidad con las leyes y reglamentos chinos. En algunos casos, estas medidas tienden a causar dificultades a los trabajadores en línea y las empresas de comercio electrónico, lo hace que la eficiencia sea menor. Algunos señalan una consecuencia económica derivada de la incapacidad de los usuarios internos de acceder a sitios web y servicios en línea extranjeros es que puede dar lugar a obstáculos a la información y reducir la productividad de la mano de obra.²⁴ Las autoridades afirman que para regular la comunicación de información en línea y proteger los derechos e intereses legítimos de los ciudadanos y las organizaciones, China ha formulado, entre otras cosas, la Ley de Ciberseguridad (artículo 4.4.1.4), que dispone que, al utilizar Internet, todas las personas y organizaciones deberán cumplir la Constitución y otras leyes, respetar el orden público y respetar la moral social, y que no utilizarán redes en particular para realizar actividades ilegales y difundir información ilegal. Las autoridades afirman que, con respecto a la difusión o transmisión de información ilegal en algunos sitios web extranjeros en violación de sus leyes y reglamentos, China adoptará medidas técnicas y otros medios necesarios para bloquear esa transmisión de conformidad con, entre otras cosas, la Ley.

²⁰ Cámara de Comercio de la Unión Europea en China (2023), *European Business in China Position Paper* 2023/2024.

²¹ State Council, *Opinions on Further Optimizing the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, Guo Fa N° 11 [2023]. Consultado en: https://www.gov.cn/zhengce/content/202308/content_6898048.htm.

²² China National Intellectual Property Administration, *Opinions of the State Intellectual Property Office and the Ministry of Justice on Strengthening the Administrative Adjudication of Patent Infringement Disputes in the New Era*, Guozhi Fa Bao Zi N° 39 [2023]. Consultado en: https://www.cnipa.gov.cn/art/2023/9/15/art_75_187582.html.

²³ Véase, por ejemplo, el Aviso de la Oficina General del Consejo de Estado sobre la Priorización de las Preocupaciones de las Preocupaciones de las Empresas y la Mayor Promoción de la Aplicación de Políticas para Optimizar el Entorno Empresarial.

²⁴ J. Fan y R. Guan (2023), "Estimating the Cost of Internet Censorship in China: Evidence from a Gamified Remote Platform", *Journalism and Media*, volumen 4, páginas 413-429.

2.43. La Ley de Inversión Extranjera y su Reglamento de Aplicación siguen siendo la base legislativa principal para las inversiones de las empresas extranjeras en China. En principio, la Ley de Inversión Extranjera concede un trato nacional a las inversiones extranjeras, excepto las que están comprendidas en una categoría especificada en las Listas Negativas. Esto implica recibir un trato equiparable al otorgado a las empresas nacionales. La otra excepción al trato nacional previo al establecimiento se refiere a las inversiones extranjeras que pueden afectar a la seguridad nacional o pueden tener tales consecuencias. Esas transacciones pueden estar sujetas a un examen de seguridad nacional separado.

2.44. En principio, las inversiones extranjeras no comprendidas en ninguna de las categorías restringidas (como las que se refieren a listas negativas o que afectan a la seguridad nacional) están sujetas únicamente a prescripciones en materia de registro, las mismas que las empresas nacionales. Durante el anterior EPC, las autoridades señalaron que se tardaba menos de cinco días hábiles en establecer una empresa en China; afirman que la SAMR ha estado trabajando con los ministerios y organismos competentes para acortar el tiempo del proceso de registro de las empresas y simplificar los procedimientos, con objeto de acortar el tiempo de establecimiento de una empresa a menos de tres días hábiles. Un inversor extranjero o una empresa con inversión extranjera presentará la información relativa a la inversión a la autoridad de comercio a través del sistema de registro de empresas en línea.

2.45. El marco de registro de las empresas se simplificó aún más durante el período objeto de examen. El 27 de julio de 2021, el Consejo de Estado publicó el Reglamento Administrativo de la República Popular China sobre el Registro de Entidades Mercantiles, que entró en vigor el 1 de marzo de 2022. El Reglamento es el primer documento jurídico que regula de manera uniforme el registro y la administración de todos los tipos de empresas.

2.46. El Reglamento y sus Normas de aplicación prescriben un texto normalizado para delimitar el ámbito de actividad de las empresas. Esto permite a las empresas examinar de manera proactiva las descripciones de su actividad utilizando un "sistema de consulta" específico para cerciorarse de si sus operaciones están comprendidas en una prescripción en materia de licencias. Con la aplicación de este nuevo sistema se espera ganar tiempo y eficiencia en comparación con el enfoque anterior, en virtud del cual las empresas tenían describir su ámbito de actividad y presentarlo a las autoridades sin normas establecidas, lo que complicaba y prolongaba los procesos.

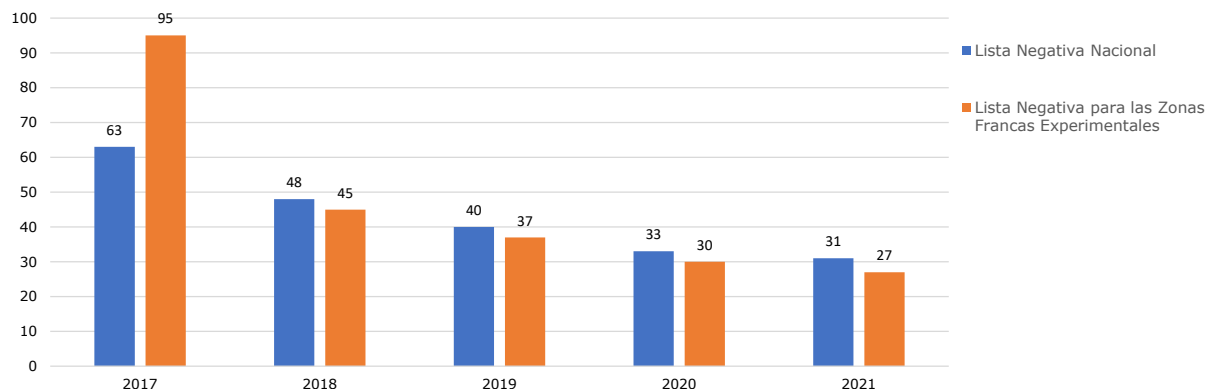
2.47. Antes de abrir una empresa en China, los inversores extranjeros deben examinar primero la Lista Negativa para el Acceso a los Mercados a fin de determinar si el sector está abierto a la inversión privada, ya sea nacional o extranjera. A continuación, los inversores extranjeros deben examinar las Medidas Administrativas Especiales relativas al Acceso a la Inversión Extranjera (Lista Negativa Nacional) y las Medidas Administrativas Especiales relativas al Acceso de la Inversión Extranjera a las Zonas Francas Experimentales (Lista Negativa para las Zonas Francas Experimentales).

2.48. No se permite la inversión extranjera en las industrias sujetas a prohibiciones enumeradas en la Lista Negativa Nacional o en la Lista Negativa para las Zonas Francas Experimentales. La inversión extranjera en sectores sujetos a restricciones que figuren en cualquiera de las dos listas debe ser examinada por la autoridad de reglamentación del mercado para verificar si los inversores cumplen las medidas administrativas prescritas, como las relativas a la participación social y a los títulos de aptitud de los altos cargos directivos.

2.49. La actual Lista Negativa para el Acceso a los Mercados (versión de 2022) redujo el número de sectores sujetos a restricciones o prohibiciones de 151 en 2018 (el primer año en que existía la lista) a 117. Esto continúa la tendencia a la reducción gradual de las restricciones/prohibiciones. Las revisiones afectan principalmente al sector financiero al levantar las restricciones a actividades tales como la emisión de acciones, las fusiones, las adquisiciones de compañías cotizadas en bolsa y los servicios de información financiera por Internet. Los inversores privados están ahora exentos del requisito de obtener la aprobación previa para participar en esos sectores. La Versión de 2022 también incorpora disposiciones que prohíben que el capital no estatal participe en actividades como la recopilación de noticias, la edición y las operaciones de radiodifusión.

2.50. En 2021 se llevaron a cabo revisiones tanto de la Lista Negativa Nacional como de la Lista Negativa para las Zonas Francas Experimentales, que entraron en vigor el 1 de enero de 2022. En conjunto, el número de medidas restrictivas incluidas en la Lista Negativa Nacional se ha reducido anualmente, de 63 en 2017 a 31 en 2021, mientras que el número de medidas incluidas en la Lista Negativa para las Zonas Francas Experimentales ha disminuido de 95 en 2017 a 27 en 2021 (gráfico 2.1).

Gráfico 2.1 Número de medidas restrictivas del acceso a la inversión extranjera, 2017-2021



Fuente: Medidas Administrativas Especiales relativas al Acceso a la Inversión Extranjera y Medidas Administrativas Especiales relativas al Acceso a la Inversión Extranjera en las Zonas Francas (ediciones de 2017 a 2021).

2.51. Las principales restricciones a la inversión extranjera abarcan actividades específicas en las siguientes industrias: agricultura, silvicultura, ganadería y pesca; minería; manufacturas; generación de energía eléctrica, calor y gas y suministro de agua; comercio mayorista y minorista; transporte, almacenamiento y servicios postales; servicios de transmisión de información, *software* y tecnología de la información; servicios de arrendamiento y comerciales; servicios de investigación científica y servicios técnicos; enseñanza; actividades de atención de la salud y de asistencia social; y cultura, deportes y espectáculos. Los cambios introducidos durante el período objeto de examen se referían a los servicios de manufactura y de arrendamiento (recuadro 2.1).

Recuadro 2.1 Cambios en la Lista Negativa Nacional y la Lista Negativa para las Zonas Francas Experimentales en 2022

Lista Negativa Nacional

Actividades eliminadas

Actividades manufactureras

1. Salvo en el caso de los vehículos para usos especiales, los vehículos propulsados por energías nuevas y los vehículos comerciales, la parte china (en una asociación) en la fabricación de vehículos completos no podrá ser inferior al 50% de las acciones; un inversor extranjero podrán establecer un máximo de dos empresas conjuntas de capital en China para fabricar el mismo tipo de productos de automóviles completos.
2. Fabricación de instalaciones receptoras en tierra para televisión satelital y de componentes esenciales.

Lista Negativa para las Zonas Francas Experimentales

Actividades eliminadas

Actividades manufactureras

1. Salvo en el caso de los vehículos para usos especiales, los vehículos propulsados por energías nuevas y los vehículos comerciales, la parte china (en una asociación) en la fabricación de vehículos completos no podrá ser inferior al 50% de las acciones; un inversor extranjero podrán establecer un máximo de dos empresas conjuntas de capital en China para fabricar el mismo tipo de productos de automóviles completos.
2. Fabricación de instalaciones receptoras en tierra para televisión satelital y de componentes esenciales.

Servicios de arrendamiento financiero y servicios prestados a las empresas

1. Los estudios de mercado se limitarán únicamente a la forma de empresa mixta por acciones; en el caso de los estudios de audiencia de radio y televisión, la participación mayoritaria de control corresponderá a la parte china.
2. Se prohibirá la inversión en estudios sociales.

Actividades añadidas**Servicios de arrendamiento financiero y servicios prestados a las empresas**

1. Los inversores chinos mantendrán una participación mayoritaria en los estudios de audiencia de radio y televisión. Los inversores chinos en servicios de estudios sociales poseerán no menos del 67% de las acciones y el representante legal será un ciudadano chino.

Fuente: Medidas Administrativas Especiales relativas al Acceso de la Inversión Extranjera (Lista Negativa) (edición de 2021), Medidas Administrativas Especiales de las Zonas Francas Experimentales relativas al Acceso a la Inversión Extranjera en las Zonas Francas Experimentales (Lista Negativa) (edición de 2020) y Medidas Administrativas Especiales de las Zonas Francas Experimentales relativas al Acceso a la Inversión Extranjera en las Zonas Francas Experimentales (Lista Negativa) (edición de 2021).

2.4.2 Procedimientos de examen y aprobación

2.52. Las Medidas para el Examen de Seguridad de las Inversiones Extranjeras, que se adoptaron el 19 de diciembre de 2020, entraron en vigor el 18 de enero de 2021. Proporcionan un marco general para la realización de exámenes de seguridad de las inversiones extranjeras en China. En el nuevo reglamento se establece un proceso de examen de la seguridad nacional mediante un documento jurídico único, que prevé distintos criterios y un marco de procedimiento a seguir por el organismo encargado del examen durante la evaluación. Como indicó en el examen anterior, también existe un mecanismo similar en las zonas francas experimentales de China. Además, las fusiones y adquisiciones en las que interviene una entidad extranjera y una empresa nacional también pueden ser objeto de un examen de seguridad de conformidad con la Circular sobre el Establecimiento del Examen de Seguridad Nacional de las Adquisiciones de Empresas Nacionales por Inversores Extranjeros.

2.53. El "Mecanismo de Trabajo" de un órgano de examen, establecido para llevar a cabo exámenes de la seguridad, se centra en la inversión extranjera que afecta o es probable que afecte a la seguridad nacional. Entre los sectores sujetos a examen figuran la industria militar y sus instalaciones de apoyo y otras esferas relacionadas con la seguridad nacional de la defensa, los lugares que rodean las instalaciones militares y las instalaciones industriales militares, así como los productos agropecuarios, la energía y los recursos, la fabricación de equipo, la infraestructura, los servicios de transporte, los productos y servicios culturales, la tecnología de la información y los productos y servicios de Internet, los servicios financieros, las tecnologías y otras esferas consideradas importantes desde el punto de vista de la seguridad nacional.

2.54. Si sus transacciones están comprendidas en el ámbito del proceso de examen, los inversores extranjeros deben presentar una solicitud de examen al Mecanismo de Trabajo antes de implementar la inversión. De no hacerlo, el Mecanismo de Trabajo conserva la facultad de pedir la que el inversor la presente. La iniciación de un examen puede llevarse a cabo antes o después de que se establezca la inversión extranjera, siempre que el Mecanismo de Trabajo determine que la inversión representa una amenaza para la seguridad nacional. El proceso de examen de la seguridad de las inversiones extranjeras comprende un examen general y un examen especial, que se realiza cuando es necesaria una investigación detallada. Las decisiones relativas al examen general deben alcanzarse en un plazo de 30 días, y las relativas al examen especial en un plazo de 60 días. De conformidad con la Ley de Inversión Extranjera, las determinaciones en el marco del examen de la seguridad realizadas de conformidad con los procedimientos legales se consideran definitivas.

2.55. China también mantiene un sistema de aprobación de las inversiones extranjeras, que es un procedimiento de licencias administrativas (distinto del Mecanismo de Trabajo). Este sistema se aplica a los proyectos de inversión extranjera especificados en el Catálogo de Proyectos de Inversión sujetos a Aprobación Gubernamental (2016) y requiere la aprobación, sobre la base de su valor, de entidades como el Consejo de Estado, la NDRC o los departamentos provinciales.²⁵ En el Catálogo, los proyectos de inversión que requieren aprobación son los que conllevan inversión de inmovilizado en esferas como la agricultura, la energía, el transporte, la tecnología de la información, las materias primas, la fabricación de maquinaria, la industria ligera, la alta y nueva tecnología y la construcción en zonas urbanas. Los que no están incluidos en él están sujetos a registro (sección 2.4.1). Por lo

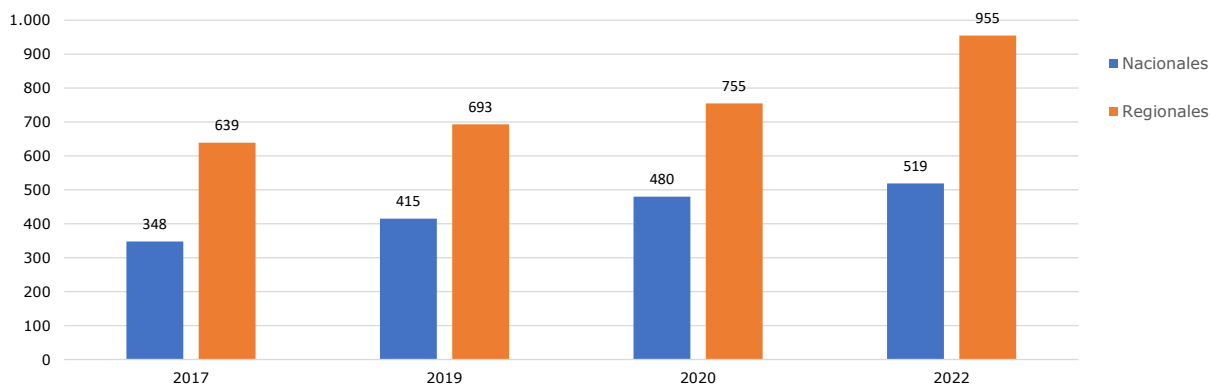
²⁵ Las inversiones por valor de USD 300 millones o más requieren la aprobación de la NDRC, y se presentan al Consejo de Estado para su registro, siempre que la inversión total ascienda por lo menos a USD 2.000 millones. Los Gobiernos provinciales pueden aprobar proyectos por un monto máximo de USD 300 millones.

general, los proyectos de inversión se evalúan teniendo en cuenta su impacto en la seguridad nacional, el medio ambiente o el interés público, y si cumplen las leyes, reglamentos y Catálogos pertinentes, así como los planes y de desarrollo nacional y las políticas industriales. En los casos en que se cumplan las condiciones para activar el examen de seguridad, se deben aplicar las Medidas para el Examen de Seguridad de las Inversiones Extranjeras.

2.4.3 Incentivos a la inversión extranjera directa

2.56. El Catálogo de Sectores en los que se Incentiva la Inversión Extranjera (versión de 2022) (que fue publicado el 26 de octubre de 2022 y entró en vigor el 1 de enero de 2023) consta del catálogo de los sectores con incentivos a la IED en todo el país y el catálogo de sectores con incentivos a la IED en las regiones central y occidental de China. Tanto la sección nacional como la sección regional del Catálogo de 2022 siguen incluyendo un número cada vez mayor de sectores (gráfico 2.2). Las actualizaciones más recientes de estas listas reflejan en gran medida el compromiso de China de promover una agricultura inteligente y mejorar las cadenas industriales y de suministro de China en esferas como los semiconductores y el sector de la energía limpia. Las adiciones al catálogo regional también pueden considerarse parte de los esfuerzos de China por reducir la desigualdad de riqueza y equilibrar el nivel de desarrollo social y económico en distintas regiones del país.

Gráfico 2.2 Número de actividades con incentivos, 2017, 2019, 2020 y 2022



Nota: En 2018 y 2021 no se publicó un Catálogo actualizado.

Fuente: Catálogo de Sectores en los que se Incentiva la Inversión Extranjera (2017, 2019, 2020 y 2022).

2.57. Sectores como la programación totalmente autónoma y la fabricación de equipos de gas de esquisto se eliminaron de la lista nacional de sectores con incentivos, de conformidad con las prioridades de China en materia de desarrollo económico y social.

2.58. El trato favorable en vigor para las empresas con inversión extranjera que participan en sectores incluidos en el Catálogo de Sectores con Incentivos a la IED no ha cambiado y consiste principalmente en exenciones arancelarias para los equipos para uso propio importados con la cuantía total de la inversión, a menos que se determine otra cosa en los reglamentos pertinentes²⁶; se pueden suministrar terrenos preferentemente para proyectos con incentivos a la inversión extranjera intensiva en los que se haga un uso intensivo de la tierra; y el precio mínimo para la transferencia de tierras puede fijarse en el 70% del precio mínimo nacional de las tierras industriales en los lugares específicos donde ocurre la transferencia. Las empresas con inversión extranjera que realizan actividades comerciales en sectores con incentivos a la inversión en las regiones occidentales y en la provincia de Hainan pueden beneficiarse de un tipo reducido del impuesto sobre la renta de las sociedades del 15% (el tipo normal es del 25%).

2.59. Durante el período objeto de examen, las autoridades subrayaron además la importancia de la investigación y la innovación para la competitividad y el desarrollo a largo plazo de China. En general, hay diversos canales por medio de los cuales la I+D y la innovación pueden repercutir en

²⁶ El Catálogo de Equipos y Productos Técnicos Esenciales No Exentos de Derechos de Importación (publicado el 10 de diciembre de 2021) y el Catálogo de Mercancías Importadas en el marco de Proyectos con Inversión Extranjera No Exentos de Derechos de Importación (publicado el 4 de abril de 2022).

la productividad, los resultados comerciales y el crecimiento económico de un país. Entre esas vías figuran la diferenciación de los productos, la reducción de los costos de producción y el aumento de la competitividad de las exportaciones.²⁷

2.60. En abril de 2021 se adoptaron medidas para aclarar las condiciones de los centros de I+D financiados con capital extranjero para beneficiarse de las exenciones de los derechos de importación en apoyo de la innovación científica y tecnológica.²⁸ En enero de 2023, las autoridades propusieron 16 iniciativas de política en 4 esferas para seguir reforzando el apoyo a los centros de I+D con inversión extranjera.²⁹ Las autoridades sostienen que sus iniciativas tienen por objeto apoyar la innovación tecnológica y el progreso de las industrias. Además, tienen por objeto fomentar un entorno propicio tanto a la apertura como a la innovación, con el objetivo de lograr la competitividad mundial.

2.61. Si bien las medidas mencionadas son un ejemplo de que las actividades de I+D extranjera es cada vez más fundamental para el sistema nacional de innovación de China, puede haber margen para mejorar la externalidad positiva que genera, especialmente en el sector de la alta tecnología.³⁰ Por ejemplo, establecer políticas de innovación provinciales activas podría contribuir a crear un entorno propicio para aprovechar todo el potencial de las actividades de I + D extranjera y maximizar sus efectos positivos en la innovación y el crecimiento económico nacionales.³¹

2.62. De conformidad con el Anuncio del Ministerio de Hacienda y la Administración Estatal de Impuestos relativo a la Continuación de la Aplicación de la Política del Impuesto sobre la Renta de las Personas Físicas a los Subsidios y las Subvenciones para las Personas Extranjeras (Anuncio Nº 29 de Ministerio de Hacienda y la Administración Estatal de Impuestos, de 2023), otros incentivos a disposición de los inversores extranjeros son las políticas preferenciales en materia de exenciones fiscales para las personas extranjeras con respecto a las subvenciones para la vivienda, los gastos de formación en idiomas y los subsidios de educación para los niños. Estas medidas estarán en vigor hasta el 31 de diciembre de 2027.

2.63. En cuanto a los programas de incentivos en regiones determinadas, desde marzo de 2021 se aplica una política de aranceles nulos a los equipos de producción importados para uso propio por las empresas admisibles en el Puerto Franco de Hainan. A fin de apoyar el desarrollo de alta calidad del Puerto Franco de Hainan, se han aplicado varios otros incentivos, como permitir el repostaje de los buques internacionales con petróleo bajo control aduanero en la provincia.³² Según las autoridades, la política preferencial respecto del impuesto sobre la renta de las sociedades sigue siendo eficaz en la Zona Experimental Integral de Pingtan, en Fujian, y la Zona de Cooperación entre Qianhai Shenzhen y Hong Kong, China en el Sector de los Servicios Modernos, en Shenzhen.

2.4.4 Acuerdos bilaterales fiscales y de inversión

2.64. Las autoridades indican que China ha firmado acuerdos bilaterales de inversión con 135 entidades, y que hay 112 acuerdos de ese tipo en vigor actualmente. Durante el período objeto de examen, solo se firmó un acuerdo de ese tipo, con Angola, en diciembre de 2023.

²⁷ Véase, por ejemplo, P. Ghazalian y W. Hartley Furtan (2007), "The Effect of Innovation on Agricultural and Agri-food Exports in OECD Countries", *Journal of Agricultural and Resource Economics*, volumen 32, Nº 3, páginas 448-461.

²⁸ Notice of the Import Tax Policies Supporting Scientific and Technological Innovations during the "14th Five-Year Plan" Period (Cai Guan Shui Nº 23 [2021]).

²⁹ Several Measures for Further Encouraging Foreign Investment in the Establishment of R&D Centres (Guo Ban Han Nº 7 [2023]).

³⁰ Han, X. y Feng, H. (2023), "The Impact of Foreign R&D on the Innovation Performance of China's High-Tech Industry and Its Spatial Spillover Effect", *PLoS ONE*, volumen 18, Nº 3.

³¹ A. Spithoven y B. Merlevede (2023), "The Productivity Impact of R&D and FDI Spillovers: Characterizing Regional Path Development", *Journal of Technology Transfer*, volumen 48, Nº 2, páginas 560-590.

³² State Council (2021), "28 Steps to Boost Hainan FTP", 27 de abril. Consultado en: https://english.www.gov.cn/statecouncil/ministries/202104/27/content_WS60877509c6d0df57f98d8a4e.html.

2.65. Durante el período objeto de examen, China firmó acuerdos para evitar la doble imposición con Rwanda, el Senegal y el Camerún; revisó completamente y firmó un nuevo acuerdo con Noruega; y modificó los acuerdos con el Brasil, Qatar y Australia. A finales de 2023, China había firmado acuerdos para evitar la doble imposición con 111 asociados, de los cuales 105 están en vigor actualmente. Además, China tiene acuerdos fiscales con Hong Kong, China; Macao, China; y el Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu (Taipei Chino).³³

³³ Para más información sobre los acuerdos para evitar la doble imposición firmados antes de 2020, véase State Taxation Administration, Overview of the State Administration of Taxation. Consultado en: <https://www.chinatax.gov.cn/chinatax/n810341/n810770/index.html>.

3 POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

3.1 Medidas que afectan directamente a las importaciones

3.1.1 Procedimientos y requisitos aduaneros, y valoración en aduana

3.1. Los asuntos aduaneros son competencia de la Administración General de Aduanas (GACC). A finales de marzo de 2024, había 42 distritos aduaneros, 678 instituciones aduaneras subordinadas y 131 oficinas de aduanas subordinadas dependientes de la GACC.

3.2. La Ley de Aduanas y otros instrumentos legislativos regulan los procedimientos aduaneros (cuadro 3.1). Los cambios introducidos en 2021 en la Ley de Aduanas eliminaron las prescripciones sobre licencias administrativas para las importaciones y exportaciones temporales. Además, en diciembre de 2022, se suprimió el artículo 9 de la Ley de Comercio Exterior; en consecuencia, en el caso de las empresas y los particulares que solicitan licencias de importación o exportación y otros documentos pertinentes (por ejemplo, certificados de registro de contrato de importación o exportación, contingentes de exportación y derechos de comercio de Estado), las autoridades competentes ya no exigen la inscripción o el registro como operadores de comercio exterior (sección 2.4).¹ Por lo tanto, desde el 30 de diciembre de 2022, los departamentos gubernamentales locales encargados de los asuntos comerciales han dejado de inscribir o registrar operadores de comercio exterior.

3.3. En lo que respecta a las medidas aduaneras aplicables a las zonas francas experimentales (PFTZ), las Medidas para la Promoción de la Apertura Institucional de las Zonas Francas Experimentales y los Puertos Francos Calificados de conformidad con las Normas Internacionales de Alto Nivel² y el Plan General para la Promoción de la Apertura Institucional de la Zona Franca Experimental (Shanghái) de China en Consonancia con las Normas Económicas y Comerciales Internacionales de Alto Nivel³, ambos promulgados en 2023, contienen artículos sobre las medidas de facilitación relacionadas con las aduanas aplicables a las PFTZ y los puertos francos calificados.

Cuadro 3.1 Legislación de China relacionada con los procedimientos aduaneros, 2024

Legislación	Fecha de promulgación/modificación
Ley de Aduanas	Anuncio Nº 51, promulgado en 1987 y revisado en 2000, 2013, 2016, 2017 y 2021.
Reglamento sobre Derechos de Importación y Exportación	Anuncio Nº 392 del Consejo de Estado, promulgado en 2003 y revisado en 2011, 2013, 2016 y 2017.
Disposiciones sobre la Tramitación por la Administración de Aduanas de las Declaraciones de Importación y Exportación de Mercancías	Anuncio Nº 103 de la GACC, promulgado en septiembre de 2003 y revisado en 2014, 2017 y 2018.
Normas de la Administración de Aduanas sobre la Gestión de la Percepción de Derechos sobre las Importaciones y las Exportaciones	Anuncio Nº 124 de la GACC, promulgado en 2005 y revisado en 2010, 2014, 2017 y 2018.
Ley de Inspección de Mercancías de Importación y Exportación	Orden Nº 14 del Presidente, promulgada en 1989 y revisada en 2002, 2013, 2018 y 2021.
Reglamento de Aplicación de la Ley de Inspección de Mercancías de Importación y Exportación	Anuncio Nº 447 del Consejo de Estado, promulgado en 2005 y revisado en 2013, 2016, 2017, 2019 y 2022.
Reglamento sobre el Registro y la Gestión de Fabricantes Extranjeros de Productos Alimenticios Importados	Anuncio Nº 248 de la GACC, promulgado en 2021 y en vigor desde 2022.
Medidas sobre la Gestión de la Inocuidad de los Alimentos Importados y Exportados	Anuncio Nº 249 de la GACC, promulgado en 2021 y en vigor desde 2022.
Medidas para la Gestión del Crédito de las Empresas Registradas e Inscritas en la GACC	Anuncio Nº 251 de la GACC, promulgado en 2021.
Disposiciones sobre la Clasificación de las Mercancías de Importación y Exportación	Anuncio Nº 252 de la GACC, promulgado en 2021.
Disposiciones sobre la Inscripción de las Entidades Especializadas en Declaraciones de Aduana	Anuncio Nº 253 de la GACC, promulgado en 2021.
Medidas para la Gestión de los Exportadores Autorizados por la GACC	Anuncio Nº 254 de la GACC, promulgado en 2021.

¹ MOFCOM. Consultado en: https://www.gov.cn/zhengce/2023-01/03/content_5734884.htm.

² Gobierno de China. Consultado en: https://www.gov.cn/zhengce/content/202306/content_6889026.htm.

³ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/content/202312/content_6918913.htm.

Legislación	Fecha de promulgación/modificación
Medidas de la GACC para la Gestión del Origen de las Mercancías de Importación y Exportación en el marco del Acuerdo de Asociación Económica Amplia Regional	Anuncio Nº 255 de la GACC, promulgado en 2021.
Medidas de la GACC para la Gestión de Zonas Integradas bajo Control Aduanero	Anuncio Nº 256 de la GACC, promulgado en 2022.
Medidas de la GACC para Gestión de la Adopción de los Resultados de la Inspección de Productos Importados y Exportados	Anuncio Nº 259 de la GACC, promulgado en 2022.
Medidas de la GACC para la Supervisión de las Mercancías en Tránsito	Anuncio Nº 260 de la GACC, promulgado en 2022.
Medidas Administrativas para la Inspección y la Cuarentena de Animales Terrestres Comestibles Suministrados a Hong Kong, China y Macao, China	Anuncio Nº 266 de la GACC, promulgado en 2024.

Fuente: Información facilitada por las autoridades.

3.4. En las Disposiciones sobre la Tramitación por la Administración de Aduanas de las Declaraciones de Importación y Exportación de Mercancías se enumeran los documentos que deben presentarse con las declaraciones de importación.⁴ No se perciben derechos por la presentación de declaraciones de aduana ni por el uso de la ventanilla única nacional (véase *infra*). Los expedidores y los destinatarios de mercancías importadas y exportadas pueden declarar sus mercancías a las autoridades aduaneras por cuenta propia o a través de un declarante autorizado.⁵ La presentación de los formularios de declaración de importación y el despacho de aduana pueden tener lugar antes de la llegada de las mercancías a China.⁶ Se pueden llevar a cabo antes de la llegada de las mercancías.⁷ La GACC sigue aplicando el sistema de "declaración en dos etapas" de las importaciones, según el cual las empresas no necesitan presentar todas las declaraciones y documentos a la vez.⁸ Según las autoridades, las disposiciones están siendo revisadas.

3.5. El sistema de ventanilla única sigue permitiendo la presentación de las declaraciones de importación en papel o en formato electrónico. China sigue utilizando una ventanilla única nacional normalizada para el comercio internacional, que constituye el principal punto de entrada en línea para que los comerciantes presenten sus declaraciones de aduana y los documentos conexos.⁹ Las autoridades consideran que las ventanillas únicas se han integrado en los sistemas de 30 ministerios y ofrecen servicios como la declaración de carga, la presentación del manifiesto, la declaración del medio de transporte, la solicitud de licencias, la solicitud de certificados de origen, el pago de impuestos, el despacho de aduana de mercancías, el tráfico de perfeccionamiento bajo control aduanero y el comercio electrónico transfronterizo. Aunque el uso de la ventanilla única nacional sigue siendo voluntario, las autoridades indican que en 2023 casi el 100% de las importaciones se declaró a través de este sistema.

3.6. La GACC sigue gestionando la plataforma "Internet + Aduanas", que ofrece acceso en línea mediante una ventanilla única a los servicios aduaneros del Estado, como la información previa a la declaración, las desgravaciones aplicables a la exportación, la aprobación administrativa y el registro de los derechos de propiedad intelectual (DPI).¹⁰ Es independiente de la ventanilla única nacional (véase *supra*), que constituye una plataforma única para presentar a las autoridades competentes

⁴ Anuncio Nº 103 de la GACC. Consultado en: <http://english.customs.gov.cn/statics/5822c242-7473-4800-945c-3e8727f72157.html>.

⁵ Anuncio Nº 103 de la GACC.

⁶ De conformidad con las Disposiciones sobre la Tramitación por la Administración de Aduanas de las Declaraciones de Importación y Exportación de Mercancías, por "declaración" se entiende que el expedidor y el destinatario de las mercancías importadas y exportadas y el agente (empresa declarante) declaran a la Administración de Aduanas la situación real de las mercancías importadas y exportadas y aceptan la verificación por la Administración de Aduanas en un plazo y un lugar determinados mediante la presentación de formularios de declaración electrónicos o impresos conforme a la Ley de Aduanas y otras normas y reglamentos administrativos pertinentes.

⁷ Disposiciones sobre la Tramitación por la Administración de Aduanas de las Declaraciones de Importación y Exportación de Mercancías, capítulo III.

⁸ En el sistema de declaración en dos etapas, la primera etapa consiste en presentar la declaración resumida junto con el conocimiento de embarque para recoger las mercancías, y la segunda en completar todo el proceso de declaración en un plazo determinado.

⁹ Ventanilla única de China para el comercio internacional, consultado en: www.singlewindow.cn; y documento [WT/TPR/S/415/Rev.1](http://www.wto.org) de la OMC, de 9 de marzo de 2022.

¹⁰ GACC. Consultado en: <http://english.customs.gov.cn/>.

información y documentación normalizadas. Las autoridades indican que, durante el período objeto de examen, la GACC siguió mejorando la capacidad general de asistencia técnica de la plataforma, y llevando a cabo una armonización técnica completa de la plataforma "Internet + Aduanas" y la plataforma nacional de servicios del Gobierno, entre otras cosas. A finales de septiembre de 2023, la plataforma "Internet + Aduanas" había recibido 111,5 millones de visitas.

3.7. Los importadores deben cumplir las prescripciones en materia de inspección y cuarentena de la Administración de Aduanas, de conformidad con lo dispuesto en la Ley de Inspección de Mercancías de Importación y Exportación, en otras leyes y reglamentos conexos, y en el Catálogo de Mercancías de Importación y Exportación sujetas a Inspección Obligatoria.¹¹ Durante el período objeto de examen, en 2021 y 2022, se introdujeron modificaciones en el Catálogo que afectaron a 266 artículos en junio de 2021, 29 artículos en octubre de 2021 y 87 en octubre de 2022.¹² Las empresas se clasifican en diferentes grupos en función del análisis del riesgo, y se asignan diferentes índices de riesgo a los modos de transporte, por ejemplo, según las rutas sensibles o el país de salida.¹³ Las autoridades indican que no se dispone de datos sobre la proporción de importaciones sujetas a inspección física.

3.8. Durante el período objeto de examen, la GACC publicó diversas medidas administrativas para la inspección o la cuarentena de determinados productos; desde el 1 de diciembre de 2022, la Administración de Aduanas de China ha adoptado, sobre la base de la evaluación del riesgo, los resultados de inspección de organismos de inspección nacionales y extranjeros como base para la evaluación de la conformidad de algunos productos de importación y exportación sujetos a una inspección obligatoria. Las autoridades indican que la Administración de Aduanas de China ya no lleva a cabo inspecciones, salvo para controlar riesgos. Según las autoridades, la Administración de Aduanas de China ha adoptado una "modalidad de aceptación" para el despacho de aduana de las prendas de vestir y el cemento importados.¹⁴

3.9. Durante el período objeto de examen, China introdujo dos medidas adicionales relacionadas con la COVID-19 que afectaban a las mercancías: i) de conformidad con el Aviso sobre la Distribución de los Planes de Trabajo para la Realización de Pruebas y la Desinfección Preventiva de Productos Transportados de Alto Riesgo Importados que No Requieren Cadena de Frío (Anuncio N° 277 del Consejo de Estado de 2020, publicado por el Grupo de Asuntos Generales, Mecanismo Conjunto de Prevención y Control del Consejo de Estado, el 31 de diciembre de 2020), las autoridades aduaneras estaban encargadas de realizar pruebas de COVID-19 *in situ* en los puertos a las mercancías transportadas y de indicar a las empresas importadoras de dichas mercancías o a las entidades encargadas el lugar bajo supervisión aduanera donde llevar a cabo la desinfección preventiva de las mercancías tomadas como muestra¹⁵; y ii) de conformidad con el Aviso sobre la Distribución de los Planes de Trabajo para la Desinfección de los Aviones de Pasajeros de Llegada (Anuncio N° 100 del Consejo de Estado de 2021, publicado por el Grupo de Asuntos Generales, Mecanismo Conjunto de

¹¹ En el Catálogo se enumeran los productos, según sea necesario para proteger la salud de las personas y de los animales o preservar los vegetales y el medio ambiente, así como para impedir el fraude y salvaguardar la seguridad nacional.

¹² Anuncio N° 39 de la GACC, 2021, consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/3731229/index.html>; Anuncio N° 81 de la GACC, 2021, consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/3957218/index.html>; y Anuncio N° 79 de la GACC, 2022, consultado en: <http://fuzhou.customs.gov.cn/customs/302249/302266/302267/4548521/index.html>.

¹³ Documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022. La calificación crediticia de una empresa se basa en los registros de importación y exportación y en si cumple la legislación. En función de su calificación crediticia, se asigna a las empresas la categoría de empresas autorizadas, empresas de integridad general o empresas deshonestas.

¹⁴ La "modalidad de aceptación" significa que en la inspección de productos importados y exportados, de conformidad con la ley, la Administración de Aduanas de China selecciona terceras instituciones de inspección nacionales y extranjeras calificadas como "organismos aceptados", y publica el catálogo de organismos aceptados junto con las normas y prescripciones relativas a la inspección de los productos pertinentes. Las empresas de importación y exportación pueden encomendar a los organismos aceptados que figuran en el catálogo que lleven a cabo las inspecciones necesarias por adelantado y faciliten los informes de inspección correspondientes al presentar la declaración de aduana. Durante el despacho de aduana, la Administración de Aduanas de China puede adoptar los informes de inspección emitidos por terceros organismos de inspección como base para la evaluación de la conformidad. El despacho de aduana basado en la modalidad de aceptación no es obligatorio.

¹⁵ Comisión Nacional de Salud. Consultado en: <http://www.nhc.gov.cn/jkj/s7914/202101/7de3622479294bd3a0a526c323745c32.shtml>.

Prevención y Control del Consejo de Estado, el 15 de septiembre de 2021), las autoridades aduaneras estaban encargadas de la cuarentena de los pasajeros entrantes y del personal del avión, y de la supervisión de la desinfección de los vuelos de alto riesgo y de los aviones con pasajeros entrantes que habían dado positivo en la prueba.¹⁶ Esas medidas se terminaron el 8 de enero de 2023.¹⁷

3.10. Desde el anterior examen de China, no ha cambiado el método de inspección y supervisión "inspección y levante antes de realizar las pruebas" para los minerales de bajo riesgo importados, como el mineral de hierro, el mineral de manganeso, el mineral de cromo, el mineral de plomo y sus concentrados, y el mineral de cinc y sus concentrados.

3.11. En junio de 2021, el Consejo de Estado publicó un Aviso sobre la Profundización de la Reforma destinada a Separar los Permisos de las Licencias Comerciales para Estimular la Vitalidad de los Agentes del Mercado¹⁸, en virtud del cual las competencias administrativas sobre las cuestiones relacionadas con las licencias para la inspección y evaluación de las mercancías importadas o exportadas se transfirieron en parte de la GACC a la Administración Estatal de Reglamentación del Mercado (SAMR).¹⁹ En este contexto, el 26 de mayo de 2022, la SAMR publicó las Condiciones Específicas para la Certificación, Calificación y Acreditación de los Organismos de Inspección de Mercancías de Importación y Exportación²⁰ y, en septiembre de 2022, la GACC publicó el Reglamento sobre la Aceptación de los Organismos de Inspección de Mercancías de Importación y Exportación.²¹

3.12. Las autoridades indican que el plazo de despacho de aduana para las importaciones y exportaciones era de 36,64 horas y 1,74 horas en 2021 y de 40,18 horas y 1,26 horas en 2022, respectivamente; en el primer trimestre de 2023, era de 33,05 horas y 1,05 horas, respectivamente.

3.13. Con respecto al Programa de Operadores Económicos Autorizados (OEA) de China, en noviembre de 2021, la GACC anunció las Medidas para la Gestión del Crédito de las Empresas Registradas e Inscritas²², que sustituyeron a las anteriores Medidas para la Gestión del Crédito. Con arreglo a este anuncio, el nivel de calificación crediticia se reduce de cuatro a tres y la condición de OEA se atribuye a una sola categoría, a saber, empresas certificadas avanzadas. Además, los OEA se examinan cada cinco años en lugar de cada tres años. En diciembre de 2023, la GACC había firmado acuerdos de reconocimiento mutuo de OEA con 52 países y regiones²³; y en China había 5.726 OEA, que representaban el 0,28% (0,26% a finales de 2021) de las empresas registradas en la GACC. En 2023, las importaciones y exportaciones realizadas por OEA representaron el 37,2% de las importaciones y exportaciones totales de China (35,0% a finales de 2021).

¹⁶ Estudio de Prevención y Control de las Infecciones. Consultado en: <https://www.gkgzj.com/zn/1925.jhtml>.

¹⁷ El 8 de enero de 2023, las medidas de prevención y control de enfermedades infecciosas de clase A previstas en la Ley de Prevención y Tratamiento de Enfermedades Infecciosas dejaron de aplicarse a la COVID-19, que dejó de estar sujeta a la gestión de enfermedades infecciosas susceptibles de cuarentena en el marco de la Ley de Salud en Frontera y Cuarentena.

¹⁸ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/content/2021-06/03/content_5615031.htm.

¹⁹ El Aviso suprimió la aprobación del acceso a los mercados por la GACC para los organismos que realizan inspecciones y evaluaciones de las mercancías de importación o exportación. Para aplicar el Aviso, la SAMR puede formular prescripciones específicas sobre las calificaciones de los organismos de inspección de las importaciones y exportaciones. Los organismos de inspección de las importaciones y exportaciones que deseen expandirse, modificar su ámbito de actividad o prorrogar el período de vigencia de su permiso comercial pueden presentar su solicitud a las autoridades de reglamentación del mercado centrales o locales, que deben consultar a la GACC antes de dar su aprobación. La GACC puede formular reglamentos sobre la aceptación de los organismos de inspección de mercancías de importación y exportación y publicar la lista de organismos de inspección aceptados.

²⁰ Asociación China de Inspección y Cuarentena de Entrada y Salida. Consultado en: <http://www.ciq.org.cn/xwdt/gnqx1/75499.htm>.

²¹ GACC. Consultado en: https://www.gov.cn/zhengce/2022-10/11/content_5723491.htm.

²² GACC. Consultado en: https://www.gov.cn/gongbao/content/2021/content_5651731.htm.

²³ MOFCOM, 26 de septiembre de 2021, consultado en: <http://asean.mofcom.gov.cn/article/jmxw/202109/20210903202266.shtml>; y GACC, consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/5340276/index.html>.

3.14. En cuanto a los obstáculos al comercio y las inversiones interprovinciales, en marzo de 2022 se publicaron los Dictámenes sobre la Aceleración de la Construcción de un Mercado Nacional Unificado, que entraron en vigor en abril de 2022, con miras a "eliminar los obstáculos locales y regionales de protección". Los Dictámenes prohíben a todas las regiones publicar listas negativas para el acceso a los mercados por cuenta propia; exigen que las regiones utilicen una única lista negativa y lleven a cabo evaluaciones del acceso a los mercados.²⁴ Según las autoridades, de acuerdo con los Dictámenes, los Gobiernos locales realizaron autoexámenes y empezaron a eliminar políticas y medidas que entorpecían la unificación del mercado; los departamentos competentes investigaron abusos de facultades administrativas cuyo objetivo era eliminar o restringir la competencia, notificaron varios casos típicos de infracción de la lista negativa de acceso a los mercados y corrigieron los derechos y cargas ilegales sobre las empresas. En 2022, la SAMR llevó a cabo una evaluación a nivel nacional por primera vez. Esta abarcó a 174 Gobiernos locales y 1.552 departamentos gubernamentales. Según las autoridades, el resultado de la evaluación indica que la razón entre las políticas y medidas ilegales y la muestra total disminuyó considerablemente, y el nivel de satisfacción de las personas con la política de examen de la competencia leal aumentó. En abril de 2023, la SAMR publicó las Directrices sobre la Evaluación por Terceros del Examen de la Competencia Leal para mejorar el sistema de evaluación.

3.15. A lo largo del período objeto de examen se mantuvieron sin cambios unas 170 "zonas especiales bajo supervisión aduanera", sujetas a su propia reglamentación, dedicadas al tráfico de perfeccionamiento, las actividades de logística y la prestación de servicios bajo control aduanero.²⁵ De acuerdo con los Dictámenes sobre la Aceleración del Desarrollo de Nuevas Formas y Modelos de Comercio Exterior²⁶, publicados en julio de 2021, el MOFCOM, el Ministerio de Ecología y Medio Ambiente y la GACC distribuyeron conjuntamente un Anuncio sobre la Publicación de un Catálogo de Productos Adicionales para la Prestación de Servicios de Mantenimiento en Zonas Integradas bajo Control Aduanero con miras a ayudar a las empresas de las zonas integradas bajo control aduanero a prestar servicios a las empresas que requieren alta tecnología, generar un alto valor añadido y cumplir determinadas prescripciones ambientales.²⁷ En enero de 2022, se publicaron las Medidas Administrativas para las Zonas Integradas bajo Control Aduanero (Anuncio N° 256 de la GACC, 2022) con miras a seguir normalizando la gestión de las zonas integradas bajo control aduanero.²⁸ De conformidad con el MOFCOM, el Ministerio de Ecología y Medio Ambiente (MEE), y los Anuncios N° 16 y 45 de la GACC, de 2020 y 2021 respectivamente, por ejemplo, las empresas de las zonas integradas bajo control aduanero pueden prestar servicios de mantenimiento de motores de combustión interna de aeronaves, trenes de aterrizaje de aeronaves, drones, instrumentos de diagnóstico ultrasónicos de tipo B y otros productos.²⁹ No hay ninguna norma que establezca que esos servicios solo se permiten en las zonas integradas bajo control aduanero.

3.16. En lo que respecta a los sistemas de exámenes administrativos relacionados con las infracciones aduaneras, el 1 de enero de 2024 entró en vigor la Ley de Reexamen Administrativo revisada. Además, el Reglamento de la GACC sobre el Procedimiento de Audiencia en el marco de Casos de Reexamen Administrativo (Anuncio N° 265 de la GACC) entró en vigor el 1 de marzo de 2024, y el mismo día se abolieron las Medidas de la GACC para el Reexamen Administrativo (Anuncio N° 166 de la GACC, modificado por el Anuncio N° 218 de la GACC).

²⁴ Consejo de Estado, Dictámenes sobre la Aceleración de la Construcción de un Mercado Nacional Unificado, 25 de marzo de 2022, artículo 2 5). Consultado en: https://www.gov.cn/zhengce/2022-04/10/content_5684385.htm.

²⁵ El Consejo de Estado aprueba las zonas especiales bajo supervisión aduanera, y la Administración de Aduanas de China las supervisa. Existen seis tipos: zonas bajo control aduanero, zonas de elaboración para la exportación, parques logísticos bajo control aduanero, puertos francos, zonas integradas bajo control aduanero y zonas industriales transfronterizas. Documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

²⁶ Aviso N° 24 del Consejo de Estado, 2021. Consultado en: https://www.gov.cn/zhengce/content/2021-07/09/content_5623826.htm.

²⁷ MOFCOM, Ministerio de Ecología y Medio Ambiente (MEE), y Anuncio N° 45 de la GACC, 2021. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202112/20211203233188.shtml>.

²⁸ Anuncio N° 256 de la GACC, 2022. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/4123714/index.html>.

²⁹ MOFCOM, consultado en: <http://www.mofcom.gov.cn/article/b/e/202005/20200502965882.shtml>; y <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202112/20211203233188.shtml>.

3.1.1.1 Inspección previa a la expedición

3.17. La inspección previa a la expedición sigue siendo obligatoria para determinadas importaciones, en particular para una gama concreta de productos mecánicos y eléctricos usados importados, conforme a ley de Inspección de Mercancías de Importación y Exportación. El 1 de enero de 2021, se prohibió la importación de desechos sólidos y se eliminó la inspección previa a la expedición de los desechos importados como materias primas; aparte de esto, durante el período objeto de examen no hubo cambios importantes en las prescripciones de inspección previa a la expedición. Tal como se notificó a la OMC³⁰, entre las leyes y reglamentos de China que permiten aplicar el Acuerdo sobre Inspección Previa a la Expedición figuran la Ley de Inspección de Mercancías de Importación y Exportación (última modificación en 2018)³¹; el Reglamento de Aplicación de la Ley de Inspección de Mercancías de Importación y Exportación (última revisión en 2022)³²; las Medidas para la Inspección, Supervisión y Administración de Productos Mecánicos y Eléctricos Usados Importados³³; y las Medidas para la Supervisión, Administración, Inspección y Cuarentena de los Residuos Sólidos Importados que Pueden Ser Utilizados como Materias Primas.³⁴

3.1.1.2 Valoración en aduana

3.18. Desde el anterior examen no se han introducido cambios importantes en las normas y procedimientos de valoración en aduana de China, que figuran en el Anuncio N° 213 de la GACC, 2013.³⁵ El valor en aduana se determina sobre la base del valor de transacción y, cuando este no puede utilizarse, se aplican los demás métodos de valoración por orden sucesivo, según se estipula en el Acuerdo sobre Valoración en Aduana de la OMC.

3.19. Desde 2021, la GACC ha aceptado 61 nuevos casos de reexamen administrativo relativos a la clasificación (31), la valoración (13) o las normas de origen (17), de los cuales se han cerrado 56. Asimismo, ha aceptado 13 nuevos casos de recurso administrativo, 10 relativos a la clasificación y 3 al país de origen. Se han cerrado 3 de ellos.

3.1.1.3 Facilitación del comercio

3.20. China ha ratificado el Acuerdo sobre Facilitación del Comercio y ha notificado sus compromisos de las categorías A y B.³⁶ Según la Base de Datos del AFC de la OMC, China ha aplicado plenamente el Acuerdo.³⁷ Durante el período objeto de examen, China adoptó diversas medidas de facilitación del comercio (recuadro 3.1); también compartió su experiencia en materia de gestión aduanera inteligente, digitalización y ventanilla única con el Comité de Facilitación del Comercio de la OMC.³⁸

³⁰ Documento [G/PSI/N/1/Rev.5](#) de la OMC, de 18 de mayo de 2021.

³¹ GACC, Ley de Inspección de Mercancías de Importación y Exportación. Consultada en: <http://www.customs.gov.cn/customs/302249/302266/302267/2369445/index.html>.

³² GACC, Reglamento de Aplicación de la Ley de Inspección de Mercancías de Importación y Exportación. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/2369666/index.html>.

³³ GACC, Medidas para la Inspección, Supervisión y Administración de Productos Mecánicos y Eléctricos Usados Importados. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/2371611/index.html>.

³⁴ Gobierno de China, Medidas para la Supervisión, Administración, Inspección y Cuarentena de los Residuos Sólidos Importados que Pueden Ser Utilizados como Materias Primas. Consultado en: https://www.gov.cn/zhengce/2018-11/23/content_5723433.htm.

³⁵ Gobierno de China, consultado en: https://www.gov.cn/qongbao/content/2014/content_2620281.htm; y documento [G/VAL/N/1/CHN/6](#) de la OMC, de 12 abril de 2018.

³⁶ El 4 de septiembre de 2015, China depositó su instrumento de aceptación del Protocolo de Enmienda para insertar el Acuerdo sobre Facilitación del Comercio en el Anexo 1A del Acuerdo sobre la OMC. Notificó sus compromisos de la categoría A, que abarcan la mayoría de las medidas, en junio de 2014, y los de la categoría B en junio de 2017. China no ha contraído ningún compromiso de la categoría C.

³⁷ Base de Datos del AFC de la OMC. Consultada en: <https://tfadatabase.org/members/china>.

³⁸ Base de Datos del AFC de la OMC. Consultada en: <https://tfadatabase.org/members/china>.

Recuadro 3.1 Medidas de facilitación del comercio de la GACC

1. Simplificación del registro de las empresas y facilitación de los trámites de despacho de aduana.

En 2020, la GACC publicó medidas para apoyar el desarrollo de las zonas bajo control aduanero. En ellas se especificaba que el registro, la inscripción o la actualización de información de empresas establecidas en las zonas integradas bajo control aduanero se realizarían en línea. En 2020, la GACC publicó un Anuncio sobre la Prórroga Temporal del Plazo de Verificación de los Manuales (Cuentas) de Tráfico de Perfeccionamiento y sobre Asuntos Pertinentes relacionados con el Registro y la Inscripción (Anuncio N° 21 de la GACC, 2020), que establecía que se daría prioridad en el registro o inscripción a las empresas importadoras de materiales para el control y la prevención de la pandemia a fin de asegurar un despacho de aduana rápido de dichos productos. En mayo de 2021, la GACC empezó a exigir la inscripción (en lugar del registro, como se exigía anteriormente) en línea de todas las entidades de declaración en aduana. Todas las entidades pueden presentar sus solicitudes de inscripción en cualquier lugar del país conectándose a "la ventanilla única para el comercio internacional" o la plataforma "Internet + Aduanas", sin necesidad de entregar documentación impresa en las instalaciones de las autoridades aduaneras. Una vez inscritas, las entidades pueden imprimir un acuse de recibo obtenido en línea. Las autoridades señalan que, gracias a estas medidas, las solicitudes se tramitaron con prontitud en línea en todo el país mediante el proceso de inscripción, sin necesidad de diligencias y sin costo alguno.

2. Aceleración del despacho de aduana de los aparatos electromecánicos y las materias primas importados que se necesitan con urgencia para la producción nacional. En agosto de 2022, la GACC publicó el Anuncio relativo a la Actualización del Catálogo de Mercancías de Importación y Exportación sujetas a Inspección (Anuncio N° 79 de la GACC, 2022) y decidió eliminar la inspección obligatoria de las importaciones de determinados productos de riesgo relativamente bajo de seguridad y calidad. Entre estos productos, siete fueron importados como productos que se necesitaban con urgencia para el equipo de procesamiento de la industria electrónica.

3. Facilitación de las importaciones de productos alimenticios y agropecuarios. Las autoridades aceleraron el procedimiento para otorgar acceso a los mercados a más categorías de productos agroalimentarios procedentes de un mayor número de países y registrar más establecimientos.

4. Apoyo a las empresas en la expansión de las exportaciones. Las notificaciones OTC y MSF realizadas por los Miembros de la OMC se publicaron en el sitio web del Servicio Nacional de Información y de Notificación OTC y MSF de China para la OMC, con miras a ayudar a las empresas a acceder a la información y las tendencias más recientes de las medidas OTC y sanitarias y fitosanitarias aplicadas en el extranjero. Hasta la fecha se han publicado más de 70.000 notificaciones. Además, las empresas pueden consultar las medidas OTC y sanitarias y fitosanitarias en la columna "Notificaciones e información" que figura en el sitio web. En el sitio web de las medidas comerciales técnicas (<http://www.tbtsps.cn/>), se publicaron la información de alerta temprana y los informes de los análisis conexos sobre la retención de productos chinos de exportación para dar a las empresas de exportación acceso oportuno a la información y evitar la obstrucción de las exportaciones. Además, sobre la base de la ventanilla única de China, se desarrolló una plataforma única de punto a punto para las medidas comerciales técnicas.

5. Facilitación de los procedimientos para las empresas dedicadas al tráfico de perfeccionamiento.

El 16 de febrero de 2020, la GACC publicó 10 medidas para ayudar a las empresas de comercio exterior a reanudar la producción y promover el crecimiento del comercio exterior. Con arreglo a estas medidas, en caso de que las empresas dedicadas al tráfico de perfeccionamiento (en particular, las establecidas en zonas sujetas a supervisión especial de las autoridades aduaneras) no verificaran sus manuales (cuentas) de tráfico de perfeccionamiento o no declararan las operaciones sujetas a declaración, como el traslado de mercancías con fines de elaboración avanzada y la tributación de las ventas internas, en el plazo establecido debido a un retraso en la reanudación de la producción, podían beneficiarse de un período de gracia, previa presentación de una declaración a las autoridades aduaneras competentes, y presentar los documentos más adelante. El 27 de octubre de 2023, la GACC puso en marcha 16 medidas de reforma, que comprenden la prórroga del plazo para la declaración centralizada de un traslado con fines de elaboración avanzada, la mejora de la gestión de las devoluciones e intercambios de productos elaborados exportados, la simplificación del procedimiento para la declaración centralizada de las ventas internas y la relocalización de las empresas, la reforma de la gestión del consumo unitario, la ampliación del alcance del modo de supervisión del tráfico de perfeccionamiento de grupos empresariales, y la facilitación del procedimiento de tráfico de perfeccionamiento y la promoción del desarrollo sostenido de alta calidad del tráfico de perfeccionamiento.

6. Simplificación de los procedimientos de verificación y reducción de las inspecciones sobre el terreno. La GACC gestiona los trámites vinculados a las pérdidas sobre la base de los datos de inventario facilitados por las empresas. Las autoridades de la Administración de Aduanas de China realizarán inspecciones sobre el terreno en función de la supervisión de la situación de producción y el riesgo en las empresas que realizan la solicitud vinculada a las pérdidas. De ser posible, la GACC lleva a cabo auditorías *ex situ* por vídeo o mediante la transmisión electrónica de datos para reducir al mínimo las interrupciones en la producción y el funcionamiento de las empresas. En el marco de las medidas de la GACC publicadas el 16 de febrero de 2020 para ayudar a las empresas dedicadas al tráfico de perfeccionamiento a hacer frente al impacto de la pandemia, cuando una de estas empresas solicitaba la verificación de sus manuales (libros de contabilidad) bajo control aduanero, generalmente las autoridades aduaneras no los verificaban *in situ*, siempre que la empresa mantuviera de forma adecuada el material pertinente. En su lugar, las autoridades aduaneras utilizaban un sistema de "Internet + Auditoría", por ejemplo, mediante una auditoría remota a través de videoconferencia y la transmisión electrónica de documentos, siempre que la empresa estuviera en condiciones de hacerlo. Hasta la fecha, las autoridades de la Administración de Aduanas de China se han conectado a los sistemas de planificación de recursos empresariales (sistemas de gestión de almacenes) de 215 empresas con el fin de realizar auditorías remotas. Las autoridades consideran que, mediante la aplicación de un enfoque basado en el riesgo posterior al despacho, la Administración de Aduanas de China puede centrarse en las auditorías de alto riesgo y mejorar los niveles de cumplimiento y facilitar el comercio. Según las autoridades, en 2023, la GACC llevó a cabo 7.809 auditorías, es decir, un 10% menos que el año anterior. La GACC también ha adoptado una estrategia de divulgación voluntaria. Además, ha simplificado la divulgación mediante procedimientos electrónicos. En 2023, la Administración de Aduanas de China aceptó 3.026 casos de divulgación voluntaria en línea. A fin de reducir las inspecciones múltiples y repetitivas sobre el terreno, las diversas instrucciones de verificación con respecto al mismo período y la misma persona son impartidas por el mismo equipo.

7. Apoyo eficaz en el marco de la plataforma "Internet + Aduanas". Todas las autoridades aduaneras han adoptado el despacho de aduana sin papel, y el servicio de asistencia telefónica y el sitio web oficial de la GACC ofrecen respuestas a las preguntas a este respecto.

Fuente: Información facilitada por las autoridades.

3.21. Los datos facilitados por las autoridades indican que la importación y exportación del tráfico de perfeccionamiento ascendió a USD 1,3156 billones en 2021 y USD 1,2684 billones en 2022. Desde el anterior examen, el régimen del tráfico de perfeccionamiento no ha variado; los productos de papel (partidas 4801 a 4816 del SA) se eliminaron del Catálogo de Productos Prohibidos en el marco del Tráfico de Perfeccionamiento a partir del 15 de junio de 2021.³⁹

3.1.2 Normas de origen

3.22. Desde su anterior examen, China no ha introducido cambios en las leyes o reglamentos pertinentes.⁴⁰ China continúa aplicando normas de origen preferenciales y no preferenciales. Todas las normas de origen preferenciales de China se aplican con arreglo a diversos ACR en vigor, y los criterios utilizados para determinar el origen no han cambiado desde el examen anterior.

3.1.3 Aranceles

3.1.3.1 Aranceles NMF aplicados

3.23. La estructura del arancel de aduanas de China, que no ha cambiado desde el examen anterior, se compone de tipos NMF, tipos arancelarios "de acuerdo", tipos arancelarios preferenciales especiales, tipos arancelarios generales y tipos aplicados dentro de contingentes arancelarios. Además, se aplican tipos arancelarios provisionales, que suelen ser inferiores a los tipos NMF, durante un período especificado (normalmente un año).⁴¹

³⁹ MOFCOM. Consultado en: <http://www.mofcom.gov.cn/swfgzc/article.shtml?id=20210603070389>.

⁴⁰ Los detalles de las normas de origen no preferenciales y preferenciales se describen en el documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

⁴¹ Los tipos establecidos en los acuerdos se aplican a los productos importados de los países y territorios aduaneros con los que China ha concertado acuerdos comerciales preferenciales (sección 2). Los tipos preferenciales especiales constituyen preferencias unilaterales que se aplican a las importaciones originarias de los PMA con los que China ha concluido un acuerdo comercial. Los tipos generales se aplican a los productos cuyo origen no puede determinarse, a los productos procedentes de países o territorios aduaneros que no han concertado un acuerdo comercial recíproco con China, a los países que no son Miembros de la OMC y a algunos territorios de los Estados miembros de la UE. Cuando un país o territorio aduanero aparece en varias listas, se le aplica el tipo más favorable teniendo en cuenta las normas de origen. Los derechos provisionales los fija

3.24. En 2024, el Arancel NMF aplicado por China comprende 8.957 líneas al nivel de 8 dígitos (SA 2022). La mayoría de las líneas arancelarias (el 99,6%) tienen aranceles *ad valorem*. Alrededor del 16% de todas las líneas estaban exentas de derechos.

3.25. La estructura del Arancel no ha registrado apenas variaciones desde el anterior examen. El tipo NMF medio aplicado en 2024 fue del 7,0%, frente al 7,1% en 2021. Los aranceles fueron más elevados en el caso de los productos agropecuarios (definición de la OMC), del 12,6% (cuadro 3.2). El arancel medio aplicado a los productos no agropecuarios se redujo al 6,1% (frente al 6,2% en 2021). El porcentaje de aranceles superiores al 15% (crestas arancelarias internacionales) fue del 4,3% (en 2021 fue del 4,5%). El porcentaje de aranceles sujetos a crestas arancelarias nacionales fue del 1,9% (sin cambios desde 2021).

Cuadro 3.2 Estructura del arancel de aduanas, 2017, 2021 y 2024

	Tipo NMF aplicado			Tipo final consolidado ^c
	2017 ^a	2021 ^b	2024	
Líneas arancelarias consolidadas (% del total de líneas arancelarias)	100,0	100,0	100,0	100,0
Promedio aritmético de los tipos	9,3	7,1	7,0	9,6
Productos agropecuarios (definición de la OMC)	14,6	12,7	12,6	15,1
Productos no agropecuarios (definición de la OMC)	8,5	6,2	6,1	8,7
Líneas arancelarias exentas de derechos (% de todas las líneas)	9,8	12,6	16,2	10,6
Promedio aritmético de los tipos de las líneas sujetas a derechos únicamente	10,3	8,1	8,3	10,7
Contingentes arancelarios (% del total de líneas arancelarias)	0,6	0,5	0,5	0,5
Aranceles no <i>ad valorem</i> (% del total de líneas arancelarias)	0,4	0,4	0,4	0,0
"Crestas" arancelarias nacionales (% del total de líneas arancelarias) ^d	1,8	1,9	1,9	2,0
"Crestas" arancelarias internacionales (% del total de líneas arancelarias) ^e	13,9	4,5	4,3	15,3
Desviación típica global de los tipos arancelarios	7,4	6,1	6,2	7,7
Coefficiente de variación de los tipos arancelarios	0,8	0,9	0,9	0,8
Tipos aplicados "de puro estorbo" (% del total de líneas arancelarias) ^f	3,2	4,3	2,5	2,5
Número de líneas	8.547	8.580	8.957	8.957
Tipos <i>ad valorem</i> (> 0%)	7.669	7.499	7.474	8.012
Libres de derechos	840	1.081	1.449	945
Tipos específicos	34	34	31	0
Tipos alternativos	3	3	3	0
Otros ^g	1	0	0	0

a Al 1 de diciembre.

b Al 1 de julio. Se incluyen las reducciones arancelarias aplicadas tras la ampliación del Acuerdo sobre Tecnología de la Información.

c Los tipos consolidados están basados en el Arancel de 2024.

d Se entiende por crestas arancelarias nacionales los tipos que exceden del triple del promedio global de los tipos aplicados.

e Se entiende por crestas arancelarias internacionales los tipos superiores al 15%.

f Los tipos "de puro estorbo" son los superiores a cero pero inferiores o iguales al 2%.

g Tipos *ad valorem*, si el precio es inferior o igual a determinada cantidad, o tipos compuestos si el precio es superior.

Nota: Los cálculos se basan en las líneas arancelarias nacionales (al nivel de 8 dígitos); se excluyen los tipos aplicables dentro de los contingentes y se incluyen los equivalentes *ad valorem* (EAV) de los derechos no *ad valorem* facilitados por las autoridades. Los tipos de los derechos temporales se utilizan para los cálculos cuando se aplican plenamente al nivel de 8 dígitos (si no se utilizan, el promedio aritmético de los tipos NMF aplicados es del 7,3% en 2024, por ejemplo). Los Aranceles de 2017 y 2021 se basan en la nomenclatura del SA 2017, y el de 2024, en la nomenclatura del SA 2022.

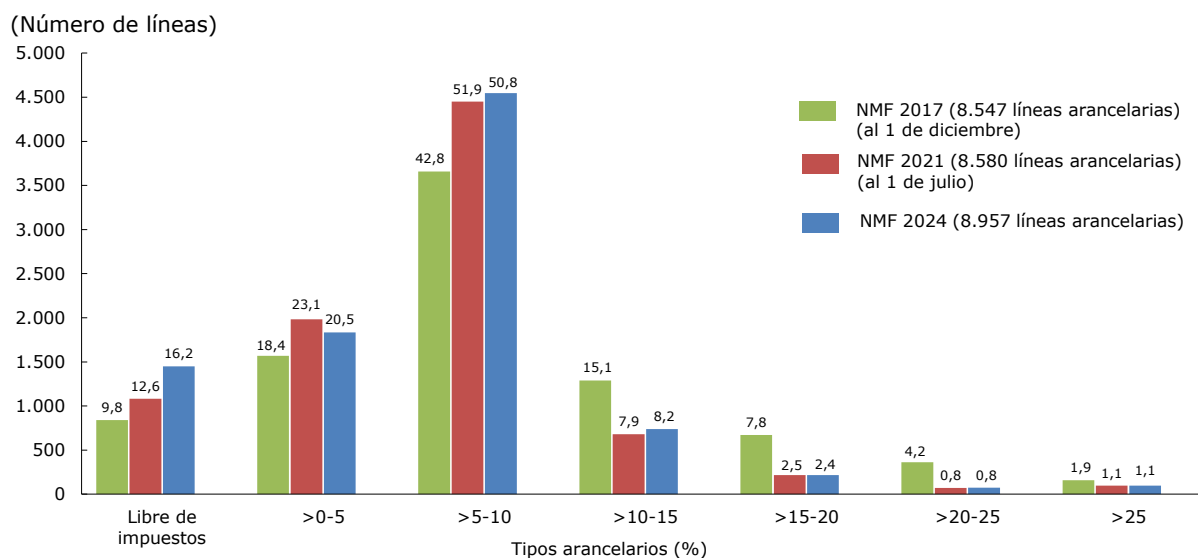
Fuente: Cálculos de la Secretaría de la OMC a partir de los datos facilitados por las autoridades.

anualmente la Comisión Arancelaria del Consejo de Estado y suelen aplicarse del 1 de enero al 31 de diciembre de cada año. Esos derechos se aplican en régimen NMF y sustituyen a los derechos NMF para las líneas afectadas. Los tipos de los derechos provisionales son inferiores a los tipos NMF y, en algunos casos, solamente se aplican a una parte de una línea arancelaria.

3.26. En 2024, los aranceles NMF aplicados por China incluyen 45 tipos arancelarios *ad valorem* distintos (frente a 50 en 2021). Esos tipos oscilan entre el 0% y el 65%, con una desviación típica de 6,2 (cuadro A3. 1). También en 2024, el 87,4% de todos los aranceles se sitúan en una horquilla que va de la franquicia arancelaria al 10%, algo menos que en 2021 (87,6%); esa pequeña diferencia puede explicarse por un cambio en la nomenclatura del SA.

3.27. En 2024, el 1,9% de las líneas arancelarias estaban sujetas a tipos superiores al 20% (gráfico 3.1). El arancel más elevado de China (65%) se aplica a 20 líneas arancelarias (trigo y morcajo (tranquillón); maíz, excepto para siembra; arroz; harina de trigo y morcajo (tranquillón); grañones, sémola y "pellets", de cereales; determinados cereales en grano, molidos o tratados (de maíz y cebada); y vermut y demás vinos preparados con plantas aromáticas (en recipientes con capacidad superior a 2 litros). Seis líneas arancelarias están sujetas a un tipo del 57% (los demás tabacos elaborados (partidas 2403 y 2404 del SA)), y 10 líneas arancelarias a un tipo del 50% (7 correspondientes a la partida azúcar de caña o de remolacha y sacarosa químicamente pura, en estado sólido (partida 1701 del SA) y 3 a la de abonos minerales o químicos (partidas 3102.10, 3105.20 y 3105.30 del SA)).

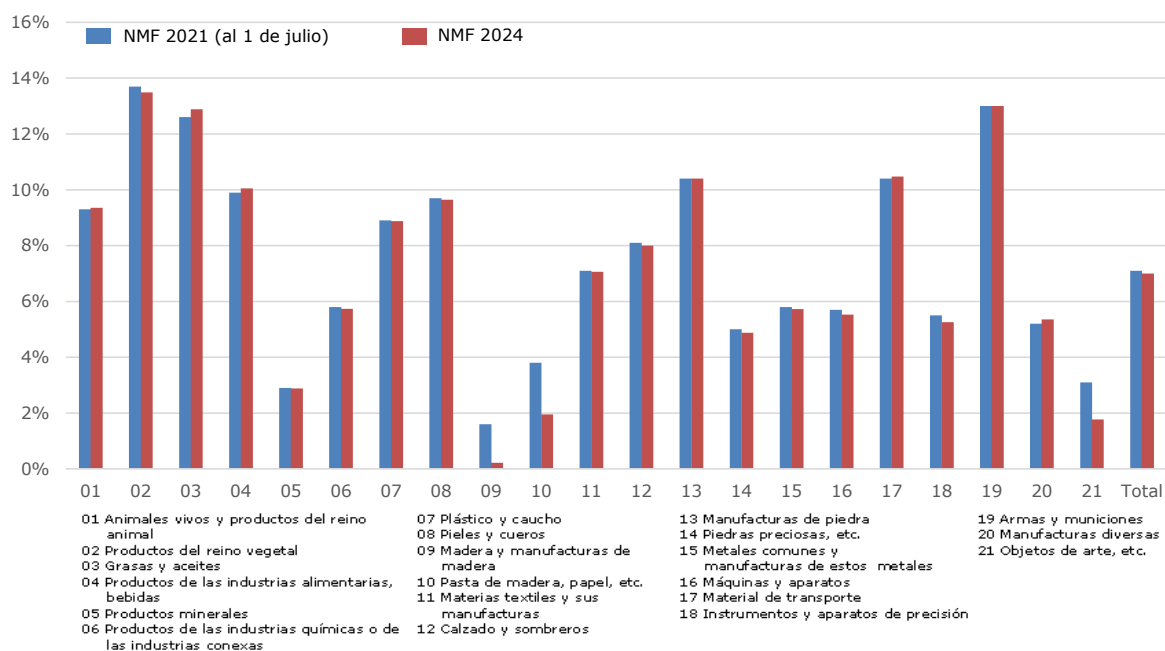
Gráfico 3.1 Distribución de los tipos arancelarios NMF aplicados, 2017, 2021 y 2024



Nota: Las cifras que figuran sobre las barras indican el porcentaje del total de líneas arancelarias. Los Aranceles de 2017 y 2021 se basan en la nomenclatura del SA 2017, y el de 2024, en el SA 2022.

Fuente: Cálculos de la Secretaría de la OMC a partir de los datos facilitados por las autoridades.

3.28. Entre 2021 y 2024, el promedio de los tipos arancelarios disminuyó principalmente para los artículos de las Secciones 09 (madera y manufacturas de madera), 10 (pasta de madera, papel, etc.) y 21 (objetos de arte). En el caso de otras Secciones del SA, la disminución es mínima. Algunas Secciones del SA muestran un aumento, que puede explicarse por un cambio en la nomenclatura del SA (gráfico 3.2).

Gráfico 3.2 Promedio de los tipos arancelarios, por Sección del SA, 2021 y 2024

Nota: Se excluyen los tipos aplicables dentro de los contingentes y se incluyen los equivalentes *ad valorem* (EAV) de los derechos no *ad valorem*. En los cálculos se utilizan los tipos provisionales cuando son aplicados en su totalidad al nivel de 8 dígitos.

Fuente: Cálculos de la Secretaría de la OMC a partir de los datos facilitados por las autoridades.

3.1.3.2 Contingentes arancelarios

3.29. China impone contingentes arancelarios de importación universales a productos como el trigo (7 líneas arancelarias), el maíz (5 líneas), el arroz (14 líneas), el algodón (2 líneas), el azúcar (7 líneas), la lana y la lana peinada (9 líneas) y los abonos químicos (3 líneas) (sección 4.1.1.4.1). Al importar se exige un certificado del contingente arancelario de importación para los productos agropecuarios y un certificado del contingente arancelario de importación para los abonos químicos, tanto para el comercio general como para el tráfico de perfeccionamiento, el comercio de trueque, el comercio fronterizo en pequeñas cantidades y el comercio con fines de asistencia o donación. Los productos procedentes del extranjero que entran en las zonas de vigilancia especial de las aduanas están exentos de ambos certificados de contingentes arancelarios de importación. Además, se han establecido contingentes arancelarios para determinados países en el marco de acuerdos bilaterales de libre comercio, como es el caso de los contingentes de la lana procedente de Australia, la lana y la lana peinada procedentes de Nueva Zelanda y el azúcar procedente de Mauricio y Nicaragua.

3.1.3.3 Aranceles consolidados

3.30. Cuando China pasó a formar parte de la OMC, en 2001, consolidó el 100% de sus aranceles a tipos *ad valorem* comprendidos entre el 0% y el 65% para los productos agropecuarios (según la definición de la OMC) y entre el 0% y el 50% para los productos no agropecuarios. El promedio aritmético de los tipos consolidados finales (y actuales) es del 9,6% (el 15,1% para los productos agropecuarios y el 8,7% para los no agropecuarios). Si bien todos los aranceles se consolidaron a tipos *ad valorem*, los aranceles NMF aplicados a 31 líneas arancelarias son a tipos no *ad valorem*. Las autoridades confirman que, en la práctica, los equivalentes *ad valorem* de esas líneas sujetas a tipos no *ad valorem* no son superiores a los tipos consolidados, puesto que se aplica el tipo más bajo.

3.1.3.4 Aranceles preferenciales

3.31. China aplica aranceles preferenciales en el marco de sus arreglos comerciales preferenciales (ACPR) y acuerdos comerciales regionales (ACR) (sección 2.3.2). Hong Kong, China y Macao, China están sujetos a los tipos arancelarios más bajos en promedio, seguidos de Chile y Nueva Zelanda

(cuadro 3.3). El porcentaje de líneas arancelarias libres de derechos en los ACR de China oscila entre el 99,2% (Hong Kong, China y Macao, China) y el 23,5% (Territorio Aduanero Distinto de Taiwán, Penghu, Kinmen y Matsu (Taipei Chino)). No se dispone de datos sobre la utilización de aranceles preferenciales en el marco de los ACR y los ACPR.

3.32. China también otorga un trato arancelario preferencial a las importaciones procedentes de PMA que han establecido relaciones diplomáticas con ella y ultimado el canje de notas diplomáticas. En febrero de 2023, China aplicaba aranceles nulos a entre el 95,4% y el 98,4% de las líneas arancelarias de esos 44 PMA. Los PMA y China han presentado al Comité de Normas de Origen de la OMC comunicaciones relativas a las tasas de utilización de las exportaciones de los PMA en el marco del arreglo comercial preferencial de China para los PMA.⁴²

Cuadro 3.3 Análisis recapitulativo de los aranceles preferenciales de China, 2024

	Total		Productos agropecuarios (definición de la OMC)		Productos no agropecuarios (definición de la OMC)	
	Promedio (%)	Libres de derechos ^a (%)	Promedio (%)	Libres de derechos ^a (%)	Promedio (%)	Libres de derechos ^a (%)
NMF	7,0	16,2	12,6	8,9	6,1	17,3
Tipos arancelarios "de acuerdo":						
APTA ^b	6,4	16,4	11,7	9,9	5,5	17,4
ASEAN ^c	0,6	95,4	1,5	93,6	0,4	95,7
Hong Kong, China (CEPA) ^d	0,04	99,2	0,0	100,0	0,05	99,1
Macao, China (CEPA) ^d	0,04	99,2	0,0	100,0	0,05	99,1
Taipei Chino (ECFA) ^e	6,5	23,5	12,4	10,6	5,5	25,5
Pakistán (ALC)	3,1	61,8	8,2	33,5	2,2	66,2
Chile (ALC)	0,3	98,4	1,8	95,0	0,1	99,0
Nueva Zelanda (ALC)	0,3	98,5	1,8	95,0	0,1	99,0
Singapur (ALC)	4,0	48,5	8,3	44,0	3,3	49,2
Perú (ALC)	0,8	94,6	2,5	90,3	0,6	95,3
Costa Rica (ALC)	0,4	97,2	2,4	86,8	0,1	98,8
Islandia (ALC)	0,5	97,3	2,6	91,4	0,1	98,2
Suiza (ALC)	1,2	91,3	3,3	87,0	0,8	92,0
Australia (ALC)	0,4	97,9	2,4	91,7	0,1	98,8
Corea, Rep. de (ALC)	2,1	72,8	4,9	63,8	1,7	74,2
Georgia (ALC)	0,8	95,3	3,3	87,1	0,4	96,6
Mauricio (ALC)	1,1	87,6	3,3	77,4	0,8	89,2
Camboya (ALC)	0,5	97,3	2,2	94,0	0,3	97,8
Nicaragua (ALC)	4,1	61,3	10,7	31,6	3,0	65,9
ASEAN (RCEP)	2,8	68,7	6,4	60,0	2,2	70,1
Australia (RCEP)	2,9	66,9	6,6	57,6	2,3	68,4
Japón (RCEP)	5,6	29,9	10,5	16,5	4,9	31,9
Corea, Rep. de (RCEP)	4,8	42,4	9,8	23,0	4,1	45,4
Nueva Zelanda (RCEP)	2,9	67,2	6,5	59,5	2,3	68,4
Tipos preferenciales aplicables a los PMA						
Aranceles preferenciales especiales "de acuerdo" aplicables a:						
Bangladesh y la República Democrática Popular Lao (PDR) en el marco del APTA	6,9	17,4	12,6	9,0	6,0	18,7
Camboya	6,4	21,9	10,1	29,6	5,8	20,7
RDP Lao	6,6	19,8	10,9	23,7	6,0	19,1
Myanmar	6,7	20,0	11,8	15,1	5,8	20,7
PMA 98% (34 países)	0,4	98,4	2,0	94,7	0,1	99,0
PMA 97% (7 países)	0,6	96,8	2,3	93,6	0,3	97,3
PMA 95% (2 países)	0,8	95,4	2,6	92,1	0,5	95,9
Pro memoria:						
Bangladesh ^f	0,4	98,4	2,0	94,7	0,1	99,0
Camboya ^g	0,3	98,4	1,4	94,8	0,1	99,0
RDP Lao ^h	0,3	98,4	1,4	94,8	0,1	99,0
Myanmar ⁱ	0,5	96,6	1,5	94,6	0,3	96,9
Singapur ^j	0,5	95,5	1,5	93,9	0,4	95,7

⁴² Documentos [G/RO/W/222](#) y [G/RO/W/227](#) de la OMC, de 22 de mayo de 2023 y 11 de octubre de 2023, respectivamente.

	Total		Productos agropecuarios (definición de la OMC)		Productos no agropecuarios (definición de la OMC)	
	Promedio	Libres de derechos ^a	Promedio	Libres de derechos ^a	Promedio	Libres de derechos ^a
	(%)	(%)	(%)	(%)	(%)	(%)
Corea, Rep. de ^k	2,0	72,9	4,8	63,7	1,6	74,3
Brunei Darussalam, Filipinas, Indonesia, Malasia, Tailandia y Viet Nam ^l	0,6	95,5	1,5	93,6	0,4	95,7
Australia ^m	0,4	97,9	2,4	91,7	0,1	98,8
Nueva Zelandia ⁿ	0,3	98,5	1,6	95,0	0,1	99,0

- a Líneas libres de derechos en porcentaje del total de líneas arancelarias.
- b Los tipos preferenciales en el marco del APTA son aplicables a la República de Corea, Sri Lanka, Bangladesh, la India y la República Democrática Popular Lao.
- c Los tipos preferenciales en el marco de la ASEAN son aplicables a Brunei Darussalam, Camboya, Filipinas, Indonesia, la RDP Lao, Malasia, Myanmar, Singapur, Tailandia y Viet Nam.
- d Acuerdo para establecer una Asociación Económica más Estrecha (CEPA).
- e Acuerdo Marco de Cooperación Económica a través del Estrecho.
- f Sobre la base de los tipos más bajos entre los aplicables en el marco del APTA, a Bangladesh y la República Democrática Popular Lao en el marco del APTA y los tipos aplicables a los PMA 98%.
- g Sobre la base de los tipos más bajos entre los aplicables en el marco de la ASEAN, en el marco de la RCEP con la ASEAN y el ALC con Camboya, el tipo preferencial especial para Camboya y los tipos aplicables a los PMA 98%.
- h Sobre la base de los tipos más bajos entre los aplicables en el marco de la ASEAN, en el marco de la RCEP con la ASEAN y en el marco del APTA, los tipos aplicables a Bangladesh y Lao, República Democrática Popular en el marco del APTA, los tipos preferenciales especiales aplicables a la RDP Lao y los tipos aplicables a los PMA 98%.
- i Sobre la base de los tipos más bajos entre los aplicables en el marco de la ASEAN y en el marco de la RCEP con la ASEAN, los tipos preferenciales especiales aplicables a Myanmar y los tipos aplicables a los PMA 95%.
- j Sobre la base de los tipos más bajos entre los aplicables en el marco de la ASEAN y en el marco de la RCEP con la ASEAN y los aplicables en el marco del ALC con Singapur.
- k Sobre la base de los tipos más bajos entre los aplicables en el marco del APTA, en el marco de la RECP con la República de Corea y en el marco del ALC con la República de Corea.
- l Sobre la base de los tipos más bajos entre los aplicables en el marco de la ASEAN y en el marco de la RCEP con la ASEAN.
- m Sobre la base de los tipos más bajos entre los aplicables en el marco del ALC con Australia y en el marco de la RCEP con Australia.
- n Sobre la base de los tipos más bajos adoptados entre los aplicables en el marco del ALC con Nueva Zelandia y en el marco de la RCEP con Nueva Zelandia.
- Nota: Los cálculos se basan en las líneas arancelarias nacionales (al nivel de 8 dígitos); se excluyen los tipos aplicables dentro de los contingentes y se incluyen los equivalentes *ad valorem* (EAV) de los derechos no *ad valorem* facilitados por las autoridades. En los cálculos se utilizan los tipos provisionales cuando son aplicados en su totalidad al nivel de 8 dígitos.

Fuente: Cálculos de la Secretaría de la OMC a partir de los datos facilitados por las autoridades de China.

3.1.3.5 Exenciones o concesiones arancelarias

3.33. Desde el examen anterior, no ha habido cambios en lo que se refiere a las exenciones, reducciones o concesiones de derechos que pueden aplicarse de conformidad con las disposiciones establecidas en la reglamentación pertinente del Consejo de Estado, ni en lo que se refiere a las mercancías importadas en zonas designadas, para empresas específicas o para usos específicos.⁴³ Las importaciones y exportaciones de mercancías en determinadas regiones, de determinadas empresas o con fines específicos pueden estar sujetas a derechos de aduana reducidos o estar exentas de tales derechos. El Consejo de Estado establecerá el alcance y los métodos de las reducciones o exenciones fiscales específicas. Se notificaron al Comité de Subvenciones y Medidas Compensatorias de la OMC diversas exenciones de los derechos de aduana en vigor durante los

⁴³ Artículos 56 a 58 de la Ley de Aduanas; artículos 45 a 47 del Reglamento sobre Derechos de Importación y Exportación; y políticas pertinentes de reducción y exención de impuestos.

períodos 2019-2020 y 2021-2022.⁴⁴ Las autoridades indican que no se dispone de datos sobre los ingresos dejados de percibir debido a las concesiones o exenciones arancelarias durante el período.

3.1.4 Otras cargas que afectan a las importaciones

3.34. Las otras cargas que afectan a las importaciones son el impuesto sobre el valor añadido (IVA), el impuesto sobre el consumo y el impuesto sobre la compra de vehículos automóviles.

3.35. Para apoyar la prevención y el control de la COVID-19, se eximió a las sociedades y las empresas individuales del IVA y del impuesto sobre el consumo (así como de diversas otras cargas que no afectan a las importaciones) con respecto a las mercancías de producción propia, elaboradas por encargo, compradas o donadas con el fin de frenar la propagación de la COVID-19, bien a través de organizaciones sociales encargadas del bienestar público, el Gobierno central y los Gobiernos locales y sus departamentos a nivel nacional o superior, y otras entidades estatales, o directamente de hospitales encargados de la prevención y el control de la COVID-19. Esta exención entró en vigor el 1 de enero de 2020. El Anuncio del Ministerio de Hacienda y la Administración Estatal sobre la Prórroga del Período de Aplicación de Determinadas Políticas Fiscales Preferenciales en Respuesta a la Pandemia (Anuncio Nº 7 de 2021), publicado el 17 de marzo de 2021, prorrogó el período de aplicación de las políticas fiscales preferenciales⁴⁵ previstas en el Anuncio del Ministerio de Hacienda y la Administración Estatal sobre las Políticas relativas al Impuesto de Donaciones en Apoyo de la Prevención y el Control del Brote de COVID-19 (Anuncio Nº 9 de 2020) hasta el 31 de marzo de 2021, fecha en que estas políticas expiraron. Además, las empresas que produjeran determinados materiales de apoyo clave para la prevención y el control de la pandemia podían solicitar mensualmente la devolución íntegra del exceso acumulado del IVA retenido. Asimismo, quedaban exentos del pago del IVA los ingresos derivados del transporte de materiales de apoyo clave para la prevención y el control de la pandemia, así los derivados de la prestación de servicios de transporte público o servicios de entrega urgente de artículos de primera necesidad.⁴⁶ Con arreglo al Anuncio del Ministerio de Hacienda y la Administración Estatal sobre las Políticas Fiscales de Apoyo a la Prevención y el Control de la Pandemia de COVID-19 (Anuncio Nº 8 de 2020), las empresas que produjeran determinados materiales de apoyo clave para la prevención y el control de la pandemia podían solicitar mensualmente a las autoridades fiscales competentes la devolución íntegra del exceso acumulado del IVA retenido. Además, estaban exentos del pago del IVA los ingresos derivados del transporte de materiales de apoyo clave para la prevención y el control de la pandemia, así como los derivados de la prestación de servicios de transporte público o servicios de entrega urgente de artículos de primera necesidad. De conformidad con el Anuncio del Ministerio de Hacienda y la Administración Estatal sobre la Prórroga del Período de Aplicación de Determinadas Políticas Fiscales Preferenciales en Respuesta a la Pandemia (Anuncio Nº 7 de 2021), estas políticas preferenciales estuvieron en vigor hasta el 31 de marzo de 2021, fecha en que expiraron.

3.1.4.1 Impuesto sobre el valor añadido (IVA)

3.36. En 2022, el IVA representó el 29,2% de los ingresos fiscales totales (frente al 36,8% en 2021); las autoridades han señalado que se ha llevado a cabo una política de reembolso en gran escala del exceso de IVA retenido. Hay 13 ramas de producción (incluidas 11 categorías) beneficiarias de esta política de devolución íntegra del impuesto retenido, a saber: el sector manufacturero; la investigación científica y los servicios tecnológicos; la generación y suministro de electricidad, calefacción, gas y agua; el transporte, el almacenamiento y los servicios postales; la venta al por mayor y al por menor; la agricultura, la silvicultura, la ganadería y la pesca; los servicios de alojamiento y restauración; los servicios residenciales, de reparación y otros servicios; la

⁴⁴ Documentos [G/SCM/N/372/CHN](#) y [G/SCM/N/401/CHN](#) de la OMC, de 27 de agosto de 2021 y 20 de julio de 2023, respectivamente.

⁴⁵ En el marco de estas políticas, los empresarios individuales que donasen mercancías producidas, expedidas, elaboradas o adquiridas para luchar contra la pandemia de COVID-19, bien a través de organizaciones sociales encargadas del bienestar público, los Gobiernos locales y sus departamentos a nivel nacional o superior y otras entidades estatales, o directamente de hospitales encargados de la prevención y el control de la pandemia, estaban exentos del IVA, del impuesto sobre el consumo, del impuesto de construcción y mantenimiento urbano, del recargo de educación y del recargo local de educación..

⁴⁶ En abril de 2022, el Ministerio de Hacienda y la Administración Estatal publicaron el Anuncio sobre la Política de Exención del IVA para los Servicios de Entrega Urgente (Anuncio Nº 18 de 2022), en el que se especificaba que, entre el 1 de mayo de 2022 y el 31 de diciembre de 2022, los ingresos derivados de la prestación de servicios de entrega urgente de artículos de primera necesidad a los residentes estarían exentos del IVA.

enseñanza; los servicios de salud y asistencia social; la cultura, el deporte y el ocio; los servicios de transmisión de información, programas informáticos y tecnología de la información; y la conservación del agua, la protección del medio ambiente y la gestión de los servicios públicos de protección de los recursos ecológicos y ambientales. Según las autoridades, la política se aplicó, entre otras cosas, con el objetivo de aliviar la presión financiera sobre las empresas, promover la inversión y el consumo, mejorar el régimen del IVA y reflejar la neutralidad fiscal.

3.37. Los tipos actuales del IVA no han variado desde el examen anterior y son del 13%, el 9%, el 6% y el 3%. Antes del 31 de diciembre de 2023, se eximió a determinados pequeños contribuyentes del IVA del pago del impuesto o se redujo temporalmente del 3% al 1% el tipo aplicado a esos contribuyentes (Anuncio del Ministerio de Hacienda y la Administración Estatal de Impuestos sobre la Política de Desgravación y Exención del IVA para los Pequeños Contribuyentes del IVA (Anuncio N° 19 de 2023)).⁴⁷

3.38. Como se notificó a la OMC, durante el período examinado se aplicaron políticas preferenciales del IVA para: i) los parques científicos y tecnológicos de las universidades nacionales; ii) la utilización integrada de recursos; iii) los nuevos tipos de materiales murales; iv) las microempresas y las pequeñas empresas; v) las empresas que dan empleo a personas discapacitadas; vi) los productos importados que sean de uso exclusivo de las personas discapacitadas; vii) los productos para personas con discapacidad; viii) los medicamentos destinados al tratamiento del VIH-SIDA; ix) el té vendido en las zonas fronterizas; x) los productos importados con objeto de sustituir las plantaciones de adormidera; xi) las importaciones de semillas (plantones); xii) el sector de los circuitos integrados; xiii) las grandes aeronaves de pasajeros; y xiv) los fármacos antineoplásicos.⁴⁸

3.39. Con arreglo al Anuncio del Ministerio de Hacienda y la Administración Estatal sobre las Políticas Fiscales de Apoyo a la Industria Cinematográfica y Otras Industrias (Anuncio N° 25 de 2020), entre el 1 de enero de 2020 y el 31 de diciembre de 2021 los contribuyentes estaban exentos del pago del IVA respecto a los ingresos derivados de la prestación de servicios de proyección de películas. De conformidad con el Anuncio del Ministerio de Hacienda y la Administración Estatal sobre la Prórroga del Período de Aplicación de Determinadas Políticas Fiscales Preferenciales en Respuesta a la Pandemia (Anuncio N° 7 de 2021), esta política se prorrogó hasta el 31 de marzo de 2021⁴⁹, fecha en la que expiró. Del 1 de enero de 2019 al 31 de diciembre de 2022, los contribuyentes estuvieron exentos del IVA con respecto a las mercancías donadas para la reducción de la pobreza, en determinadas condiciones.

3.1.4.2 Impuesto (especial) sobre el consumo

3.40. En 2022, el impuesto (especial) sobre el consumo (cuadro 3.4) representó el 10% de los ingresos fiscales totales (frente al 8,0% en 2021) (cuadro 3.5). Este impuesto sigue aplicándose a los productos que se consideran perjudiciales para la salud humana, el orden público y el medio ambiente; los bienes suntuarios; los productos que consumen mucha energía y los productos con un alto grado de elaboración; y los productos del petróleo no renovables y no reemplazables. Los tipos del impuesto varían de un producto a otro; pueden ser *ad valorem*, específicos o compuestos. En noviembre de 2022, China introdujo un impuesto sobre el consumo de cigarrillos electrónicos a un tipo del 36% en la etapa de producción e importación y del 11% en la etapa de venta al por mayor.⁵⁰ No se han introducido otros cambios en los artículos sujetos al impuesto sobre el consumo ni en los tipos aplicados. Al igual que en el examen anterior, están exentos del impuesto los productos del petróleo producidos mediante el uso integral de los recursos y determinados tipos de petróleo refinado.⁵¹

⁴⁷ En el caso de los pequeños contribuyentes que realizan actividades de venta sujetas al impuesto, se aplica un método simplificado de cálculo de la cuota tributaria basado en el importe de las ventas y el tipo impositivo, y no se permite la deducción del impuesto soportado. El tipo del IVA aplicado a los pequeños contribuyentes es del 3%, a menos que el Consejo de Estado disponga otra cosa.

⁴⁸ Documentos de la OMC [G/SCM/N/372/CHN](https://www.wto.org/press/2021/20210827_gscm_n401_chn.htm), de 27 de agosto de 2021, y [G/SCM/N/401/CHN](https://www.wto.org/press/2021/20210720_gscm_n401_chn.htm), de 20 de julio de 2023.

⁴⁹ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2021-03/23/content_5595078.htm.

⁵⁰ Anuncio N° 33 del Ministerio de Hacienda, de 2022. Consultado en: http://szs.mof.gov.cn/zhengcefabu/202210/t20221025_3847603.htm.

⁵¹ Documento de la OMC [G/SCM/N/401/CHN](https://www.wto.org/press/2012/20120720_gscm_n401_chn.htm), de 20 de julio de 2023, y Gobierno de China, consultado en https://www.gov.cn/gongbao/content/2012/content_2266921.htm.

Cuadro 3.4 Impuesto sobre el consumo, junio de 2023

Producto	Tipo impositivo
Cigarros (puros)	36%
Cigarrillos	
Procedimiento de producción (importación)	
Precio igual o superior a CNY 70 (IVA excluido) por cartón	56% más CNY 0,003/cigarrillo
Precio inferior a CNY 70 (IVA excluido) por cartón	36% más CNY 0,003/cigarrillo
Venta al por mayor	11% más CNY 0,005/cigarrillo
Picadura de tabaco	30%
Cigarrillos electrónicos	
Procedimiento de producción (importación)	36%
Venta al por mayor	11%
Bebidas alcohólicas y alcohol	
Alcohol destilado de cereales, patata o uva	20% más CNY 0,5/500 g (o por 500 ml)
Vino amarillo de arroz	CNY 240/tonelada
Cerveza de malta cuyo precio en fábrica sea igual o superior a CNY 3.000 (excluido el IVA) por tonelada	CNY 250/tonelada
Cerveza de malta cuyo precio en fábrica sea inferior a CNY 3.000 (excluido el IVA) por tonelada	CNY 220/tonelada
Las demás bebidas alcohólicas fermentadas	10%
Cosméticos de lujo	15%
Joyas preciosas, perlas, jade y piedras preciosas	
Joyas de oro, plata y platino, y diamantes	5%
Perlas, jade y piedras preciosas	10%
Cohetes y artículos para fuegos artificiales	15%
Gasolina	
Gasolina para motores y gasolina de aviación	CNY 1,52/litro
Gasóleo	CNY 1,2/litro
Queroseno de aviación	CNY 1,2/litro
Nafta	CNY 1,52/litro
Disolventes	CNY 1,52/litro
Lubricantes	CNY 1,52/litro
Fuel	CNY 1,2/litro
Motocicletas	
De cilindrada no superior a 250 ml	3%
De cilindrada superior a 250 ml	10%
Vehículos de motor	
Vehículos de pasajeros con menos de nueve asientos, de cilindrada:	
igual o inferior a 1.000 ml	1%
superior a 1.000 ml, pero inferior a 1.500 ml	3%
superior a 1.500 ml, pero inferior a 2.000 ml	5%
superior a 2.000 ml, pero inferior a 2.500 ml	9%
superior a 2.500 ml, pero inferior a 3.000 ml	12%
superior a 3.000 ml, pero inferior a 4.000 ml	25%
Igual o superior a 4.000 ml	40%
Vehículos ligeros o medianos para pasajeros de uso comercial	5%
Vehículos de "gran lujo" (venta al por menor)	Además del impuesto sobre el consumo aplicable a la producción (importación) basado en los tipos indicados <i>supra</i> , el impuesto sobre el consumo aplicable a la venta al por menor se percibe a un tipo del 10%.
Yates	10%
Relojes de lujo de precio superior a CNY 10.000 por unidad	20%
Pelotas y palos de golf	10%
Revestimientos de madera maciza	5%
Palillos para comer, desechables	5%
Pilas	4%
Pinturas	4%

Fuente: Información facilitada por las autoridades.

Cuadro 3.5 Ingresos fiscales, 2020-2022

(En miles de millones de CNY)

	2020	2021	2022
Ingresos públicos totales	18.291,4	20.255,5	20.364,9
Gobierno central (%)	45,3	45,2	46,6
Gobiernos locales (%)	54,7	54,8	53,4
Ingresos fiscales	15.421,2	17.273,6	16.662,0
Gobierno central (%)	51,6	51,5	54,0
Gobiernos locales (%)	48,4	48,5	46,0
Impuestos indirectos (% de los ingresos fiscales totales)			
Impuesto (especial) sobre el consumo	7,8	8,0	10,0
Impuesto sobre el valor añadido	36,8	36,8	29,2
Impuesto sobre el consumo e IVA aplicados en frontera	9,4	10,0	12,0
Desgravaciones del IVA y del impuesto sobre el consumo aplicadas a las exportaciones	8,8	10,5	9,8
Aranceles	1,7	1,6	1,7
Impuestos directos (% de los ingresos fiscales totales)			
Impuesto sobre la renta de las sociedades	23,6	24,3	26,2
Impuesto sobre la renta de las personas físicas	7,5	8,1	9,0
Gasto público total	24.567,9	24.567,3	26.055,2
Gobierno central (%)	14,3	14,3	13,7
Gobiernos locales (%)	85,7	85,7	86,3

Nota: Los ingresos y gastos totales de las administraciones públicas que figuran en el cuadro son los ingresos y gastos totales del presupuesto público general; no incluyen los ingresos y gastos de los fondos públicos ni el presupuesto de explotación del capital del Estado.

Fuente: Información facilitada por las autoridades.

3.41. El Anuncio del Ministerio de Hacienda y la Administración Estatal sobre la Prórroga de la Exención del Impuesto sobre el Consumo para los Productos de Aceites Minerales Usados y Reciclados (Anuncio Nº 69 de 2023) dispone que están exentos del citado impuesto los aceites industriales (como los aceites de base lubricantes, la gasolina o el gasóleo) elaborados a partir de aceites minerales por contribuyentes que reúnan determinados requisitos.⁵² El plazo de aplicación de la política de exención del impuesto sobre el consumo para los productos del petróleo reciclados a partir de aceites minerales usados se ha prorrogado hasta el 31 de diciembre de 2027.

3.1.4.3 Impuesto sobre la compra de vehículos automóviles

3.42. En virtud de la Ley del Impuesto sobre la Compra de Vehículos Automóviles de 2019, China aplica un impuesto del 10% a los vehículos de producción nacional y a los importados, que no se ha modificado desde el examen anterior. El impuesto es percibido por las autoridades fiscales solo cuando se produce la compra.⁵³ En el caso de los vehículos de producción nacional, el impuesto se aplica al precio íntegro pagado por el contribuyente al vendedor, excluido el IVA. En el caso de los vehículos importados, el precio imponible es el precio después de pagados los derechos, más el derecho de aduana y el impuesto sobre el consumo.⁵⁴ Los vehículos por los que ya se ha pagado el impuesto (por ejemplo, los coches usados) no están obligados a abonarlo de nuevo.

3.43. En junio de 2023, China anunció la prórroga de la exención: los vehículos adquiridos entre 2024 y 2025 estarán totalmente exentos; la exención fiscal máxima por cada vehículo de pasajeros propulsado por energías alternativas será de CNY 30.000. En cuanto a los vehículos

⁵² Administración Estatal de Impuestos. Consultado en: <https://fgk.chinatax.gov.cn/zcfgk/c102416/c5214575/content.html>.

⁵³ Según la Ley, las personas y entidades que adquieran vehículos sujetos a impuestos (es decir, automóviles, tranvías, remolques para automóviles y motocicletas de cilindrada superior a 150 mm) dentro de China están obligados a pagar el impuesto sobre la compra de vehículos de conformidad con la Ley. Con arreglo a la Ley, se entiende por "compra" el acto de adquirir y utilizar para uso propio vehículos sujetos a impuestos por medio de su compra, importación, autoproducción, donación, adjudicación u otros procedimientos. Los contribuyentes que compren vehículos sujetos a impuestos (para uso propio) y cumplan los criterios deben pagar el impuesto sobre la compra de vehículos durante el proceso de compra.

⁵⁴ Ley del Impuesto sobre la Compra de Vehículos Automóviles, artículo 6. El impuesto no se aplica a los vehículos ferroviarios urbanos (por ejemplo, metro y ferrocarril ligero), los vehículos mecánicos de ruedas especiales (como cargadoras, niveladoras, excavadoras y topadoras frontales), las grúas, las carretillas elevadoras y las motocicletas eléctricas. Desde 2014, están exentos del impuesto determinados vehículos propulsados por energías alternativas.

adquiridos entre 2026 y 2027, estarán sujetos a una desgravación del 50% y la desgravación fiscal máxima por cada vehículo de pasajeros propulsado por energías alternativas será de CNY 15.000.⁵⁵ La administración de los vehículos propulsados por energías alternativas que están exentos o pueden acogerse a desgravaciones del impuesto/gravamen corre a cargo del Ministerio de Industria y Tecnología de la Información (MIIT) y la Administración Estatal de Impuestos y se basa en el Catálogo de Modelos de Vehículos Propulsados por Energías Alternativas que se benefician de una Exención o Desgravación del Impuesto sobre la Compra de Vehículos Automóviles, que se actualiza periódicamente. Puede solicitarse la inclusión en el Catálogo de aquellos vehículos propulsados por energías alternativas (de producción nacional o importados) que cumplan todos los requisitos (entre los que figuran prescripciones técnicas y normas de prueba y de servicios). Todos los modelos enumerados en el Catálogo pueden beneficiarse de exenciones o desgravaciones fiscales. Según se ha notificado a la OMC, entre 2019 y 2021 se aplicaron otros tipos impositivos preferenciales a las empresas de transporte público urbano que adquirieran autobuses públicos eléctricos, los vehículos propulsados por energías alternativas, los remolques y otros vehículos similares.⁵⁶

3.1.5 Prohibiciones, restricciones y licencias de importación

3.44. China sigue clasificando las importaciones en tres categorías: no restringidas, restringidas y prohibidas. La importación de mercancías restringidas se administra mediante licencias o contingentes de importación. El régimen de licencias no establece diferencias en cuanto al origen de los productos, salvo que se disponga otra cosa en los ACR vigentes en China.⁵⁷ Desde 2021 no se han introducido cambios en las leyes y reglamentos que rigen la administración de las licencias de importación/exportación.⁵⁸

3.1.5.1 Prohibiciones de importación

3.45. Según las leyes y reglamentos pertinentes, se aplica un régimen de licencias de importación a determinadas mercancías sujetas a restricciones a la importación.

3.46. Con arreglo a la Ley de Comercio Exterior (modificada por última vez en 2022), China puede prohibir importaciones por razones de protección de la salud o la seguridad humanas, protección de la vida o la salud animal o vegetal, protección del medio ambiente, protección de la seguridad nacional y el interés público, cumplimiento de obligaciones jurídicas establecidas en virtud de tratados o acuerdos internacionales, o aplicación de medidas relacionadas con la importación o exportación de oro o plata.⁵⁹ También se aplican prohibiciones a la importación de mercancías originarias de interlocutores comerciales específicos (cuadro A3. 2); por ejemplo, como se notificó a la OMC en agosto de 2023, China anunció la suspensión de la importación de todos los productos acuáticos, incluidos los animales acuáticos comestibles, originarios del Japón.⁶⁰ China ha notificado a la OMC sus prohibiciones de importación correspondientes al período 2020-2022 (cuadro 3.6).⁶¹ Esas prohibiciones se aplicaban a determinadas sustancias tóxicas y productos de animales

⁵⁵ Anunció N° 10, de 2023, del Ministerio de Hacienda, la Administración Estatal de Impuestos y el Ministerio de Industria y Tecnología de la Información. Consultado en: https://www.gov.cn/zhengce/zhengceku/202306/content_6887734.htm.

⁵⁶ Documentos de la OMC [G/SCM/N/372/CHN](#), de 27 de agosto de 2021, y [G/SCM/N/401/CHN](#), de 20 de julio de 2023.

⁵⁷ Documento [G/LIC/N/3/CHN/18](#) de la OMC, de 30 de enero de 2020.

⁵⁸ El fundamento jurídico del sistema de licencias de importación/exportación de China consta de la Ley de Comercio Exterior, el Reglamento sobre la Administración de la Importación y Exportación de Mercancías, el Reglamento Administrativo sobre las Sustancias que Agotan la Capa de Ozono, el Código Arancelario de Importación y Exportación, las Medidas Administrativas relativas a las Licencias Automáticas de Importación de Mercancías, las Medidas Administrativas relativas a las Licencias de Importación de Mercancías, las Medidas Administrativas relativas a la Importación de Productos Mecánicos y Eléctricos, las Medidas Administrativas relativas a la Importación de Determinados Productos Mecánicos y Eléctricos Usados, las Medidas relativas a la Aplicación del Régimen de Licencias Automáticas de Importación para los Productos Mecánicos y Eléctricos, las Medidas Administrativas relativas a las Licencias de Exportación de Mercancías, las Medidas Administrativas relativas a las Mercancías Sujetas a Contingentes de Exportación y las Medidas relativas a las Mercancías Sujetas a Licitación de Contingentes de Exportación.

⁵⁹ National People's Congress, *Foreign Trade Law*. Consultado en: <https://flk.npc.gov.cn/detail2.html?ZmY4MDQxODE4NjVIZGMxNDExODY5YjI2MjNiZjE0YTU%3D>.

⁶⁰ Anuncio N° 103 de la GACC, 2023. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/5277845/index.html>; y documento [G/SPS/N/CHN/1283](#) de la OMC, de 31 de agosto de 2023.

⁶¹ Documento [G/MA/QR/N/CHN/6](#) de la OMC, de 12 de mayo de 2022.

silvestres; determinados equipos mecánicos y eléctricos viejos o de segunda mano; determinados productos químicos peligrosos, plaguicidas, contaminantes orgánicos persistentes, y productos con mercurio añadido; los desechos sólidos; la ractopamina; determinados tipos de lámparas de filamento; y el carbón vegetal importado de Somalia. La lista más reciente de productos prohibidos se publicó en diciembre de 2023 (Catálogo de Productos Sujetos a Prohibiciones de Importación del MOFCOM).⁶²

Cuadro 3.6 Prohibiciones de importación notificadas a la OMC para el período 2020-2024

Producto	Código(s) de la(s) línea(s) arancelaria(s) afectada(s), basado(s) en el SA 2017	Justificación en el marco de la OMC y motivos de la restricción	Fundamento jurídico nacional y entrada en vigor
Determinadas sustancias tóxicas y productos de animales silvestres	ex0506, ex0507, ex1302, ex2903	Artículo XX del GATT de 1994	Anuncio N° 19 del Ministerio de Comercio Exterior y Cooperación Económica (MOFTEC), 2001
Determinados equipos mecánicos y eléctricos viejos o de segunda mano	ex7011, ex7311, ex7321, ex7613, ex8402, ex8403, ex8404, ex8407, ex8408, ex8416, ex8417, ex8519, ex8521, ex8528, ex8540, ex9018, ex9022, ex9027	Artículo XX del GATT de 1994	Anuncio Conjunto N° 106 del MOFCOM y la GACC, 2018.
Determinados productos químicos peligrosos, plaguicidas, contaminantes orgánicos persistentes, y productos con mercurio añadido	ex2524, ex2903, ex2908, ex2910, ex2915, ex2918, ex2919, ex2921, ex2924, ex2925, ex2932	Artículo XX del GATT de 1994, Convenio de Rotterdam, Convenio de Estocolmo, Convenio de Minamata sobre el Mercurio	Anuncio Conjunto N° 116 del MOFCOM, la GACC y la Administración Estatal de Protección del Medio Ambiente (SEPA), de 2005
Determinados desechos sólidos (incluye también otros desechos sólidos cuyas líneas arancelarias no se especifican)	ex0501, ex0502, ex0505, ex0506, ex0507, ex0511, ex1522, ex1703, ex2517, ex2525, ex2530, ex2618, ex2619, ex2620, ex2621, ex2710, ex2713, ex2804, ex3006, ex3804, ex3825, ex3915, ex4004, ex4017, ex4115, ex4707, ex5103, ex5104, ex5202, ex5505, ex6309, ex6310, ex7001, ex7112, ex7204, ex7401, ex7404, ex7602, ex7802, ex8101, ex8102, ex8104, ex8105, ex8106, ex8107, ex8108, ex8109, ex8110, ex8111, ex8112, ex8415, ex8418, ex8450, ex8469, ex8473, ex8508, ex8510, ex8516, ex8517, ex8518, ex8539, ex9504, ex8519, ex8531, ex8532 a ex8534, ex8540 a ex8542, ex8908, ex9018, ex9022, ex84, ex85, ex90, ex2520, ex2524, ex6806	Artículo XX del GATT, Convenio de Basilea	Decreto Presidencial N° 43 de la República Popular China, 2020
Ractopamina e hidrocloreto de ractopamina	29225020	Artículo XX del GATT de 1994	Anuncio Conjunto N° 110 del MOFCOM y la GACC, 2009

⁶² Catálogo de Mercancías sujetas a Prohibiciones de Importación (Séptimo Lote) del MOFCOM y la GACC, y Anuncio N° 73 de la Administración Estatal de Protección del Medio Ambiente (SEPA), 2020. Consultado en: https://www.mee.gov.cn/xxqk2018/xxqk/xxqk10/202101/t20210107_816408.html; Octavo Lote, MOFCOM, GACC, y Anuncio N° 21 de la SEPA, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202306/20230603414825.shtml>; y Noveno Lote, MOFCOM, GACC, y Anuncio N° 63 de la SEPA, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202312/20231203463766.shtml>.

Producto	Código(s) de la(s) línea(s) arancelaria(s) afectada(s), basado(s) en el SA 2017	Justificación en el marco de la OMC y motivos de la restricción	Fundamento jurídico nacional y entrada en vigor
Determinados tipos de lámparas de filamento	ex8539	Artículo XX del GATT de 1994	Anuncio Conjunto N° 28 de la NDRC, el MOFCOM, la GACC, la Administración Estatal de Industria y Comercio (SAIC) y la AQSIQ, 2011
Carbón vegetal importado de Somalia	ex4402	Artículo XXI del GATT de 1994, documento S/RES/2036 de las Naciones Unidas (2012)	Anuncio N° 27 del MOFCOM, 2012.

Fuente: Documento [G/MA/QR/N/CHN/6](#) de la OMC, de 12 de mayo de 2022; e información facilitada por las autoridades.

3.47. Las importaciones de todos los desechos sólidos, de cualquier forma, están prohibidas desde enero de 2021.⁶³ El vertido, apilamiento y eliminación de productos de desecho procedentes del extranjero en el territorio de China también está prohibido. Los productos de desecho se enumeran en el Catálogo de Desechos Sólidos Restringidos (que pueden utilizarse como materias primas) y el Catálogo de Desechos Sólidos No Restringidos, elaborados por el Ministerio de Ecología y Medio Ambiente.

3.48. En abril de 2021 se revisaron las Medidas Administrativas sobre la Inocuidad de los Alimentos Importados y Exportados. Entre otras cosas, la revisión alentaba la utilización de la tecnología y el fortalecimiento de cooperación con las organizaciones internacionales.

3.1.5.2 Prescripciones en materia de licencias de importación

3.49. El régimen de licencias de importación de China, que no ha variado desde 2020, comprende licencias automáticas y no automáticas. Para la asignación de contingentes arancelarios debe obtenerse el correspondiente certificado de contingente arancelario de importación. Además, China exige licencias de importación para determinadas sustancias de doble uso, con objeto de proteger la seguridad nacional y el interés público y cumplir lo dispuesto en los acuerdos internacionales pertinentes.⁶⁴ Las autoridades indican que, con el fin de facilitar la expedición de licencias para artículos de doble uso, China ha digitalizado todo el proceso de solicitud de dichas licencias. La mayor parte de las prescripciones en materia de licencias automáticas de importación concierne a productos incluidos en la Sección 17 del SA (material de transporte). Los productos para los que se exigen licencias no automáticas de importación son, principalmente, las sustancias que agotan la capa de ozono y algunos productos mecánicos y eléctricos usados.

3.1.5.2.1 Prescripciones en materia de licencias automáticas de importación

3.50. Las principales leyes y reglamentos que rigen las licencias no automáticas de importación siguen siendo la Ley de Comercio Exterior, el Reglamento sobre la Administración de la Importación y Exportación de Mercancías y el Reglamento sobre la Administración de la Importación y Exportación de Tecnologías, que no han variado desde 2021

3.51. Todos los años se publica un Catálogo de Mercancías sujetas al Régimen de Licencias Automáticas de Importación.⁶⁵ Como anteriormente, todos los productos incluidos en el Catálogo pueden importarse libremente; las licencias automáticas de importación se mantienen únicamente con fines de vigilancia. En 2024 había 24 categorías de productos sujetas a prescripciones en materia

⁶³ Anuncio del Ministerio de Ecología y Medio Ambiente, el MOFCOM, la NDRC y la GACC sobre Cuestiones Pertinentes relativas a la Prohibición Total de la Importación de Desechos Sólidos (Anuncio N° 53, 2020). Consultado en: https://www.mee.gov.cn/xxqk2018/xxqk/xxqk01/202011/t20201125_809835.html.

⁶⁴ Documento [G/LIC/N/3/CHN/18](#) de la OMC, de 30 de enero de 2020; y Anuncio de la GACC sobre la Publicación del Catálogo de Artículos y Tecnologías de Doble Uso sujetos a Licencias de Importación y Exportación (Anuncio N° 68, 2019). Consultado en: <http://cys.mofcom.gov.cn/article/zcgz/201912/20191202927099.shtml>.

⁶⁵ Catálogo de Mercancías sujetas al Régimen de Licencias Automáticas de Importación correspondiente al año 2024, y Anuncio Conjunto N° 62 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcfb/202312/20231203463866.shtml>.

de licencias automáticas de importación aplicadas por el MOFCOM⁶⁶, y otras 21 categorías de productos⁶⁷ estaban sujetas a prescripciones de ese tipo aplicadas por los departamentos de comercio locales competentes a nivel provincial o las oficinas de electromecánica locales y departamentales, por autorización del MOFCOM. En el período objeto de examen se añadieron al Catálogo el tetracloroetileno, el cloruro de polivinilo (PVC) y el neopreno.

3.52. No ha habido cambios importantes en los procedimientos de solicitud de licencias automáticas de importación, ni en las condiciones para su concesión, desde el anterior examen.⁶⁸ Las licencias automáticas de importación tienen una validez de seis meses, prorrogable en ciertos casos. Las solicitudes se pueden presentar ante el MOFCOM o las instituciones autorizadas por este. La autoridad responsable de emitir las licencias debe aprobar las solicitudes con carácter inmediato (o en un plazo máximo de 10 días hábiles en circunstancias especiales). Las licencias automáticas de importación no son transferibles. Se permite a las empresas solicitar y recibir en línea las licencias de importación, y se las alienta a hacerlo por ese medio.

3.1.5.2.2 Prescripciones en materia de licencias no automáticas de importación

3.53. Los productos sujetos al régimen de licencias no automáticas se indican en el Catálogo de Mercancías sujetas al Régimen de Licencias de Importación.

3.54. En 2024 el Catálogo de Mercancías sujetas al Régimen de Licencias de Importación contenía 149 líneas arancelarias a nivel de 10 dígitos del SA que estaban sujetas al régimen de licencias no automáticas de importación (frente a 118 líneas arancelarias a nivel de 10 dígitos del SA en 2020).⁶⁹ Según las autoridades, en el período objeto de examen se han introducido en el Catálogo algunos ajustes en relación con las sustancias que agotan la capa de ozono, a consecuencia de la ratificación de la Enmienda de Kigali, así como del Plan de Ajuste Arancelario de la Comisión Arancelaria del Consejo de Estado correspondiente a 2022.⁷⁰ Como se señaló en anteriores exámenes, las importaciones sujetas a licencias no automáticas consisten principalmente en el equipo mecánico y electrónico usado y las sustancias que agotan la capa de ozono. El procedimiento para la obtención de una licencia no automática de importación no ha cambiado desde el anterior examen.

⁶⁶ Se trata de las siguientes categorías: carne de bovino; carne de porcino; carne de cordero; leche fresca; leche en polvo; yuca; cebada; sorgo; habas de soja; colza; azúcar; granos de destilería de maíz; harina de soja; tabaco; crudo; petróleo refinado; abonos; ácido diacético; estopas de fibra; máquinas para la industria del tabaco; productos de comunicaciones móviles; equipo de comunicación por satélite y de radio y televisión; productos del automóvil; aeronaves; y buques.

⁶⁷ Se trata de las siguientes categorías: pollo de engorde, aceites vegetales, mineral de hierro, concentrados de cobre, carbón, petróleo refinado, tetracloroetileno, abonos, cloruro de polivinilo (PVC), neopreno, acero, maquinaria de construcción, máquinas impresoras, maquinaria textil, equipo de fundición y elaboración de metales, máquinas herramienta para la elaboración de metales, equipo eléctrico, productos del automóvil, aeronaves, buques, y equipo médico.

⁶⁸ Para más información sobre el procedimiento de obtención de licencias automáticas de importación, véase la última notificación presentada por China en virtud del artículo 7.3 del Acuerdo sobre Procedimientos para el Trámite de Licencias de Importación (documento [G/LIC/N/3/CHN/18](#) de la OMC, de 30 de enero de 2020).

⁶⁹ Catálogo de Mercancías sujetas al Régimen de Licencias de Importación correspondiente al año 2024, y Anuncio Conjunto N° 64 del MOFCOM y la GACC, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zwgk/qkzcfb/202312/20231203463753.shtml>.

⁷⁰ El 15 de septiembre de 2021 entró en vigor en China la Enmienda de Kigali. En consecuencia, el Ministerio de Ecología y Medio Ambiente, junto con el MOFCOM y la GACC, revisó y publicó el Catálogo de Importación y Exportación de Sustancias que Agotan la Capa de Ozono Controladas, al que se incorporaron los HFC. Desde el 1 de noviembre de 2021 los HFC están sujetos al control del sistema de licencias de importación y exportación. Posteriormente, en consonancia con el Aviso de la Comisión Arancelaria del Consejo de Estado sobre el Plan de Ajuste Arancelario de 2022, el MOFCOM y la GACC publicaron conjuntamente el Catálogo de Mercancías sujetas al Régimen de Licencias de Importación (2022) y el Catálogo de Mercancías sujetas al Régimen de Licencias de Exportación (2022) para ajustar la designación y el código arancelario de las partidas.

3.1.6 Medidas antidumping, compensatorias y de salvaguardia

3.1.6.1 Medidas antidumping

3.55. Desde su anterior examen China no ha introducido ningún cambio en la legislación y las normas administrativas sobre los procedimientos relacionados con las medidas antidumping.⁷¹ Las principales disposiciones relativas la realización de investigaciones antidumping y la aplicación de medidas antidumping son la Ley de Comercio Exterior, el Reglamento Antidumping⁷² y varias Normas publicadas, algunas de ellas provisionales.⁷³

3.56. Entre enero de 2021 y diciembre de 2023, China inició tres investigaciones antidumping (cuadro 3.7). Esas investigaciones concernían a los siguientes productos e interlocutores comerciales: policarbonato (Taipei Chino, noviembre de 2022); ftalocianina (India, marzo de 2022); y ácido propiónico (Estados Unidos, julio de 2023).

Cuadro 3.7 Investigaciones antidumping y medidas impuestas, enero de 2021-diciembre de 2023

	2021	2022	2023
Investigaciones iniciadas	0	2	1
Medidas provisionales	2	1	1
Medidas definitivas	2	2	1
Medidas que expiraron/terminaron	7	5	3

Fuente: Documentos de la OMC [G/ADP/N/391/CHN](#), de 28 de febrero de 2024; [G/ADP/N/384/CHN](#), de 4 de septiembre de 2023; [G/ADP/N/377/CHN](#), de 6 de marzo de 2023; [G/ADP/N/370/CHN](#), de 16 de agosto de 2022; [G/ADP/N/364/CHN/Corr.1](#), de 7 de julio de 2022; [G/ADP/N/364/CHN](#), de 1 de abril de 2022; [G/ADP/N/357/CHN/Corr.1](#), de 6 de julio de 2022; y [G/ADP/N/357/CHN](#), de 16 de septiembre de 2021.

3.57. En el período objeto de examen se puso fin a las medidas antidumping impuestas a los siguientes productos: cebada (Australia, agosto 2023); bisfenol-A (Tailandia, marzo de 2023); papel y cartón fotográficos (Reino Unido, marzo de 2023); caprolactama (Estados Unidos, Reino Unido y Unión Europea, octubre de 2022); cables de fibra óptica monomodo, de dispersión sin cambios (Reino Unido, abril de 2022); caucho cloropreno (Reino Unido, mayo de 2022); cintas (bandas) de aleación amorfa a base de hierro (Estados Unidos y Japón, noviembre de 2021); ácido tereftálico puro (República de Corea y Tailandia, agosto de 2021); acero magnético laminado plano de grano orientado (Reino Unido, julio de 2021); papel para sacos, crudo (Reino Unido, abril de 2021); y poliamidas-6 (Reino Unido, abril 2021).⁷⁴

3.58. Al final de diciembre de 2023 China aplicaba 120 medidas antidumping definitivas. Esas medidas afectaban a las importaciones procedentes de 17 países o territorios (contando a la Unión Europea como uno cuando las medidas se aplican a todos los Estados miembros de la UE). Entre todos los interlocutores comerciales afectados, las importaciones procedentes de los Estados Unidos eran las que estaban sujetas al mayor número de medidas antidumping, seguidas de las procedentes del Japón, la Unión Europea y la República de Corea, en consonancia con la tendencia observada en años anteriores (cuadro 3.8).

3.59. En período objeto de examen el MOFCOM admitió tres casos de examen administrativo de medidas comerciales correctivas (dos en 2021, ninguno en 2022 y uno en 2023); no recibió ninguna solicitud de iniciación de procedimientos contencioso-administrativos conexa. En el período

⁷¹ Se ofrece información detallada a este respecto en el documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

⁷² Documento [G/ADP/N/1/CHN/2/Suppl.3](#) de la OMC, de 20 de octubre de 2004.

⁷³ Documentos de la OMC [G/ADP/N/1/CHN/2/Suppl.1](#), de 18 de febrero de 2003; [G/ADP/N/1/CHN/2/Suppl.2](#), de 14 de abril de 2003; [G/ADP/N/1/CHN/2/Suppl.4](#), de 1 de diciembre de 2004; [G/ADP/N/1/CHN/2/Suppl.5](#), de 11 de enero de 2007; [G/ADP/N/1/CHN/2/Suppl.6](#), de 19 de octubre de 2007; y [G/ADP/N/1/CHN/2/Suppl.7](#), de 3 de octubre de 2018.

⁷⁴ Documentos de la OMC [G/ADP/N/377/CHN](#), de 6 de marzo de 2023; [G/ADP/N/370/CHN](#), de 16 de agosto de 2022; [G/ADP/N/364/CHN](#), de 1 de abril de 2022; [G/ADP/N/364/CHN/Corr.1](#), de 7 de julio de 2022; [G/ADP/N/357/CHN](#), de 16 de septiembre de 2021; [G/ADP/N/357/CHN/Corr.1](#), de 6 de julio de 2022; [G/ADP/N/350/CHN](#), de 9 de marzo de 2021; [G/ADP/N/350/CHN/Corr.1](#), de 6 de julio de 2022; [G/ADP/N/342/CHN](#), de 16 de octubre de 2020; y [G/ADP/N/342/CHN/Corr.1](#), de 6 de julio de 2022.

considerado el MOFCOM admitió tres casos de examen administrativo relacionados con medidas antidumping (dos en 2021, ninguno en 2022 y uno en 2023).

Cuadro 3.8 Medidas antidumping en vigor, por interlocutores comerciales, enero de 2021-junio de 2023

Interlocutor comercial	2021	2022	2023
Estados Unidos	24	25	25
Japón	20	20	20
Unión Europea	18	17	17
Corea, República de	15	16	16
Reino Unido	15	12	11
Taipei Chino	7	7	7
India	6	5	6
Malasia	4	4	4
Singapur	3	2	3
Tailandia	4	4	3
Brasil	2	2	2
Australia	2	2	1
Indonesia	1	1	1
Federación de Rusia	1	1	1
Arabia Saudita, Reino de la	1	1	1
Sudáfrica	1	1	1
Türkiye	1	1	1
Total	125	121	120

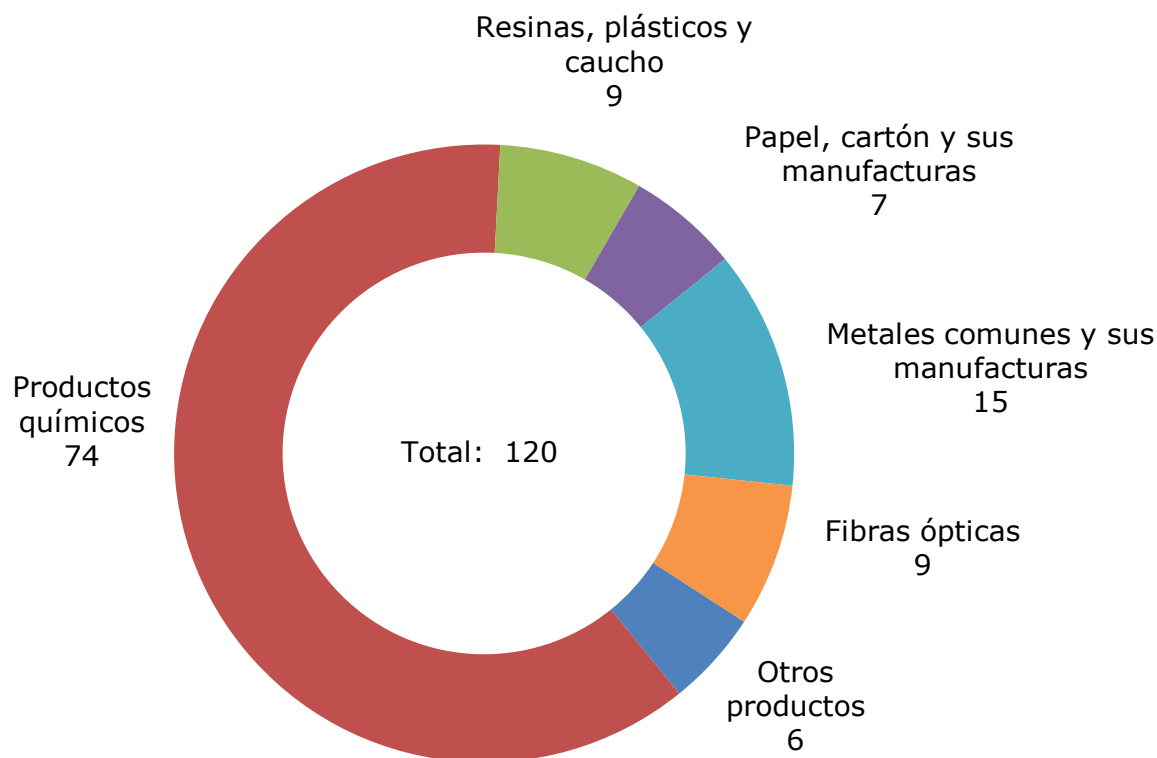
Nota: Las cifras correspondientes al período 2021-2022 reflejan las medidas antidumping en vigor el 31 de diciembre de cada año. Los compromisos y los derechos se consideran medidas distintas.

Fuente: Documentos de la OMC [G/ADP/N/384/CHN](#), de 4 de septiembre de 2023; [G/ADP/N/377/CHN](#), de 6 de marzo de 2023; [G/ADP/N/364/CHN](#), de 1 de abril de 2022; [G/ADP/N/364/CHN/Corr.1](#), de 7 de julio de 2022; [G/ADP/N/350/CHN](#), de 9 de marzo de 2021; y [G/ADP/N/350/CHN/Corr.1](#), de 6 de julio de 2022.

3.60. Las medidas antidumping en vigor más antiguas de China conciernen al caucho cloropreno procedente de los Estados Unidos, el Japón y la Unión Europea; los cables de fibra óptica monomodo, de dispersión sin cambios, procedentes de la República de Corea y el Japón; la fécula de patata (papa) procedente de la Unión Europea; el nonilfenol procedente de la India y el Taipei Chino; el papel para condensadores electrolíticos procedente del Japón; y el bisfenol A procedente de la República de Corea, el Japón, Singapur y el Taipei Chino.

3.61. Los productos químicos siguen siendo los más afectados por las medidas vigentes al final de junio de 2023, seguidos de los metales comunes y sus manufacturas (gráfico 3.3).

Gráfico 3.3 Medidas antidumping en vigor, por productos, 31 de diciembre de 2023



Nota: "Otros productos" comprende animales vivos y productos del reino animal (dos medidas); alimentos precocinados (tres medidas) y vino (una medida).

Fuente: Información recopilada por la Secretaría de la OMC a partir de documentos de la OMC.

3.1.6.2 Medidas compensatorias

3.62. Desde el anterior examen, en China no ha habido cambios en la legislación ni las normas administrativas existentes sobre medidas compensatorias y procedimientos de investigación en materia de derechos compensatorios.⁷⁵

3.63. El número de investigaciones en materia de derechos compensatorios iniciadas por China, y el número de medidas en vigor, han disminuido gradualmente en los últimos años (cuadro 3.9). No se ha iniciado ninguna nueva investigación en materia de medidas compensatorias en el período objeto de examen. Se han examinado y prorrogado las medidas relativas a los siguientes productos: fécula de patata (papa) (Unión Europea); y granos de destilería desecados, con o sin solubles (Estados Unidos). Se ha puesto fin a las siguientes medidas: fécula de patata (papa) (Reino Unido, septiembre de 2022); y cebada (Australia, agosto de 2023).

3.64. En los informes de los anteriores exámenes figura información detallada acerca de las disposiciones en materia de medidas compensatorias de los ACR concluidos por China.⁷⁶

⁷⁵ Se ofrece información detallada a este respecto en el documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

⁷⁶ Documentos [WT/TPR/S/415/Rev.1](#) y [WT/TPR/S/375/Rev.1](#) de la OMC, de 9 de marzo de 2022 y 14 de septiembre de 2018, respectivamente.

Cuadro 3.9 Investigaciones en materia de derechos compensatorios y medidas impuestas, 2021-2023

	2021	2022	2023
Investigaciones iniciadas	0	0	0
Medidas provisionales	1	0	0
Medidas definitivas	0	0	0
Medidas que expiraron/terminaron	0	1	1
Medidas en vigor (fin del período)	7	6	4

Fuente: Documentos de la OMC [G/SCM/N/414/CHN](#), de 7 de febrero de 2024; [G/SCM/N/407/CHN](#), de 30 de agosto de 2023; [G/SCM/N/399/CHN](#), de 1 de marzo de 2023; [G/SCM/N/392/CHN](#), de 12 de septiembre de 2022; [G/SCM/N/386/CHN](#), de 1 de abril de 2022; [G/SCM/N/379/CHN](#), de 23 de septiembre de 2021; [G/SCM/N/371/CHN](#), de 26 de febrero de 2021; y [G/SCM/N/363/CHN](#), de 16 de octubre de 2020.

3.1.6.3 Medidas de salvaguardia

3.65. En el período objeto de examen China no ha iniciado ninguna nueva investigación en materia de salvaguardias.

3.66. Las leyes y reglamentos que rigen las medidas de salvaguardia en China no han cambiado en el período objeto de examen.⁷⁷ El MOFCOM sigue estando a cargo de investigar y determinar si se ha producido un aumento de las importaciones y si se ha causado daño.⁷⁸ El procedimiento de las investigaciones no ha variado en el período considerado. En los informes de los exámenes anteriores figura información detallada sobre las disposiciones en materia de medidas de salvaguardia de los ACR suscritos por China.⁷⁹

3.2 Medidas que afectan directamente a las exportaciones
3.2.1 Procedimientos y requisitos aduaneros

3.67. El marco general de los procedimientos de exportación, entre los que figuran el registro y la documentación, apenas ha variado durante el período objeto de examen. Los trámites de registro para las exportaciones de mercancías con fines comerciales son similares a los de las importaciones y se rigen por la misma reglamentación; la expedición de licencias/permisos para la exportación de mercancías es de competencia del MOFCOM y China ha digitalizado el procedimiento de solicitud de ese tipo de licencias (sección 3.1.1).

3.68. Como parte del procedimiento de exportación, las declaraciones de exportación deben presentarse en papel o en formato electrónico. Al igual que cuando se realizó el examen anterior, las declaraciones puede presentarlas el expedidor o una empresa especializada en declaraciones de aduana autorizada por el expedidor.

3.69. Tal como estipula la Ley de Inspección de Mercancías de Importación y Exportación, los exportadores deben cumplir los requisitos establecidos en el Catálogo de Mercancías de Importación y Exportación sujetas a Inspección Obligatoria. La Administración de Aduanas de China inspecciona la exportación de productos incluidos en el Catálogo, como los productos químicos peligrosos, los artículos para fuegos artificiales, los encendedores, los productos alimenticios y las tierras raras. Esos productos deben ser inspeccionados en su lugar de producción. El embalaje de los productos peligrosos de exportación también debe someterse a inspección. El Catálogo es objeto de modificaciones periódicas en las que se añaden o eliminan productos. En el Catálogo revisado que entró en vigor el 15 de octubre de 2021 se añadieron 29 productos, como los abonos y los productos químicos, que quedaron sujetos a inspección.⁸⁰ En el Catálogo revisado que entró en vigor el 1 de

⁷⁷ Se ofrece información detallada a este respecto en el documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

⁷⁸ Si una investigación está relacionada con productos agropecuarios, la investigación y la determinación deben llevarse a cabo conjuntamente con el Ministerio de Agricultura y Asuntos Rurales.

⁷⁹ Documentos [WT/TPR/S/415/Rev.1](#) y [WT/TPR/S/375/Rev.1](#) de la OMC, de 9 de marzo de 2022 y 14 de septiembre de 2018, respectivamente.

⁸⁰ La finalidad de la inspección de los productos de importación y exportación es proteger la salud y la seguridad de las personas, proteger la vida y la salud de los animales o preservar los vegetales, proteger el medio ambiente, impedir el fraude y salvaguardar la seguridad nacional.

octubre de 2022, se suprimieron 87 productos, como los materiales metálicos no peligrosos y el equipo de procesamiento del sector de la electrónica.⁸¹

3.70. Con arreglo al sistema de gestión de riesgos, las empresas siguen clasificándose en distintos grupos en función de un análisis de riesgos. Como sucede con los procedimientos de importación, la inspección y supervisión aduaneras dependen de la calificación de la empresa (sección 3.1.1). Los productos exportados por empresas calificadas como empresas de alto riesgo y otras mercancías de riesgo elevado (en función del análisis de riesgos) son objeto de inspección, mientras que las demás exportaciones se despachan por una vía rápida o mediante un "examen de exportaciones de bajo riesgo".

3.71. Debido a la eliminación del artículo 9 de la Ley de Comercio Exterior en diciembre de 2022, como ocurre en el caso de las importaciones, las autoridades competentes ya no exigen a las empresas y particulares que solicitan licencias de exportación y otros documentos pertinentes (por ejemplo, certificados de registro de contratos de exportación de tecnología, contingentes de exportación y derechos de comercialización del Estado) presentarse ni registrarse como operadores de comercio exterior.⁸²

3.72. En cuanto a las medidas de facilitación del comercio y en materia de cumplimiento establecidas por China con miras, entre otras cosas, a contener la COVID-19, mantener las corrientes comerciales de suministros médicos y reducir al mínimo la perturbación causada por la COVID-19, desde su anterior examen, China ha publicado varios anuncios para ajustar las medidas adoptadas en respuesta a los cambios en la situación de la pandemia de COVID-19.⁸³ Las medidas de control de la exportación de equipos de pruebas de la COVID-19 y otros dispositivos médicos y otras medidas relacionadas con la COVID-19 finalizaron el 18 de agosto de 2023.⁸⁴

3.2.2 Impuestos, cargas y gravámenes

3.73. China aplica derechos de exportación de conformidad con el Reglamento sobre Derechos de Importación y Exportación. Pueden aplicarse tipos arancelarios provisionales a las mercancías de exportación durante un plazo determinado.⁸⁵

3.74. Los derechos de exportación se calculan sobre la base del valor de transacción de las exportaciones más las tasas relacionadas con el transporte y el costo del seguro. En 2023, todos los derechos de exportación eran *ad valorem*. Algunas partidas están sujetas a derechos provisionales de exportación aplicados a un tipo nulo.

⁸¹ Anuncio Nº 39 de la GACC, 2021. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/3731229/index.html>; Anuncio Nº 81 de la GACC, 2021. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/3957218/index.html>; y Anuncio Nº 79 de la GACC, 2022. Consultado en: <http://fuzhou.customs.gov.cn/customs/302249/302266/302267/4548521/index.html>.

⁸² MOFCOM (2023), The Person in Charge of the Foreign Trade Department of the Ministry of Commerce Introduced the Relevant Situation of Cancelling the Registration of Foreign Trade Operators. Consultado en: https://www.gov.cn/zhengce/2023-01/03/content_5734884.htm.

⁸³ Cabe citar entre ellos: Anuncio Nº 131 de la GACC, 2023; Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/4767730/index.html>; Anuncio Nº 14 de la GACC, 2023. Consultado en: <http://www.customs.gov.cn/customs/302249/302266/302267/4855354/index.html>; y Anuncio Nº 57 de la GACC, 2021. Consultado en: <http://xian.customs.gov.cn/customs/302249/302266/302267/3769016/index.html>.

⁸⁴ Anuncio Nº 32 del MOFCOM, la GACC, la Administración Estatal de Reglamentación del Mercado y la Administración Estatal de Productos Alimenticios y Farmacéuticos, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202308/20230803436393.shtml>.

⁸⁵ El Consejo de Estado constituirá la Comisión Arancelaria del Consejo de Estado para adoptar una resolución sobre las mercancías sujetas al arancel provisional, los tipos arancelarios y el plazo de aplicación. Las autoridades afirman que el principal objetivo de imponer derechos de exportación es la protección del medio ambiente nacional y la utilización eficaz y la sostenibilidad de los recursos escasos; los tipos arancelarios provisionales de exportación se ajustan según proceda sobre la base de consideraciones de desarrollo económico nacional.

3.75. En diciembre de 2022, la Comisión Arancelaria del Consejo de Estado anunció el Programa de Ajuste Arancelario para 2023.⁸⁶ El Programa contenía un aumento de los derechos de exportación de aluminio y aleaciones de aluminio para promover la transformación y modernización de la rama de producción.⁸⁷ El 1 de agosto de 2021, también se aumentaron al 40% y al 20%, respectivamente, los derechos de exportación de ferrocromo y fundición en bruto de alta pureza.⁸⁸

3.76. El 1 de enero de 2023, 102 líneas arancelarias (al nivel de 8 dígitos del SA) estaban sujetas a derechos de exportación legales, el mismo número que desde 2015, y 67 líneas arancelarias estaban sujetas a derechos provisionales, lo que supuso un descenso frente a las 75 líneas de 2021 (cuadro 3.10). El tipo más alto (del 50%) se aplica a los minerales de estaño y sus concentrados (partida 2609 del SA).⁸⁹

Cuadro 3.10 Derechos de exportación, por tipo y Capítulo del SA, 2024

Capítulo del SA	Derechos legales		Derechos provisionales	
	Nº de líneas	Horquilla (%)	Nº de líneas	Horquilla (%)
Total	102	20-50	67	0-35
03 Pescados y crustáceos	1	20	0	n.a.
05 Productos de origen animal, n.e.p.	4	40	1	0
26 Minerales metalíferos, escorias y cenizas	7	20-50	2	0-20
28 Productos químicos inorgánicos	3	20-30	0	n.a.
29 Productos químicos orgánicos	1	40	1	0
41 Cueros y pieles en bruto	2	20	0	n.a.
72 Fundición, hierro y acero	17	20-40	0	n.a.
74 Cobre y sus manufacturas	32	30	31	0-15
75 Níquel y sus manufacturas	4	40	4	5-15
76 Aluminio y sus manufacturas	24	20-30	23	0-15
79 Cinc y sus manufacturas	4	20	4	0-15
81 Los demás metales comunes	3	20	1	5

n.a. No se aplica.

Nota: Se incluyen las líneas arancelarias en las que los derechos de exportación se aplican solo parcialmente.

Fuente: Secretaría de la OMC a partir de los datos facilitados por las autoridades.

3.2.3 Prohibiciones, restricciones y licencias de exportación

3.77. Al igual que en el anterior examen, China impone restricciones y prohibiciones a la exportación de determinados productos con miras, entre otras cosas, a proteger la seguridad nacional y el interés público, la salud y seguridad humanas, la vida y salud animal y vegetal y el medio ambiente; preservar los recursos naturales que escasean en el país o pueden agotarse en el futuro; mantener el sistema comercial; proteger determinadas ramas de producción y la balanza de pagos; y cumplir las obligaciones contraídas en virtud de tratados y acuerdos internacionales.⁹⁰

⁸⁶ Aviso Nº 11 de la Comisión Arancelaria del Consejo de Estado [2022], 29 de diciembre de 2022, Anexo del Programa de Ajuste Arancelario de 2023.

Consultado en: <http://gss.mof.gov.cn/qzdt/zhengcefabu/202212/P020221229360729702511.pdf>.

⁸⁷ Ministerio de Hacienda, 12 de diciembre de 2022. Consultado en:

http://gss.mof.gov.cn/qzdt/zhengcejiedu/202212/t20221230_3861744.htm.

⁸⁸ Aviso Nº 6 de la Comisión Arancelaria del Consejo de Estado [2021], 29 de julio de 2021.

Consultado en: http://gss.mof.gov.cn/qzdt/zhengcefabu/202107/t20210729_3741558.htm.

⁸⁹ Aviso Nº 12 de la Comisión Arancelaria del Consejo de Estado [2022], 31 de diciembre de 2022.

Consultado en: https://www.gov.cn/zhengce/zhengceku/2023-01/02/content_5734605.htm.

⁹⁰ Oficina de Información del Consejo de Estado, China's Export Controls. Consultado en: http://www.scio.gov.cn/zfbps/ndhf/2021n_2242/202207/t20220704_130729.html.

3.78. Se aplican restricciones a la exportación, con inclusión de prohibiciones y prescripciones en materia de licencias, a diversos productos, según se desprende de la notificación de China a la OMC, de 2022, sobre sus restricciones cuantitativas.⁹¹ La lista contiene productos sujetos a prohibiciones a la exportación (por ejemplo, sustancias tóxicas y productos de animales salvajes, productos químicos y contaminantes peligrosos, arena natural, desechos forestales y céspedes y ractopamina) y sujetos a licencias de exportación (por ejemplo, ganado en pie, trigo, maíz, arroz, carbón, aceite, algodón, tungsteno, tierras raras, motocicletas, sustancias que agotan la capa de ozono, sustancias y tecnologías de doble uso, etc.), algunas de las cuales incluyen contingentes de exportación. Además, varios anuncios del MOFCOM indican restricciones temporales a la exportación (con inclusión de prohibiciones) (cuadro 3.11). Según las autoridades, las licencias de exportación de productos de doble uso no restringen los contingentes ni los volúmenes de exportación.⁹²

3.79. Las autoridades indican que China tiene previsto presentar una nueva notificación antes de la reunión del OEPC que se celebrará en julio de 2024 para examinar las políticas comerciales de China.

3.80. Los productos a los que se aplican restricciones de exportación pueden estar sujetos a contingentes o licencias. Antes del 31 de octubre de cada año, el MOFCOM anuncia el contingente total de exportación de las mercancías. El contingente total más reciente se hizo público mediante el Anuncio de los Contingentes Totales de Exportación de Mercancías del MOFCOM (Anuncio N° 44, 2023).⁹³

3.81. Por lo que respecta a las prescripciones en materia de licencias, el MOFCOM publica anualmente el Catálogo de Mercancías sujetas al Régimen de Licencias de Exportación⁹⁴, en el que se enumeran las mercancías que están sujetas a la obtención de licencias de exportación. El Anuncio de 2023, cuya aplicación está prevista para 2024, contiene 43 categorías (el mismo número que desde 2020). La mayor parte del contenido de estas categorías no ha variado desde 2020, mientras que se han añadido algunos productos de las categorías de regaliz y sus productos, productos químicos, algunos materiales de grafito y sus productos, sustancias que agotan la capa de ozono, algunos vehículos aéreos no tripulados, algunos motores de aviación, algunos artículos de galio y germanio, madera aserrada y algunos automóviles. Se han añadido algunas mercancías a las categorías de fluorita (espato flúor) y titanio. Además, se ha cambiado el nombre de algunas mercancías, pero sus Códigos del SA siguen siendo los mismos.⁹⁵ El Catálogo enumera también las mercancías sujetas a contingentes de exportación, a las que también corresponde un catálogo específico.⁹⁶ En el caso de las exportaciones sujetas a contingentes, el exportador debe obtener el contingente antes de solicitar una licencia.

⁹¹ Documento [G/MA/OR/N/CHN/6](#) de la OMC, de 12 de mayo de 2022.

⁹² Las autoridades afirman que, de conformidad con la Ley de Control de las Exportaciones, los productos de doble uso son bienes, tecnologías o servicios que pueden utilizarse tanto para fines civiles como para fines militares o para otros fines que favorezcan el aumento de la capacidad militar y, en particular, el diseño, el desarrollo, la producción o la utilización de armas de destrucción masiva y sus medios de transporte. En la actualidad, los productos de doble uso sujetos a control incluyen los enumerados en el Reglamento sobre el Control de la Exportación de Productos Nucleares de Doble Uso y Tecnologías Conexas, el Reglamento sobre el Control de la Exportación de Productos Biológicos de Doble Uso y Equipo y Tecnologías Conexas, el Reglamento sobre la Vigilancia de los Productos Químicos, el Reglamento sobre el Control de las Exportaciones de Misiles y Productos y Tecnologías Conexas y las Disposiciones sobre Control de las Exportaciones de Productos Químicos. El Catálogo de Productos de Doble Uso sujetos a Licencias de Importación y Exportación reúne los productos de doble uso y otros productos sujetos a licencias de importación y exportación. También incluye los productos químicos precursores que no están sujetos a la Ley de Control de las Exportaciones, pero se importan o exportan a través de dichas licencias de importación/exportación. Todos los productos del Catálogo deben contar con la aprobación previa de las autoridades competentes para su importación o exportación.

⁹³ Anuncio N° 44 del MOFCOM, 2023. Consultado en:

<http://www.mofcom.gov.cn/article/zcfb/zcblqg/202310/20231003449868.shtml>.

⁹⁴ Anuncios Conjuntos del MOFCOM y la GACC N° 50, 2021; N° 40, 2022; y N° 65, 2023. Consultados en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202112/20211203233746.shtml>, <http://www.mofcom.gov.cn/article/zcfb/zcblqg/202212/20221203376706.shtml>, y <http://www.mofcom.gov.cn/article/zcfb/zcblqg/202312/20231203463828.shtml>.

⁹⁵ Los productos químicos, algunos materiales y productos de grafito, algunos drones y algunos materiales de galio y germanio mencionados en ese Catálogo también se han incluido en el Catálogo para la Administración de Licencias de Importación y Exportación de Productos y Tecnologías de Doble Uso (2024).

⁹⁶ Los contingentes de exportación para 2024 se detallan en el Anuncio N° 44 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zczxzc/202310/20231003449868.shtml>.

3.82. China aplica un sistema de gestión de licencias para la exportación de determinados productos de doble uso. Durante el período objeto de examen, China impuso un control de las exportaciones de productos relacionados con el perclorato de potasio, los cañones de agua a alta presión, el galio y el germanio y los productos relacionados con drones, y realizó ajustes a las medidas temporales de control aplicables a la exportación de grafito (las autoridades señalan que se trata de prácticas aceptadas a nivel mundial). Las autoridades afirman que estas medidas adoptan un enfoque coordinado de desarrollo y seguridad, tienen en cuenta la necesidad de respetar las obligaciones internacionales, como la no proliferación, y salvaguardan la seguridad y los intereses nacionales. De conformidad con las Disposiciones sobre Administración de Licencias de Importación y Exportación de Productos y Tecnologías de Doble Uso, al final de cada año, el MOFCOM actualizará el Catálogo para la Administración de Licencias de Importación y Exportación de Productos y Tecnologías de Doble Uso, en colaboración con la GACC. Entre los productos sujetos a la administración de licencias de importación y exportación de productos y tecnologías de doble uso incluidos en el Catálogo figuran los productos químicos, misiles, productos nucleares, determinados productos de contraseñas comerciales y productos informáticos. Además, el control de las exportaciones se aplica también a los productos militares y los productos relacionados con la energía nuclear. En diciembre de 2022 se publicó el Catálogo para la Administración de Licencias de Importación y Exportación de Productos y Tecnologías de Doble Uso de 2023, por el que se revisa el Catálogo de 2021.⁹⁷ El Catálogo sobre licencias de exportación contiene 11 tipos de productos, entre otros, productos químicos, misiles, productos nucleares y productos criptográficos.

3.83. Las autoridades afirman que, con miras a promover la facilitación del comercio internacional de semillas agrícolas, a partir del 1 de julio de 2021 se suprimió el requisito de examen a nivel provincial para la importación y exportación de dichas semillas, que ahora aprueba directamente el Ministerio de Agricultura y Asuntos Rurales.

Cuadro 3.11 Productos sujetos a contingentes y licencias de exportación (con inclusión del sistema de gestión de licencias de exportación de productos de doble uso), marzo de 2024

Productos	Observaciones
Productos sujetos a contingentes y licencias de exportación Trigo; maíz; arroz; algodón; carbón; hierbas de efedra para uso medicinal (cultivadas); madera aserrada; pollos vivos (destinados a la exportación a Hong Kong, China); animales vivos de las especies bovina y porcina (destinados a la exportación a Hong Kong, China y Macao, China); petróleo crudo y petróleo refinado (excepto aceite lubricante, grasa, aceite de base lubricante, juncos y sus productos, gránulos medicinales y sus productos); regaliz y sus productos; harina de trigo; harina de maíz; harina de arroz; juncos de estera y sus productos.	
Productos sujetos a licencia Animales vivos de las especies bovina y porcina (destinados a la exportación a mercados distintos de Hong Kong, China y Macao, China); pollos vivos (destinados a la exportación a mercados distintos de Hong Kong, China); carne de bovino, de porcino y de pollo; arena natural (incluida la arena normal); bauxita; fosfato mineral; magnesita; talco en bloques (en polvo); fluorita (espato flúor); tierras raras; estaño y sus productos; tungsteno y sus productos; molibdeno y sus productos; antimonio y sus productos; coque; petróleo refinado (aceite lubricante, grasa y aceite de base lubricante); parafina; metaloides y sus productos; sulfato de disodio; carburo de silicio; sustancias que agotan la capa de ozono; ácido cítrico; plata; platino u oro blanco (exportado en el marco del tráfico de perfeccionamiento); indio y sus productos; motocicletas (incluidas las todoterreno) y motores y cuadros de motocicletas; y automóviles (incluidos los juegos completos de piezas) y chasis de automóviles.	
i) Materiales de grafito artificial de alta pureza (pureza > 99,9%), alta resistencia (resistencia a flexión > 30 MPa) y alta densidad (densidad > 1,73 g/centímetro cúbico) y sus productos (partidas 3801100030, 3801909010 y 6815190020 del SA) ii) Grafito natural en escamas y sus productos (incluidos el grafito esferoidizado, el grafito dilatado, etc.) (partidas 2504101000, 2504109100, 3801901000, 3801909010, 3824999940 y 6815190020 del SA)	Exportaciones prohibidas si no se obtiene un permiso (a partir del 1 de diciembre de 2023)

⁹⁷ MOFCOM. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202212/20221203376668.shtml>.

Productos	Observaciones
Vehículos aéreos no tripulados cuyos indicadores de rendimiento no hayan alcanzado los indicadores de control existentes pero hayan alcanzado algunos otros indicadores (partidas 8806100010, 8806221011, 8806229010, 8806231011, 8806239010, 8806241011, 8806249010, 8806291011, 8806299010, 8806921011, 8806929010, 8806931011, 8806939010, 8806941011, 8806949010 y 8806990010 del SA)	Exportaciones prohibidas si no se obtiene un permiso (a partir del 1 de septiembre de 2023)
i) Motores de aviación con una potencia continua de más de 16 kilovatios (kW) especialmente utilizados para vehículos o aeronaves no tripulados específicos (partidas 8501200010, 8501320010, 8501330010, 8501340010, 8501400010, 8501520010, 8501530010, 8407101010, 8407102010, 8408909230, 8408909320, 8411111010, 8411119010, 8411121010, 8411129020, 8411210010, 8411221010, 8411222010, 8411223010 y 8411810002 del SA)	Exportaciones prohibidas si no se obtiene un permiso (a partir del 1 de septiembre de 2023)
ii) Cargas útiles que satisfacen determinadas especificaciones técnicas y se utilizan específicamente para vehículos aéreos o aeronaves no tripulados específicos, con inclusión de equipos de diagnóstico de visualización infrarroja, radares de apertura sintética y láseres para la indicación de blancos	
i) Artículos de galio Galio metálico (elemento) (partidas 8112929010, 8112929090 y 8112999000 del SA); nitruro de galio (incluidos, aunque no exclusivamente, sus obleas, polvos, desechos, etc.) (partidas 2850001901, 3818009001 y 3825690001 del SA); óxido de galio (incluidos, aunque no exclusivamente, el policristalino y monocristalino y sus obleas, obleas epitaxiales, polvos, desechos, etc.) (partidas 2825909001, 3818009002 y 3825690002 del SA); fosfuro de galio (incluidos, aunque no exclusivamente, el policristalino y monocristalino y sus obleas, obleas epitaxiales, etc.) (partidas 2853904030, 3818009003 y 3825690003 del SA); arsenio de galio (incluidos, aunque no exclusivamente, el policristalino y monocristalino y sus obleas, obleas epitaxiales, polvos, desechos, etc.) (partidas 2853909026, 3818009004 y 3825690004 del SA); arsienuro de indio y galio (partidas 2853909028, 3818009005 y 3825690005 del SA); seleniuro de galio (incluidos, aunque no exclusivamente, el policristalino y monocristalino y sus obleas, obleas epitaxiales, polvos, desechos, etc.) (partidas 2842909024, 3818009006 y 3825690006 del SA); antimoniuro de galio (incluidos, aunque no exclusivamente, el policristalino y monocristalino y sus obleas, obleas epitaxiales, polvos, desechos, etc.) (partidas 2853909029, 3818009007 y 3825690007 del SA)	Exportaciones prohibidas si no se obtiene un permiso (a partir del 1 de agosto de 2023)
ii) Artículos de germanio Germanio metálico (elemento) (incluidos, aunque no exclusivamente, sus cristales, polvos, desechos, etc.) (partidas 8112921010, 8112921090 y 8112991000 del SA); lingotes de germanio de fusión por zona (partida 8112921090 del SA); fósforo, germanio y cinc (incluidos, aunque no exclusivamente, sus cristales, polvos, desechos, etc.) (partidas 2853904040, 3818009008 y 3825690008 del SA); sustrato de germanio para crecimiento epitaxial (partida 8112921090 del SA); dióxido de germanio (partidas 2825600002, 3818009009 y 3825690009 del SA); tetracloruro de germanio (partidas 2827399001, 3818009010 y 3825690010 del SA).	

Fuente: Anuncio N° 65 del MOFCOM y la GACC, 2003. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202312/20231203463828.shtml>; Anuncio N° 44 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zczxzc/202310/20231003449868.shtml>; Anuncio N° 39 del MOFCOM y la GACC, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zczxzc/202310/20231003447368.shtml>; Anuncio N° 28 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202307/20230703424616.shtml>; Anuncio N° 27 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202307/20230703424598.shtml>; y Anuncio N° 23 del MOFCOM, 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202307/20230703419666.shtml>.

3.84. Además, para "mantener el sistema de comercio exterior", las declaraciones de exportación de algunos productos siguen sujetas a licencias de exportación. Actualmente, según las autoridades, la restricción relativa a los puertos de despacho de aduana es aplicable principalmente en relación con las solicitudes de contingentes de exportación de hierbas de efedra cultivada utilizadas con fines medicinales.⁹⁸ El despacho de las exportaciones del producto debe realizarse en la aduana de Tianjin.

⁹⁸ Anuncio N° 88 del MOFCOM, 2018. Consultado en: <http://www.mofcom.gov.cn/article/b/c/201811/20181102804274.shtml>. Se suspende la gestión de puertos

3.85. En 2021, las exportaciones sujetas a licencias de exportación y contingentes de exportación representaron alrededor del 2,7% del valor de las exportaciones totales de China.⁹⁹ En 2022, representaron alrededor del 3,5% de las exportaciones totales y, en 2023, alrededor del 4,1%.

3.86. Los exportadores deben solicitar una "licencia de exportación de productos sujetos a control" a la autoridad competente para exportar cualquier producto que figure en una lista de control o esté sujeto a controles temporales. De conformidad con el artículo 13 de la Ley de Control de las Exportaciones, la aprobación o desaprobación de las exportaciones se basa en si ponen en peligro la seguridad y los intereses nacionales; pueden utilizarse para el diseño, el desarrollo, la producción o el uso de armas de destrucción masiva y sus vectores; o pueden utilizarse con fines terroristas.¹⁰⁰

3.87. El MOFCOM y el Ministerio de Ciencia y Tecnología (MOST) modificaron el Catálogo de Tecnologías sujetas a Restricciones o Prohibiciones de Exportación en diciembre de 2023.¹⁰¹ Se prohíben las exportaciones de una tecnología, mediante transferencia o concesión de licencias, si esa tecnología se clasifica como prohibida en el Catálogo. En el caso de la transferencia de cualquier tecnología sujeta a restricciones de exportación en el Catálogo, se requiere la aprobación de una autoridad de comercio competente a nivel provincial antes de entablar cualquier negociación sustancial de transferencia con homólogos extranjeros, y también se exigirá una licencia de exportación expedida por la misma autoridad al completar el acuerdo de transferencia de tecnología.

3.88. Según las autoridades, China está redactando el Reglamento sobre el Control de la Exportación de Productos de Doble Uso.

3.2.4 Apoyo y promoción de las exportaciones

3.89. En septiembre de 2022, el MOFCOM publicó el Aviso sobre Diversas Políticas y Medidas para Apoyar el Desarrollo Estable del Comercio Exterior", que contempla el apoyo a la participación en exposiciones relacionadas con las exportaciones, la mejora de las zonas de demostración de la innovación y las zonas experimentales integrales de comercio electrónico transfronterizo, y la mejora de la eficiencia de la recogida, la distribución y el transporte en los puertos.¹⁰²

3.90. La notificación más reciente de China a la OMC relativa a las subvenciones a la exportación se presentó en 2023; China indicó que en 2020, 2021 y 2022 no se concedieron subvenciones a la exportación de productos agropecuarios.¹⁰³

3.91. Los exportadores tienen derecho a desgravaciones del IVA. Salvo en el caso de productos como determinadas especies animales y vegetales amenazadas y determinados productos que consumen gran cantidad de energía o emiten contaminantes sustanciales, que no pueden beneficiarse de desgravaciones fiscales a la exportación, el reintegro de los productos que sí pueden

designados para la exportación de productos como magnesita, tierras raras y antimonio y sus productos; ya no hay puertos de despacho de aduana designados para las exportaciones de estos productos. Anuncio N° 40 del MOFCOM, 2023. Consultado en:

<http://www.mofcom.gov.cn/article/zcfb/zcblgg/202212/20221203376706.shtml>.

⁹⁹ Datos facilitados por las autoridades.

¹⁰⁰ En el caso de las mercancías, tecnologías, y servicios distintos de los enumerados en la lista de control de las exportaciones y en la lista de productos sujetos a control temporal, el exportador deberá solicitar a las autoridades nacionales de control de las exportaciones una licencia de exportación, si tiene o debiera tener constancia de que las mercancías, tecnologías y servicios pertinentes pueden poner en peligro la seguridad y los intereses nacionales, o pueden utilizarse para el diseño, el desarrollo, la producción o el uso de armas de destrucción masiva y sus vectores, o pueden utilizarse para el terrorismo, o si ha recibido de las autoridades nacionales de control de las exportaciones una notificación a tal efecto. MOFCOM. Consultado en: <http://www.mofcom.gov.cn/article/zwgk/zcfb/202010/20201003008925.shtml>.

¹⁰¹ MOFCOM y MOST, Catálogo de 2023, Notificación N° 57/2020, 21 de diciembre de 2023. Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcqxw/202312/20231203462079.shtml>.

Las autoridades afirman que, de conformidad con el Reglamento sobre la Administración de la Importación y Exportación de Tecnología, en los últimos años, el MOFCOM y el MOST han venido revisando activamente el Catálogo para adaptarse a la evolución de la ciencia y la tecnología y la necesidad de promover los intercambios científicos y tecnológicos internacionales y la cooperación en consonancia con las prácticas internacionales comunes.

¹⁰² Anuncio N° 152 del Departamento de Comercio Exterior del MOFCOM, 2022.

Consultado en: <http://www.mofcom.gov.cn/article/zcfb/zcdwmy/202209/20220903351830.shtml>.

¹⁰³ Documentos [G/AG/N/CHN/58](#), [G/AG/N/CHN/59](#) y [G/AG/N/CHN/68](#) de la OMC, de 16 de noviembre de 2022, 16 de noviembre de 2022 y 20 de septiembre de 2023, respectivamente.

beneficiarse de desgravaciones fiscales a la exportación se realiza sobre la base del tipo impositivo aplicable. El MOF y la Administración Estatal de Impuestos administran el régimen de desgravación del IVA. Durante el período objeto de examen, las tasas de desgravación del IVA sobre las exportaciones fueron objeto de ajustes mediante el Aviso N° 16 de 2021 y el Aviso N° 25 de 2021 del MOF y la Administración Estatal de Impuestos, por los que se eliminó la desgravación del IVA para la exportación de productos de hierro y acero. Según las autoridades, actualmente las tasas vigentes de desgravación fiscal a la exportación ascienden al 13%, el 9%, el 6% y el 0%.¹⁰⁴ Con el fin de ayudar a las empresas de comercio exterior a reducir su presión financiera y promover el desarrollo constante del comercio exterior, en la reunión ejecutiva del Consejo de Estado celebrada el 13 de abril de 2022 se decidió reforzar el apoyo a las políticas de desgravación fiscal a la exportación. A fin de llevar a la práctica la decisión, 10 departamentos del Consejo de Estado publicaron conjuntamente un Aviso sobre el Aumento del Apoyo a la Desgravación Fiscal a la Exportación para Promover el Desarrollo Constante del Comercio Exterior el 20 de abril de 2022.¹⁰⁵ En abril de 2022, la Administración Estatal de Impuestos publicó el Aviso sobre el Fortalecimiento del Apoyo al Reintegro Fiscal Aplicable a las Exportaciones y la Promoción del Desarrollo Estable del Comercio Exterior (Anuncio N° 36 de la Administración Estatal de Impuestos, 2022). El Anuncio tiene por objeto hacer más práctica la tramitación del reintegro fiscal aplicable a las exportaciones en vez de insistir más en ello a nivel de políticas.

3.92. Aparte de su función primordial como terreno de prueba para las reformas de política, las zonas francas experimentales han atraído a empresas exportadoras. Actualmente hay 22 zonas francas experimentales: una más que en 2021, aprobada el 31 de octubre de 2023.¹⁰⁶ En 2022, las 21 zonas francas experimentales utilizaron CNY 222.500 millones de capital extranjero, lo que representaba el 18% del total de la inversión extranjera en el país.¹⁰⁷ Entre los beneficios disponibles para las empresas que operan en zonas francas experimentales figuran un tipo reducido del impuesto sobre la renta de las sociedades del 15% que se aplicará durante cinco años desde su constitución y trámites aduaneros simplificados para las importaciones y exportaciones en esas zonas de las empresas que se dediquen a productos o tecnologías esenciales en esferas clave como los circuitos integrados, la inteligencia artificial, la biomedicina y la aviación civil, y que a su vez realicen actividades sustanciales de producción, investigación o desarrollo en la zona franca experimental de la Zona Especial Lin-Gang de China (Shanghái).

3.93. Desde 2021, se han adoptado diversas medidas con miras a utilizar las zonas francas experimentales como plataforma experimental amplia para la reforma y la liberalización del comercio. El 3 de septiembre de 2021 se publicó el Aviso sobre Diversas Medidas para Promover la Reforma y la Innovación del Comercio y la Facilitación de las Inversiones en las Zonas Francas Experimentales con el objetivo de adoptar 19 medidas de reforma e innovación y otorgar mayor autonomía a las zonas francas experimentales en lo que respecta a la facilitación del comercio y las inversiones.¹⁰⁸ Entre otras medidas figuran las Orientaciones para Reforzar la Protección Ambiental Ecológica y Promover un Desarrollo de Alta Calidad en las Zonas Francas Experimentales (publicadas el 28 de mayo de 2021).¹⁰⁹ Además, a fin de mejorar continuamente el nivel de apertura de las zonas francas experimentales, se publicaron las Medidas Administrativas Especiales relativas al Acceso a la Inversión Extranjera en las Zonas Francas Experimentales (Lista Negativa) (edición de 2021), que tenían menos categorías de actividades que antes.¹¹⁰ China también publicó en julio

¹⁰⁴ Se pueden consultar las tasas más recientes de desgravaciones fiscales a la exportación en el módulo "consulta de tasas de desgravación fiscal a la exportación" de la Plataforma Nacional de Servicios Gubernamentales. Consultado en: <https://app.gjzfw.gov.cn/jmopen/webapp/html5/chukou/index.html>.

¹⁰⁵ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2022-04/22/content_5686726.htm.

¹⁰⁶ Consejo de Estado. Consultado en: https://english.www.gov.cn/policies/latestreleases/202310/31/content_WS6540c489c6d0868f4e8e0d2b.html; y Gobierno de China. Consultado en: https://www.gov.cn/xinwen/2021-12/28/content_5664885.htm#:~:text=%E7%89%B9%E5%88%AB%E6%98%AF%E8%BF%91%E5%B9%B4%E6%9D%A5%EF%BC%8C%E4%B8%AD%E5%9B%BD,%E4%BA%AE%E7%9A%84%E5%BC%80%E6%94%BE%E6%88%90%E7%BB%A9%E5%8D%95%E3%80%82.

¹⁰⁷ Consejo Chino para el Fomento del Comercio Internacional, 6 de febrero de 2023. Consultado en: <https://www.ccpit.org/a/20230206/2023020668y6.html>.

¹⁰⁸ https://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664887.htm ¹⁰⁸ Government of China, Guo Fa N° 12 [2021]. Consultado en:

https://www.gov.cn/zhengce/content/2021-09/03/content_5635110.htm.

¹⁰⁹ Ministerio de Ecología y Medio Ambiente. Consultado en:

https://www.mee.gov.cn/xxgk/xxgk/xxgk03/202105/t20210531_835481.html.

¹¹⁰ Government of China, Anuncio N° 48 de la NDRC y el MOFCOM, 2021. Consultado en:

de 2021 la primera lista negativa en la esfera del comercio transfronterizo de servicios: Medidas Administrativas Especiales relativas al Comercio Transfronterizo de Servicios en el Puerto Franco de Hainan (Lista Negativa) (edición de 2021). Las autoridades han indicado que los proveedores de servicios nacionales y extranjeros no incluidos en la lista negativa recibirán el mismo trato y tendrán el mismo acceso al comercio transfronterizo de servicios. En junio de 2023 se publicó el Aviso sobre Diversas Medidas para la Armonización con las Normas Internacionales de Alto Nivel y la Promoción de la Apertura Institucional en las Zonas Francas Experimentales Calificadas y el Puerto Franco de Hainan, destinado a: i) promover la innovación y el desarrollo del comercio de mercancías; ii) promover el comercio de servicios; iii) facilitar la entrada temporal de personas de negocios; iv) promover el desarrollo del comercio digital; v) aumentar los esfuerzos para optimizar el entorno empresarial; y vi) mejorar el sistema de prevención y control de riesgos.¹¹¹ En diciembre de 2023, China publicó el Plan General para la Promoción de la Apertura Institucional de la Zona Franca Experimental (Shanghái) de China en consonancia con las Normas Económicas y Comerciales Internacionales de Alto Nivel.¹¹²

3.94. En 2022, el valor total del comercio exterior vinculado a las zonas francas experimentales ascendió a CNY 7,5 billones (CNY 4,7 billones en 2020).¹¹³ En 2023, el volumen total de importaciones y exportaciones en las 22 zonas francas experimentales alcanzó los CNY 7,67 billones (con un incremento interanual del 2,7%), lo que representó el 18,4% del comercio total del país.

3.95. En el marco de los programas de apoyo a la exportación, la Oficina de Desarrollo Comercial (TDB) del MOFCOM organiza exposiciones en mercados emergentes y actividades de formación orientadas a la exportación.¹¹⁴ También mantiene el sitio web China Trade Promotion para la promoción del comercio chino y ofrece información general sobre los mercados extranjeros a través de diversas plataformas de servicios. El Servicio para Empresas Chinas de Reclamaciones relativas a Operaciones Comerciales en el Extranjero, creado como ventanilla del MOFCOM en 2006, sigue prestando a los gobiernos locales y a las empresas chinas, entre otros, servicios de tramitación de reclamaciones, información sobre políticas, asesoría, creación de bases de talentos, apoyo a las empresas emergentes y orientación para llevar a cabo actividades comerciales en el extranjero.

3.96. Las autoridades han indicado que, durante el período objeto de examen, se realizaron varias actividades de promoción de las exportaciones y de asistencia a la exportación en el extranjero. Debido a la pandemia, en 2021 y 2022 el Consejo Chino para el Fomento del Comercio Internacional (CCPIT) organizó exposiciones relacionadas con el comercio principalmente en línea. Desde 2021, el CCPIT ha organizado foros de alto nivel, como la Mesa Redonda sobre Derecho Mercantil con ocasión del 70º aniversario del CCPIT. La plataforma de servicios jurídicos en materia de comercio e inversión transfronterizos desarrollada por el CCPIT ha ofrecido servicios de consultoría en más de 315.000 ocasiones desde diciembre de 2020, cuando se puso en marcha el servicio.

3.97. En octubre de 2023, el CCPIT había establecido 393 mecanismos de cooperación industrial y comercial a nivel bilateral y multilateral con homólogos y organizaciones internacionales conexas en más de 152 países y regiones. Desde 2021, el CCPIT ha colaborado con más de 100 interlocutores comerciales en la organización de actividades económicas y comerciales bilaterales y multilaterales, como la Cumbre Empresarial y de Inversiones China-ASEAN, la Cumbre Empresarial China-América Latina, la Conferencia Empresarial y el Seminario sobre Inversiones del Foro de Cooperación entre China y los Estados Árabes, y el Foro Empresarial del grupo BRICS.

https://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664887.htm.

¹¹¹ Government of China, Guo Fa Nº 9 [2023]. Consultado en:

<http://www.mofcom.gov.cn/article/zcfb/zcfbqg/202307/20230703424598.shtml>.

¹¹² Government of China, Guo Fa Nº 23 [2023]. Consultado en:

https://www.gov.cn/zhengce/zhengceku/202312/content_6918914.htm.

¹¹³ Consejo Chino para el Fomento del Comercio Internacional, 6 de febrero de 2023. Consultado en:

<https://www.ccpit.org/a/20230206/2023020668y6.html>.

¹¹⁴ La TDB, establecida en 2003, es una organización centrada en la aplicación de políticas y la promoción del comercio exterior que depende directamente del MOFCOM. Presta servicios públicos para promover los intercambios y la cooperación entre empresas chinas y extranjeras organizando actividades económicas y comerciales, exposiciones a nivel nacional e internacional y sesiones de formación empresarial.

3.2.5 Financiación, seguro y garantías de las exportaciones

3.98. La financiación¹¹⁵, el seguro y las garantías de las exportaciones siguen corriendo a cargo de varias instituciones financieras con el mandato de promover el comercio exterior y las inversiones transfronterizas. Estas incluyen el Banco de Exportación e Importación de China (Banco EXIM), que financia las exportaciones, y la Corporación de Seguros de Crédito y Exportación de China (SINOSURE), de propiedad estatal, que ofrece seguros de crédito a la exportación y garantías conexas. Las empresas de propiedad extranjera también pueden acceder a los servicios del Banco EXIM y SINOSURE. China no participa en el Acuerdo de la OCDE en materia de Créditos a la Exportación con Apoyo Oficial. Las autoridades han indicado que China siempre ha participado activamente en las consultas del Grupo de Trabajo Internacional sobre Créditos a la Exportación, incluido su grupo de trabajo técnico.

3.99. Durante el período objeto de examen no hubo ningún cambio importante en la situación del Banco EXIM, que ofrece principalmente financiación en el extranjero mediante diversas actividades como los créditos a la exportación, ni en sus objetivos y mandatos como banco de propiedad estatal. En 2022, el Banco EXIM realizó operaciones por valor de CNY 1.418,6 millones en concepto de liquidación internacional (CNY 843.600 millones), garantía (CNY 88.800 millones) y financiación del comercio (CNY 486.200 millones); a finales de 2022, el saldo pendiente de los préstamos al comercio exterior del Banco registró un aumento interanual del 20%.¹¹⁶ El Banco EXIM proporciona préstamos en apoyo de la Iniciativa "Cinturón y Ruta" (BRI). A finales de 2022, el saldo de los préstamos en apoyo a la BRI ascendía a CNY 2,2 billones, con una cobertura de más de 130 países.

3.100. Las autoridades afirman que, desde el examen anterior, no ha habido ningún cambio de política en relación con los seguros de crédito a la exportación proporcionados por SINOSURE. En 2022, la cuantía total de los seguros de crédito a la exportación fue de USD 753.000 millones, gran parte de los cuales eran seguros de crédito a la exportación a corto plazo. Según la información facilitada por las autoridades, en 2021 y 2022 los seguros de crédito a la exportación de SINOSURE representaron alrededor del 20,3% y el 21,0%, respectivamente, de las exportaciones totales.

3.3 Medidas que afectan a la producción y al comercio

3.3.1 Incentivos

3.101. Durante el período objeto de examen, China siguió ofreciendo apoyo financiero (con inclusión de incentivos y subvenciones) a nivel del Gobierno central y de los Gobiernos locales, en diversas formas, y a diferentes sectores y ramas de producción, centrándose principalmente en la industria, la ciencia y la tecnología.

3.102. Las políticas e industrias identificadas como esferas de apoyo prioritarias se describen en las Líneas Generales del 14º Plan Quinquenal del Gobierno Central (2021-2025) para el Desarrollo Económico y Social Nacional y los Objetivos a Largo Plazo hasta 2035.¹¹⁷ En el Plan Quinquenal, que persigue a largo plazo el objetivo del "socialismo moderno", se pone de relieve el desarrollo impulsado por la innovación, incluida la digitalización, el desarrollo agrícola y rural, la mejora de las empresas de propiedad estatal (así como de las empresas privadas y las empresas con inversión extranjera), el desarrollo verde, el bienestar de la población y la seguridad económica.¹¹⁸ También se destaca el papel de la economía digital y se incluye la nueva estrategia gubernamental de "doble

¹¹⁵ Las autoridades señalan que esto se refiere únicamente al crédito oficial a la exportación.

¹¹⁶ China Eximbank, *2022 Annual Report*. Consultado en: http://www.eximbank.gov.cn/aboutExim/annals/2021_877/202306/U020230609413828602225.pdf.

¹¹⁷ 14º Plan Quinquenal para el Desarrollo Económico y Social Nacional y Objetivos a Largo Plazo hasta 2035.

¹¹⁸ Government of China, *Major Targets in the 14th Five-Year Plan (2021-2025)*. Consultado en: <http://english.www.gov.cn/w/14thfiveyearplan/>.

circulación".¹¹⁹ El Plan Quinquenal hace hincapié en el apoyo financiero a la ciencia y la tecnología, las empresas de alta tecnología, las patentes y la agricultura.¹²⁰

3.103. Durante el período objeto de examen, China presentó dos notificaciones sobre subvenciones a la OMC. La notificación presentada en agosto de 2021 abarca las subvenciones otorgadas en 2019 y 2020, y la presentada en julio de 2023, las otorgadas en 2021 y 2022.¹²¹ La notificación de 2021 contiene 71 programas a nivel del Gobierno central que se refieren a 53 políticas fiscales preferenciales y 18 asignaciones financieras, y 374 asignaciones financieras proporcionadas por 36 Gobiernos subcentrales. En la notificación de 2023 se informa sobre 69 programas a nivel del Gobierno central que se refieren a 54 políticas fiscales preferenciales y 15 asignaciones financieras. Treinta y seis Gobiernos subcentrales proporcionan 385 asignaciones financieras.

3.104. Los objetivos de las medidas notificadas varían e incluyen la promoción de las industrias de vanguardia y tradicionales, el apoyo a las pymes, la ayuda al desarrollo en las zonas rurales, la atracción de IED, la protección del medio ambiente y la ayuda a las personas con discapacidad. Las subvenciones a los niveles tanto central como subcentral del Gobierno se otorgan en forma de trato fiscal preferencial, donaciones, asignaciones financieras y fondos para objetivos específicos. Concretamente, muchos de los programas notificados tratan de los incentivos financieros para promover la tecnología y la innovación y apoyar la agricultura.

3.105. La principal subvención notificada es un fondo para el desarrollo de la producción agrícola cuyo monto asciende a CNY 232.483 millones. A nivel subcentral, los fondos fiscales para el alivio de la pobreza y la revitalización del medio rural en diversas provincias son los más importantes. En las notificaciones figuran datos sobre las cuantías de casi todas las asignaciones financieras a nivel del Gobierno central. Sin embargo, no se dispone de las cuantías relativas a las asignaciones financieras a nivel subcentral en relación con 54 de 374 programas en las notificaciones de 2021, y 37 de 385 programas en la notificación de 2023; las autoridades afirman que esto se debe a dificultades estadísticas. Las notificaciones no facilitan datos sobre la cuantía de las subvenciones para las políticas fiscales preferenciales, lo que, según las autoridades, se debe a dificultades estadísticas.

3.106. Durante el período objeto de examen, China siguió ofreciendo apoyo financiero a su sector agropecuario (sección 4.1.1.4.3). Las notificaciones de subvenciones correspondientes a 2021 y 2023 presentadas por China contienen además información sobre diversos programas destinados al sector agropecuario. China notificó sus medidas de ayuda interna en diciembre de 2022.¹²² En el sector de la pesca, en 2021 se notificaron ocho programas a nivel del Gobierno central, y en 2023 se notificaron tres programas.¹²³

3.107. En respuesta a la notificación de subvenciones de China correspondiente a 2021, los Miembros presentaron varias comunicaciones (incluidas preguntas).¹²⁴ En esas comunicaciones se piden aclaraciones sobre los fondos gubernamentales de orientación de China, los bancos de propiedad estatal, las subvenciones no notificadas, los fondos para resolver el exceso de capacidad y los criterios de admisibilidad. En sus respuestas, China facilitó más detalles sobre las subvenciones notificadas; en las respuestas no se facilitaba información sobre los fondos gubernamentales de

¹¹⁹ La "doble circulación" es una estrategia gubernamental que se refiere a una pauta de desarrollo que da prioridad al "consumo interno y se mantiene abierta al comercio internacional y a las inversiones". FMI (2023), *Growing Threats to Global Trade*. Consultado en: <https://www.imf.org/en/Publications/fandd/issues/2023/06/growing-threats-to-global-trade-goldberg-reed>.

¹²⁰ La financiación y el trato fiscal preferencial otorgados para alentar a las empresas a realizar investigaciones básicas sobre ciencia y tecnología (capítulo 4); los incentivos fiscales otorgados para los gastos de investigación y desarrollo y las empresas de alta tecnología (capítulo 5); la optimización de las subvenciones para patentes y para las patentes de alto valor y las industrias con un uso intensivo de patentes (capítulo 7); el apoyo a la creación de un entorno para la empresa privada (capítulo 19); una política de subvenciones a la agricultura (capítulo 25); y el apoyo financiero a los servicios públicos (capítulo 46). Gobierno Popular de la provincia de Fujian. Consultado en: https://www.fujian.gov.cn/english/news/202108/t20210809_5665713.htm#C46.

¹²¹ Documentos de la OMC [G/SCM/N/372/CHN](#), de 27 de agosto de 2021; y [G/SCM/N/401/CHN](#), de 20 de julio de 2023.

¹²² Documentos [G/AG/N/CHN/63-67](#) de la OMC, de 14 de diciembre de 2022.

¹²³ Documentos de la OMC [G/SCM/N/372/CHN](#), de 27 de agosto de 2021; y [G/SCM/N/401/CHN](#), de 20 de julio de 2023.

¹²⁴ Documentos de la OMC [G/SCM/Q2/CHN/105](#), 106, 107, 110, 113, 114, 119, 120, 27 de enero de 2022, 24 de enero de 2023.

orientación, los bancos de propiedad estatal, o la cuantía de los gastos no notificados.¹²⁵ En respuesta a la notificación de subvenciones de China correspondiente a 2023, otros Miembros presentaron varias comunicaciones (incluidas preguntas).¹²⁶

3.108. De manera general, las dos notificaciones presentadas a la OMC durante el período examinado y las respuestas dadas por China no han permitido a la Secretaría tener una visión clara de los programas de ayuda de China. Por ejemplo, las notificaciones no facilitan información sobre los niveles de gasto en sectores en los que es probable que el apoyo gubernamental tenga repercusiones a nivel mundial, como el aluminio, los vehículos eléctricos, los módulos solares, el vidrio, la construcción naval, los semiconductores o el acero. El material informativo puesto a disposición de la Secretaría para este examen solo proporciona información limitada más allá de las dos notificaciones sobre subvenciones de China.

3.109. La información disponible en bases de datos comerciales indica grandes cantidades de ayudas públicas a las empresas de sectores económicos clave. Dos bases de datos, Wind y CSMAR, recopilan información sobre la base de los balances anuales de empresas que cotizan en las tres principales bolsas de valores chinas. Los datos sobre las ayudas indicados en esas bases de datos excluyen los incentivos fiscales, pero incluyen donaciones y activos no monetarios que se otorgan gratuitamente. Las cifras también excluyen la ayuda pagada a las empresas que no cotizan en bolsa. Según la base de datos Wind¹²⁷, la ayuda pública total de China ascendió a más de CNY 250.000 millones en 2022 (cuadro 3.12). Según la base de datos CSMAR¹²⁸, la ayuda total ascendió a más de CNY 245.000 millones en 2022, con una fuerte concentración en el sector manufacturero (cuadro 3.13). Ambas bases de datos reflejan un aumento sustancial de la ayuda desde 2018.

Cuadro 3.12 Ayuda pública sobre la base de la base de datos Wind, 2018-2022

(En millones de CNY)

Sector	2018	2019	2020	2021	2022
Materiales	20.757,7	26.120,1	29.016,8	26.706,6	34.759,2
Servicios de telecomunicaciones	1.835,3	3.169,1	3.102,2	3.675,4	4.497,3
Bienes raíces	2.996,9	3.555,9	5.033,2	4.614,3	4.452,7
Industria	33.636,2	41.054,7	52.612,5	52.205,7	59.850,9
Servicios públicos	4.489,1	5.622,3	5.354,0	7.975,7	7.885,2
Finanzas	8.420,7	8.682,1	11.043,3	12.970,8	14.150,7
Consumo facultativo	31.664,8	37.126,0	37.153,7	36.912,4	36.459,5
Energía	12.515,5	11.530,6	14.348,2	7.251,4	8.438,7
Consumo diario	7.397,3	8.292,4	10.726,7	10.311,3	11.116,0
Tecnología de la información	31.925,0	38.548,8	43.460,3	46.013,3	52.710,0
Seguros médicos	11.084,0	12.614,7	16.177,2	15.521,4	16.266,9
Total	166.722,4	196.316,7	228.028,2	224.158,3	250.587,1

Fuente: Secretaría de la OMC, sobre la base de la base de datos económicos Wind y de las definiciones de ayuda y subvención de Wind.

Cuadro 3.13 Ayuda pública sobre la base de la base de datos CSMAR, 2018-2022

(En millones de CNY)

Sector	2018	2019	2020	2021	2022
Minería	12.372,1	11.670,7	14.617,4	7.505,0	9.038,8
Producción y suministro de electricidad, calefacción, gas y agua	4.062,6	5.417,6	4.960,2	7.777,0	7.700,4
Bienes raíces	2.504,4	2.929,3	4.439,1	3.738,2	3.476,8
Construcción	3.991,8	5.634,1	7.047,2	8.359,9	9.427,1
Transporte, almacenamiento y servicios postales	5.887,4	6.117,6	8.768,0	7.892,1	9.763,0

¹²⁵ Documentos de la OMC [G/SCM/Q2/CHN/111](#), 112, 115-118, 121-123, 25 de abril de 2022-26 de abril de 2023.

¹²⁶ Documentos de la OMC [G/SCM/Q2/CHN/124](#), 125, 126, de 22 y 23 de enero de 2024.

¹²⁷ Wind Economic Database es una empresa de inteligencia basada en China que proporciona datos sobre la economía y las ramas de producción chinas. Consultado en: <https://www.wind.com.cn/mobile/EDB/en.html>.

¹²⁸ CSMAR (China Stock Market and Accounting Research Database) es una base de datos orientada a la investigación basada en China y que se centra en la economía de China. Consultado en: <https://data.csmar.com/>.

Sector	2018	2019	2020	2021	2022
Enseñanza	112,1	165,2	218,6	118,6	84,4
Finanzas	7.343,9	8.243,0	11.031,5	13.132,9	14.252,4
Servicios residenciales, reparaciones y otros servicios	10,2	3,2	2,4	0,0	0,1
Investigación científica y servicios técnicos	669,5	985,2	1.294,6	1.712,6	2.181,0
Agricultura, silvicultura, ganadería y pesca	845,2	969,2	1.429,5	1.656,8	1.712,8
Comercio al por mayor y al por menor	4.264,9	5.012,6	8.027,8	6.617,7	7.086,4
Gestión de la conservación del agua, medio ambiente e instalaciones públicas	862,9	1.282,9	1.768,5	1.788,9	1.777,8
Salud y servicios sociales	139,6	151,8	271,2	351,9	336,6
Cultura, deporte y ocio	1.964,6	2.101,1	2.153,4	1.785,4	1.927,0
Servicios de transmisión de información, programas informáticos y tecnología de la información	5.188,5	6.920,5	8.099,7	8.953,5	12.885,0
Manufacturas	97.662,2	115.815,8	133.226,7	136.756,2	159.723,3
Alojamiento y restauración	121,8	158,9	688,0	481,5	160,1
Servicios integrales	251,4	596,8	729,5	569,8	610,0
Servicios de arrendamiento financiero y servicios prestados a las empresas	2.615,8	2.601,2	2.425,2	2.563,1	2.940,3
Total	150.871,0	176.776,5	211.198,8	211.761,0	245.083,3

Fuente: Secretaría de la OMC, sobre la base de la base de datos CSMAR y de las definiciones de ayuda y subvención de CSMAR.

3.110. Hay fondos de inversión que incluyen fondos gubernamentales de inversión (o fondos gubernamentales de orientación); estos comprenden fondos de inversión público-privada que persiguen el doble objetivo de reportar beneficios financieros y promover los objetivos de la política industrial del Gobierno, utilizando recursos públicos para efectuar inversiones de capital en sectores que el Gobierno considera importantes.¹²⁹ Existen 37 fondos gubernamentales de inversión a nivel nacional y, según las estimaciones, 2.100 a nivel subnacional. En el cuadro 3.14 y el cuadro 3.15 se ofrece un panorama general de los principales fondos gubernamentales de inversión a nivel central y subcentral. La mayoría de los fondos a nivel del Gobierno central suelen tener una dotación superior a CNY 10.000 millones. No se han facilitado cifras oficiales. Como ya se ha indicado, por lo general los incentivos proporcionados por esos fondos no se han notificado a la OMC; las autoridades afirman que esos fondos operan con arreglo a los principios del mercado.

Cuadro 3.14 Principales fondos nacionales de inversión en China (incluidos los fondos gubernamentales de inversión/orientación)

Nombre	Año de creación	Dotación inicial (miles de millones de CNY) ^a	Incentivos de política
Fondo Nacional de Transferencia y Comercialización de Tecnología	2015	8,74	Desarrollo científico y tecnológico
Fondo de Desarrollo de las Pymes de China	2020	15,25	Desarrollo de las pymes
Fondo Nacional de Orientación para la Inversión de Capital de Riesgo en Industrias Emergentes	2016	40	Iniciativa empresarial e innovación colectivas
Fondo para el Reajuste Estructural de las Empresas de Propiedad Estatal de China	2016	350	"Reforma estructural de la oferta", ajustes estructurales de las empresas centrales
Fondo de Capital de Riesgo para el Capital de Propiedad Estatal de China	2016	200	Aplicar la estrategia nacional de desarrollo impulsado por la innovación
Fondo Guoxin Guotong	2016	150	Promover la participación de empresas chinas en la Iniciativa "Cinturón y Ruta"

¹²⁹ N. Luong et al. (2021), "Understanding Chinese Government Guidance Funds", Center for Security and Emerging Technology. Consultado en: <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf>.

Nombre	Año de creación	Dotación inicial (miles de millones de CNY) ^a	Incentivos de política
Fondo Central de Orientación para la Inversión en Innovación de Empresas de Propiedad Estatal Nacionales	2017	150	Reforma de las empresas de propiedad estatal
Fondo de Inversión de la Industria de Circuitos Integrados de China	2014 (Fase I) 2019 (Fase II)	36 (Fase I) 22.5 (Fase II)	Directrices Nacionales para el Desarrollo de la Industria de Circuitos Integrados
Fondo de Inversión en Innovación del Comercio de Servicios de China	2017	30	Invertir en los sectores enumerados en el "Catálogo de Orientación para las Esferas Clave de Exportación de Servicios" y el "Catálogo de Orientación para las Esferas Clave de Desarrollo de la Industria de la Contratación Externa de Servicios"
Fondo Nacional de Desarrollo de las Industrias Emergentes Estratégicas	2018	30 (objetivo)	13 ^{er} Plan Quinquenal de Desarrollo de las Industrias Emergentes Estratégicas 2016-2020
Fondo de Desarrollo de la Industria de Revalorización Agrícola de China ("Fondo de Revalorización de China")	2018	2	Estrategia de Revitalización Rural
Fondo Nacional de Transformación y Modernización del Sector Manufacturero	2019	22,5	Nuevos materiales, TI de nueva generación, equipo de energía eléctrica
Fondo de Inversión para la Industria Manufacturera Avanzada	2015	6	Reforma estructural, modernización de las industrias tradicionales, adaptación de la distribución de industrias clave
Fondo de Inversión para la Industria Manufacturera Avanzada	2019	50,25	"Made in China 2025"
Fondo de Inversión para el Sector Cultural de China - Fase II	2020	0,5	Promover el desarrollo de industrias culturales como la integración de los medios de comunicación y nuevas formas de cultura digital
Fondo Nacional de Desarrollo Verde (Sociedad en Comanditamodern) - Fase II	2020	10,0	Mejorar la protección ecológica ambiental
Fondo Central de Inversión Industrial en Empresas de Propiedad Estatal de Zonas Rurales	2016	33,74	Revitalización rural
Fondo de Inversión en Asociaciones Público-Privadas de China	2016	180	Iniciativas relacionadas con las asociaciones público-privadas
Fondo de Desarrollo de Semillas Modernas	2013	1,5	Plan Nacional de Desarrollo de la Industria de Semillas Modernas para Cultivo
Fondo de Fondos de Guochuang	2010	60	n.a.
Fondo de Inversión de Capital de Guoxie - Fase I	2016	30	n.a.
Fondo Central de Operaciones de las Empresas de Propiedad Estatal de Guoxin	2017	150	Reforma estructural de la oferta, reforma de la propiedad mixta, reestructuración.

n.a. No se aplica

a Algunas cifras son estimaciones.

Fuente: Compilado por la Secretaría de la OMC a partir de diversas fuentes.

Cuadro 3.15 Principales fondos subnacionales (incluidos los fondos gubernamentales de inversión/orientación)

Nombre	Año de creación	Dotación (miles de millones de CNY)	Industrias
Fondo de Orientación de Shenzhen	2015	100	Industrias emergentes estratégicas, en particular en los campos de la tecnología de la información, la atención sanitaria, los dispositivos inteligentes, la protección del medio ambiente
Fondo de Innovación en Ciencia y Tecnología de Beijing	2017	12	Optoelectrónica, macrodatos, nuevos materiales, energía limpia, inteligencia artificial, fabricación avanzada, atención sanitaria, tecnología de la información, computación cuántica
Fondo de Inversiones del Gobierno Provincial de Jiangsu	2015	23,2	Industrias emergentes estratégicas, industrias de alta tecnología, industrias manufactureras avanzadas
Fondo de Desarrollo Industrial Optics Valley de Wuhan	2017	62	Industria de la información optoelectrónica, nuevas energías y protección del medio ambiente, fabricación de equipos de alta gama, servicios de alta tecnología
Fondo de Inversión Industrial de Xiamen	2011	125,1	Visualizadores, dispositivos informáticos y de telecomunicaciones, atención sanitaria, nuevos materiales, turismo y exposiciones, logística, programas informáticos, financiación, cultura
Fondo de Desarrollo de la Industria de Alta Precisión de Beijing	2015	4	Tecnología de la información, medicina y salud, circuitos integrados, automóviles conectados inteligentes, fabricación y equipo inteligentes, energía verde, conservación de la energía y protección del medio ambiente
Fondo de Financiación de Guangdong	2016	93,5	Fabricación avanzada, conservación de la energía y protección del medio ambiente, biomedicina
Fondo de Orientación de Capital de Riesgo de Hefei	2014	95	Comunicaciones cuánticas, vehículos propulsados por energías nuevas, turbinas de gas, manufacturas de precisión
Fondo de Orientación de Qingdao	2021	38,6	Aparatos electrodomésticos inteligentes, equipo de tránsito ferroviario, vehículos propulsados por energías alternativas, productos químicos de alta gama, equipo marino
Fondo de Orientación para la Conversión de Nuevos y Antiguos Conductores en la Provincia de Shandong	2018	..	Tecnología de la información, equipo de alta gama, nuevas energías y nuevos materiales, océanos inteligentes, atención médica y salud
Fondo de Orientación de Futian	2015	160	Energía renovable, nuevos materiales, aviación, atención sanitaria, tecnología de la información
Fondo de Desarrollo de Pequeñas y Medianas Empresas de Anhui	2017 (Fase I) 2022 (Fase II)	20 (Fase I) 20 (Fase II)	Pymes de información electrónica, equipo de alta gama, fabricación inteligente, nuevos materiales, biomedicina

.. No disponible.

Fuente: Compilado por la Secretaría de la OMC a partir de diversas fuentes.

3.111. A falta de información oficial, existen diferentes estimaciones sobre la dotación acumulativa de todos los fondos gubernamentales de inversión/orientación, que oscilan entre CNY 1,89 billones¹³⁰ y CNY 6,51 billones.¹³¹ Los fondos centrales gubernamentales de inversión/orientación han sido patrocinados por autoridades como el MST, la Comisión de Supervisión y Administración de Activos Estatales (SASAC), el MIIT y la Comisión Nacional de Desarrollo y Reforma (NDRC), con diferentes prioridades en materia de inversión y objetivos de política. En el cuadro 3.16 se enumeran los documentos de política que rigen su gestión de estos fondos.

Cuadro 3.16 Documentos de política sobre la gestión de los Fondos Gubernamentales de Inversión/Orientación

Año	Documento del Gobierno	Ministerio	Observaciones
2008	Orientaciones sobre el Establecimiento y el Funcionamiento Normalizados de los Fondos de Orientación para el Capital de Riesgo ^a	NDRC, MOF, MOFCOM	Guo Ban Fa N° 116 [2008].
2015	Medidas Provisionales para la Administración de los Fondos Gubernamentales de Inversión ^b	MOF	Cai Yu N° 210 [2015].
2016	Medidas Provisionales para la Administración de los Fondos de Inversión Industrial Patrocinados por el Gobierno ^c	NDRC	Guo Fa N° 2800 [2016].
2022	Orientaciones para Seguir Mejorando el Entorno Normativo y Fomentando los Esfuerzos para Apoyar el Desarrollo de la Inversión Privada	NDRC	Guo Fa N° 1652 [2022].

a Consultado en: https://www.gov.cn/gongbao/content/2008/content_1139420.htm.

b Consultado en: https://www.gov.cn/gongbao/content/2016/content_5051233.htm.

c Consultado en: https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202006/t20200616_1231357.html.

d Consultado en: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202211/t20221107_1340900.html.

Fuente: Secretaría de la OMC, compilado a partir de diversos sitios web del Gobierno chino.

3.112. Dado el predominio de las empresas de propiedad estatal en numerosos sectores, puede ser difícil tener una idea cabal del grado de apoyo gubernamental (sección 3.3.5). Las autoridades estiman que las empresas de propiedad estatal operan con arreglo a los principios del mercado.

3.113. Habida cuenta de la importancia de la economía china y del volumen de la ayuda gubernamental otorgada a determinadas empresas, las medidas de apoyo de China pueden afectar a los mercados mundiales, las ramas de producción de fases ulteriores del proceso productivo y determinadas cadenas de valor. Estos efectos no pueden cuantificarse en cifras totales, ya que no se dispone de los datos pertinentes. No se dispone de estudios oficiales sobre los efectos de la ayuda pública de China en el aumento de la productividad y en la innovación. No obstante, existen varios documentos académicos que examinan la relación entre la ayuda pública, la productividad y la innovación.¹³²

3.3.2 Normas y otras prescripciones técnicas

3.3.2.1 Panorama general y tendencias

3.114. La Ley de Normalización, de 1988, modificada en 2018, y el Reglamento de Aplicación de la Ley de Normalización, de 1990, son los principales instrumentos legislativos de China que regulan las normas. En la Ley de Normalización se establece el proceso de formulación y aplicación de

¹³⁰ Lista de los Fondos Gubernamentales de Orientación en 2023, recopilada por la Beijing Private Equity Association. Consultado en: https://mp.weixin.qq.com/s/zlfBfuX3x_efhtFbFozYqw.

¹³¹ China VC/PE Market Review 2022. Consultado en: <https://research.pedaily.cn/202302/507620.shtml>.

¹³² Figuran entre ellos L. Branstetter et al. (2022), "Picking Winners? Government Subsidies and Firm Productivity in China", *Journal of Comparative Economics*, volumen 51, N° 4, páginas 1186-1199; F. Pan et al. (2021), "State-led Financialization in China: the Case of the Government-guided Investment Fund", *the China Quarterly*, volumen 247, páginas 749-772; H. Cheng et al. (2019), "Do Innovation Subsidies Make Chinese Firms More Innovative? Evidence from the China Employer Employee Survey", NBER Working Paper 25432; L. Jia et al (2021), "Impact of Chinese Government Subsidies on Enterprise Innovation", *Sustainability*, vol. 13, N° 3, páginas 1288ff; L. Song y Y. Wen (2023), "Financial Subsidies, Tax Incentives and Technological Innovation in China's Integrated Circuit Industry", *Journal of Innovation & Knowledge*, volumen 8, N°3, páginas 100406ff; y S. Zhang et al (2024), "Do Government Subsidies Promote Enterprise Green Innovation? Evidence from Listed Companies in China", *Applied Economics*, páginas 1-21.

normas, que tienen por objeto mejorar la calidad de los productos y servicios; promover los avances científicos y tecnológicos; proteger la salud humana, la seguridad y la propiedad; salvaguardar la seguridad nacional y ecoambiental; y elevar el nivel general de desarrollo económico y social.¹³³

3.115. La SAMR, establecida en 2018, se encarga de la normalización y de la observancia de la legislación y la supervisión del mercado en lo relativo a la calidad de los productos, la inocuidad de los alimentos, la medición, la certificación, la acreditación y las normas. La Administración de Normalización de China (SAC), dependiente de la SAMR, se encarga de la supervisión unificada y la coordinación general de las actividades de normalización, y también representa a China en las organizaciones internacionales de normalización. La Administración Nacional de Certificación y Acreditación de China (CNCA) se encarga de la gestión, supervisión y coordinación unificadas de la certificación, la acreditación, la inspección y las pruebas en el ámbito de la evaluación de la conformidad; representa a China en las organizaciones internacionales de evaluación de la conformidad. También se encarga de la aplicación y supervisión del sistema de Certificación Obligatoria de China (CCC).

3.116. Entre la nueva reglamentación sobre normas promulgada por la SAMR durante el período objeto de examen figuran las Medidas relativas a la Administración de las Normas Nacionales (entrada en vigor el 1 de marzo de 2023), las Medidas revisadas relativas a la Administración de las Normas Sectoriales (entrada en vigor prevista para el 1 de junio de 2024) y las Medidas relativas a la Gestión de la Normalización Agrícola y Rural (entrada en vigor prevista para el 1 de julio de 2024).

3.117. En octubre de 2021, el Comité Central del Partido Comunista de China y el Consejo de Estado publicaron las Líneas Generales de Desarrollo Nacional de la Normalización; en julio de 2022 se publicó un plan de acción para su aplicación. En las Líneas Generales se establecen "cuatro transformaciones" relativas a la normalización como objetivo que se ha de alcanzar para 2025: i) equiparación de la importancia atribuida a la administración pública y al mercado; ii) aplicación al conjunto de la economía y la sociedad; iii) normas promovidas mutuamente por las perspectivas de ámbito nacional e internacional; y iv) calidad y eficiencia.¹³⁴

3.118. Sobre la base de las Líneas Generales, la SAC publicó las Directrices Nacionales para Proyectos de Normas en 2022 y 2023, en las que se exigía e instaba al Gobierno central, a los gobiernos subcentrales y a las asociaciones industriales a colaborar en las actividades de normalización.¹³⁵ Los objetivos de las Directrices Nacionales para Proyectos de Normas de 2023 son promover el desarrollo de la normalización; potenciar la transformación de los resultados científicos y tecnológicos; promover la convergencia de las normas a lo largo de la cadena de producción industrial; impulsar la apertura a normas y sistemas internacionales; y fortalecer el suministro efectivo de normas nacionales.¹³⁶ Entre los principales objetivos que se prevé alcanzar para 2025 figuran una proporción del 50% de resultados de investigaciones relacionadas con las normas en tecnologías clave, y una tasa de conversión del 85% de normas internacionales en normas nacionales.

3.119. En el Plan de Normas de China 2035 se exponen las directrices para que el Gobierno y las principales empresas tecnológicas establezcan normas mundiales de tecnologías emergentes como la internet 5G, la internet de las cosas y la inteligencia artificial (IA). El Plan se aplicará de forma concertada con otras políticas industriales de China, a saber, la iniciativa "Made in China 2025", como un instrumento para contribuir a que China llegue a ser un líder mundial en innovación de alta tecnología.

3.120. China es miembro de varias organizaciones internacionales relacionadas con la normalización, como la Organización Internacional de Normalización (ISO), la Comisión Electrotécnica Internacional (CEI) y la Unión Internacional de Telecomunicaciones (UIT).

¹³³ Ley de Normalización, Orden Nº 78, artículo 1.

¹³⁴ SAC, Directrices para Establecer Normas Nacionales en 2023, artículo 1 (2).

¹³⁵ Consejo de Estado, Líneas Generales de Desarrollo Nacional de la Normalización, 10 de octubre de 2021.

¹³⁶ SAC, Directrices para Establecer Normas Nacionales en 2023, artículo 1 (1)-(5).

3.121. Las autoridades indican también que China participa de forma cada vez más activa en el establecimiento de normas mundiales para tecnologías emergentes.¹³⁷ Entre los principales campos de investigación de China en materia de normalización figuran la IA, la información cuántica, la biotecnología, los ferrocarriles de alta velocidad, los vehículos de energías alternativas, los vehículos inteligentes conectados en red y los robots.¹³⁸

3.3.2.2 Normas y reglamentos técnicos

3.122. En la Ley de Normalización se clasifican las normas de China en cinco categorías: nacionales, sectoriales, locales, de asociaciones y empresariales. Las normas nacionales pueden ser voluntarias u obligatorias; las normas sectoriales y locales son voluntarias.

3.123. En enero de 2024 había 44.332 normas nacionales (2.023 obligatorias y 42.309 voluntarias) y 601 documentos técnicos de orientación.¹³⁹ Cada año se adoptan entre 2.000 y 3.000 normas nacionales (cuadro 3.17). Las autoridades indican que más del 80% de las normas nacionales están armonizadas con normas internacionales. En la fabricación de equipos esenciales y en la tecnología de la información de nueva generación, la tasa de conversión de las normas internacionales ha superado el 90%; en el caso de las normas de los productos de consumo más importantes, el nivel de compatibilidad con las normas internacionales ha alcanzado el 95%.

Cuadro 3.17 Normas aprobadas, 2020-2023

	2020	2021	2022	2023
Normas nacionales	2.252	2.815	2.266	2.902
Obligatorias	99	76	82	75
Voluntarias	2.153	2.739	2.184	2.827
Normas sectoriales (voluntarias)	3.474	3.656	2.791	..
Normas locales (voluntarias)	7.383	8.359	8.010	..

.. No disponible.

Fuente: Información facilitada por las autoridades.

3.124. Durante el período objeto de examen, China adoptó una amplia variedad de nuevas normas nacionales sectoriales y basadas en productos. Las nuevas normas obligatorias adoptadas se referían a los aditivos para piensos, los petroleros, el equipo eléctrico médico, el consumo de energía y el control de la contaminación. Se adoptaron nuevas normas voluntarias sobre los formatos de intercambio de datos biométricos, la tecnología de seguridad de la información y los formatos de fabricación aditiva. Durante el período objeto de examen, China ha elaborado cada vez más normas relacionadas con la digitalización y la nueva tecnología. Las autoridades indican que, por ejemplo, China adoptó más de 10 nuevas normas relacionadas con las ciudades inteligentes.

3.125. El Centro de Investigaciones sobre Normas Internacionales de Inspección y Cuarentena y Reglamentos Técnicos, dependiente de la GACC, es el Servicio de Información sobre OTC de China y se encarga de presentar las notificaciones OTC.

3.126. Entre enero de 2021 y febrero de 2024, China presentó 315 notificaciones OTC, la mayoría de ellas en virtud del artículo 2.9 del Acuerdo OTC.¹⁴⁰ La mayoría de los reglamentos técnicos notificados tienen por objeto proteger la salud y la seguridad de las personas, garantizar el cumplimiento de los requisitos de calidad o impedir prácticas que puedan inducir a error a los consumidores.

3.127. Entre enero de 2021 y febrero de 2024, otros Miembros plantearon un total de 21 preocupaciones comerciales específicas (PCE) relativas a OTC contra China; ocho de ellas son PCE nuevas.¹⁴¹

¹³⁷ Consejo de Estado, Líneas Generales de Desarrollo Nacional de la Normalización, 10 de octubre de 2021.

¹³⁸ SAC, Directrices para Establecer Normas Nacionales en 2023, artículo 2 (3).

¹³⁹ SAMR. Consultado en: <https://openstd.samr.gov.cn/bzgk/gb/index>.

¹⁴⁰ Documentos de la serie G/TBT/N/CHN/ de la OMC, de 1 de enero de 2021 a 5 de febrero de 2024.

¹⁴¹ PCE 655, 677, 706, 749, 751, 761, 784, 788 y 804.

3.128. Entre enero de 2021 y febrero de 2024, China planteó 65 PCE relativas a OTC contra otros Miembros.

3.3.2.3 Certificación de productos

3.129. No se han producido cambios importantes en la legislación y el marco institucional por los que se rige el sistema de certificación de China. China administra los sistemas de certificación obligatorios y voluntarios, estos últimos relacionados con la gestión, los servicios y los productos orgánicos y ecológicos. El sistema de certificación obligatoria de productos se aplica tanto a los productos nacionales como a las importaciones, sobre la base de las normas nacionales obligatorias. Según la SAMR, hasta marzo de 2024 se habían expedido 3.824 millones de certificados, principalmente en las provincias de Guangdong, Jiangsu y Zhejiang.

3.130. En septiembre de 2022, la SAMR publicó su 14º Plan Quinquenal de Desarrollo de la Certificación, la Acreditación, la Inspección y las Pruebas. El Plan contiene varias tareas relacionadas con la mejora de la capacidad industrial, la promoción de la modernización industrial y de la cadena de suministro, la optimización y modernización del sector manufacturero y la mejora de la cooperación internacional.

3.131. La CNCA se encarga de la certificación de productos. La certificación y la acreditación se rigen por la Ley de Calidad de los Productos, la Ley de Inspección de Mercancías de Importación y Exportación, y el Reglamento de Certificación y Acreditación (modificado en noviembre de 2020), así como por diversas medidas como las Medidas relativas a la Administración de los Órganos de Certificación (modificadas en noviembre de 2020) y las Medidas relativas a la Administración de los Certificados y las Marcas de Certificación. Desde junio de 2022, el Servicio Nacional de Acreditación de China para la Evaluación de la Conformidad (CNAS) ofrece una nueva categoría de servicios de acreditación, con fines de homologación y verificación. La CNCA ha autorizado 34 organismos acreditados, entre ellos 22 organismos de certificación acreditados, 2 organismos de validación y verificación acreditados, 9 laboratorios acreditados y 1 organismo de inspección.¹⁴²

3.132. El Reglamento sobre la Administración de la Certificación Obligatoria de Productos y las Medidas relativas a la Administración de los Organismos de Certificación Obligatoria de Productos, los Organismos de Inspección y los Laboratorios, ambos instrumentos modificados en 2022, regulan el sistema de certificación obligatoria de China y aclaran las funciones de los organismos de reglamentación.¹⁴³ Las modificaciones de 2022 reflejan el traspaso de responsabilidades a la SAMR en 2021, sin ningún cambio sustancial.

3.133. El sistema de certificación obligatoria de China tiene por objeto proteger la seguridad nacional, evitar actos fraudulentos, proteger la salud y la seguridad de las personas, proteger la vida y la salud de los animales y preservar los vegetales y proteger el medio ambiente.¹⁴⁴ En el marco del sistema, los productos nacionales y las importaciones pertinentes deben estar certificados y marcados con la certificación CCC antes de la venta. Los productos sujetos a certificación obligatoria figuran en el Catálogo para la Certificación Obligatoria de Productos (el Catálogo CCC), que se renovó por última vez en 2023.¹⁴⁵ Hay dos tipos de evaluaciones: la evaluación por terceros y la autodeclaración. En el Catálogo CCC figuran 96 productos, entre ellos el equipo electrónico, la maquinaria y los automóviles; la autodeclaración es posible para 19 productos.

3.3.2.4 Etiquetado y envasado

3.134. Varias leyes y reglamentos establecen normas de etiquetado y envasado, principalmente de alimentos, medicamentos, cosméticos e instrumental médico. La Comisión Nacional de Salud se encarga de las normas de etiquetado de alimentos, mientras que la Administración Nacional de Productos Médicos (NMPA), dependiente de la SAMR, se encarga de la reglamentación de los medicamentos, los cosméticos y el instrumental médico.

¹⁴² La lista puede consultarse en: <https://www.cnas.org.cn/cxq/697737.shtml>.

¹⁴³ Anuncio N° 117 de la AQSIQ, 2009; y Anuncio N° 6 de la SAMR, 2022.

¹⁴⁴ Anuncio N° 117 de la AQSIQ, 2009, artículo 2.

¹⁴⁵ Las Normas de Aplicación pueden consultarse en: https://www.cnca.gov.cn/hlwfw/ywzl/qzxcprz/ssgz/art/2021/art_dc8623c0d4bb4c7fb7790e4b064e212a.html.

3.135. La Ley de Inocuidad de los Alimentos exige que los alimentos y aditivos alimentarios preenvasados nacionales e importados vayan provistos de etiquetas en chino que contengan información como la fecha de producción, los ingredientes, el nombre del productor y el origen de los alimentos. No se pueden importar alimentos preenvasados sin etiquetas correctas en chino.¹⁴⁶ En el Reglamento de Aplicación de la Ley de Inocuidad de los Alimentos se reitera esta prescripción.¹⁴⁷ Además, diversas normas proporcionan detalles adicionales sobre etiquetado y envasado de alimentos, a saber: la Norma Nacional sobre Inocuidad de los Alimentos: Disposiciones Generales sobre Etiquetado Nutricional de los Alimentos Preenvasados (GB28050-2011), la Norma Nacional sobre Inocuidad de los Alimentos: Disposiciones Generales sobre Etiquetado de los Alimentos Preenvasados (GB7718-2011) y la Norma Nacional sobre Inocuidad de los Alimentos: Disposiciones Generales sobre Etiquetado de Alimentos Preenvasados para Regímenes Especiales (GB13432-2013).

3.136. Las prescripciones en materia de etiquetado y envasado de medicamentos y cosméticos se establecen en la Ley de Administración de Medicamentos, el Reglamento de Aplicación de la Ley de Administración de Medicamentos, Ley de Administración de Productos Farmacéuticos, la Ley de Calidad de los Productos y el Reglamento de Control de los Cosméticos.

3.137. Durante el período objeto de examen se introdujeron varios cambios y actualizaciones, especialmente en relación con los defectos de la etiqueta. En cuanto al etiquetado de los alimentos, las Medidas de Control, Inspección y Administración de la Producción y Elaboración de Alimentos entraron en vigor en marzo de 2022, aclarando la autoridad y los criterios relativos a los defectos de las etiquetas.¹⁴⁸ Las Medidas Administrativas sobre la Inocuidad de los Alimentos Importados y Exportados, en vigor desde enero de 2022, exigen que la etiqueta china de los alimentos dietéticos y para regímenes especiales importados se imprima en el envase más pequeño.¹⁴⁹

3.138. La Norma Nacional sobre Inocuidad de los Alimentos: Disposiciones Generales sobre Etiquetado de los Alimentos Preenvasados (GB7718-2011) se encuentra actualmente en proceso de revisión, lo que conlleva los siguientes cambios: prescripciones sobre etiquetado digital y cuantitativo, y etiquetado de fechas y de alérgenos en los alimentos.

3.139. En mayo de 2021, la MNPA publicó las Medidas Administrativas para el Etiquetado de Cosméticos, que exige a los productores de cosméticos que actualicen el etiquetado para mayo de 2023.¹⁵⁰ Según la interpretación de la política, su objetivo es unificar los reglamentos y normas anteriores y abordar eficazmente las afirmaciones falsas y exageradas. Sus principales contenidos se refieren a la definición del etiquetado de cosméticos, los requisitos detallados, el contenido prohibido en etiquetas y las circunstancias específicas de los defectos del etiquetado.¹⁵¹ En respuesta, algunos Miembros plantearon una PCE sobre la medida.¹⁵²

3.140. Además, las Disposiciones de Control y Administración de la Fabricación y Comercialización de Cosméticos entraron en vigor en enero de 2022; los artículos 35 a 37 aclaran las circunstancias de los defectos del etiquetado.¹⁵³ Las Disposiciones de Control y Administración de la Venta de Medicamentos en Línea, en vigor desde diciembre de 2022, regulan la venta en línea de medicamentos sujetos a receta médica y prohíben la visualización de la etiqueta y del envase de medicamentos de venta con receta en la página web principal.¹⁵⁴

¹⁴⁶ Ley de Inocuidad de los Alimentos, artículos 67 y 97.

¹⁴⁷ Reglamento de Aplicación de la Ley de Inocuidad de los Alimentos, artículo 40.

¹⁴⁸ Medidas de Control, Inspección y Administración de la Producción y Elaboración de Alimentos, Anuncio Nº 49 de la SAMR, 2021, artículo 37.

¹⁴⁹ Medidas sobre la Inocuidad de los Alimentos Importados y Exportados, Hai Guan Nº 249 de la SAMR [2021].

¹⁵⁰ Medidas Administrativas para el Etiquetado de Cosméticos, Anuncio Nº 77 de la MNPA, 2021.

¹⁵¹ Interpretación Política de las Medidas Administrativas para el Etiquetado de Cosméticos, MNPA, 31 de junio de 2021.

¹⁵² Documento [G/TBT/M/82](#) de la OMC, de 5 de enero de 2021.

¹⁵³ Disposiciones de Control y Administración de la Fabricación y Comercialización de Cosméticos, Anuncio Nº 46 de la SAMR, 2021, artículos 35-37. Consultado en: http://english.nmpa.gov.cn/2022-10/25/c_824567.htm.

¹⁵⁴ Disposiciones de Control y Administración de la Venta de Medicamentos en Línea, Anuncio Nº 58 de la SAMR, 2022, artículo 13.

3.3.3 Prescripciones sanitarias y fitosanitarias

3.3.3.1 Marco general

3.141. El 13^{er} Plan Quinquenal de Inocuidad de los Alimentos (2016-2020) ha servido como principal documento orientativo para las recientes reformas del sistema de inocuidad de los alimentos de China. El Plan consideró que la buena gobernanza de la inocuidad de los alimentos era un elemento crucial para el desarrollo de la industria alimentaria. Como se indicó en el examen anterior, las esferas a las que se orientó la reforma incluían el aumento de las inspecciones y pruebas, la mejora de las normas sobre inocuidad de los alimentos y su integración con las normas internacionales pertinentes, el aumento de la capacidad de investigación y realización de pruebas y el fortalecimiento de la observancia de las leyes y reglamentos en materia de inocuidad de los alimentos. El 14^o Plan Quinquenal para la Modernización de la Regulación de los Mercados adopta el mismo enfoque, y establece, entre otras cosas, varios pilares generales para orientar los esfuerzos de las autoridades por mejorar el sistema de inocuidad de los alimentos y los medicamentos.¹⁵⁵ Durante el período de aplicación del Plan, China tiene el objetivo de seguir mejorando la supervisión de la calidad y la inocuidad en toda la cadena de suministro de alimentos, a través de un enfoque con base científica. Esto supone dar prioridad a la equiparación de las normas generales en materia de inocuidad de los alimentos, en particular las relativas a residuos de plaguicidas, residuos de medicamentos veterinarios, metales pesados, contaminantes alimentarios y microorganismos patógenos. Además, los esfuerzos se centrarán en promover y actualizar normas fundamentales en materia de inocuidad de los alimentos, especificaciones de productos, prescripciones de etiquetado y métodos de inspección esenciales para el desarrollo de la industria, al tiempo que también se racionalizan los mecanismos de observancia. Por otra parte, existe el compromiso de intensificar la supervisión de la inocuidad de los alimentos importados, a fin de mitigar efectivamente los riesgos asociados a los productos importados.

3.142. El marco de medidas sanitarias y fitosanitarias (MSF) de China se regula principalmente a través de la Ley de Inocuidad de los Alimentos (de 2009, revisada por última vez en 2021), la Ley de Calidad e Inocuidad de los Productos Agrícolas (de 2006, revisada por última vez en 2022), la Ley de Prevención de Epizootias (de 1997, revisada por última vez en 2021), la Ley de Cuarentena de Entrada y Salida de Fauna y Flora (de 1992, revisada por última vez en 2009), el Reglamento sobre cuarentena fitosanitaria (promulgado en 1983, revisado por última vez en 2017), la Ley de Inspección de Mercancías de Importación y Exportación (de 1989, revisada por última vez en 2022), y sus medidas y reglamentos de aplicación. En octubre de 2020 se adoptó la Ley de Bioseguridad, que entró en vigor el 15 de abril de 2021. En virtud de la ley se aplican directrices que abarcan varios aspectos, entre ellos la prevención y el control de enfermedades infecciosas, la regulación de investigaciones y aplicaciones biotecnológicas, la garantía de la inocuidad y las prácticas en laboratorios biológicos, la salvaguardia de los recursos genéticos biológicos y humanos, la prevención de la propagación de especies invasoras, la conservación de la biodiversidad y la adopción de medidas de lucha contra el terrorismo biológico.¹⁵⁶ Este conjunto de leyes y reglamentos primarios sigue sirviendo de base para la formulación y la observancia de las normas sanitarias del país para los productos animales, vegetales y alimenticios producidos y comercializados.

3.143. No se han introducido cambios importantes en el marco institucional durante el período objeto de examen. La Comisión Nacional de Salud es responsable de la evaluación del riesgo, la vigilancia del riesgo y el establecimiento de normas nacionales en materia de inocuidad de los alimentos. La principal función de la SAMR en el marco de las MSF sigue incluyendo la formulación de políticas, el sistema de respuesta ante situaciones de urgencia, la investigación de incidentes graves relacionados con la inocuidad de los alimentos y las inspecciones de la inocuidad de los alimentos. El Ministerio de Agricultura y Asuntos Rurales (MARA) se ocupa, entre otras cosas, de la inocuidad y la calidad de los productos agropecuarios; la alerta temprana, en colaboración con los arreglos internacionales pertinentes; y la redacción de medidas de administración de la entrada y salida de animales y plantas, en particular las medidas de cuarentena y prohibición. La GACC es responsable de la redacción de medidas de administración de la entrada y salida de animales y plantas, en particular las medidas de cuarentena y prohibición. Supervisa los procedimientos de

¹⁵⁵ State Council, 14th Five-Year Plan for the Modernization of Market Regulation. Consultado en: https://www.gov.cn/zhengce/zhengceku/2022-01/27/content_5670717.htm.

¹⁵⁶ Ministry of Ecology and Environment (2021), "Biosecurity Law Goes into Effect", 16 de abril de 2021. Consultado en: https://english.mee.gov.cn/News_service/media_news/202104/t20210416_828952.shtml.

cuarentena e inspección sanitaria para la entrada y salida de animales, plantas y sus productos, y colabora con el MARA para determinar y ajustar los catálogos correspondientes.

3.144. Dependiente de la GACC, el Servicio de Información y de Notificación MSF del Centro de Investigaciones sobre Normas Internacionales de Inspección y Cuarentena y Reglamentos Técnicos sigue siendo el servicio de información MSF/OMC de China, y el Centro de Información y Notificaciones relativas a la OMC del MOFCOM es el organismo nacional encargado de la notificación.¹⁵⁷

3.3.3.2 Normas sobre inocuidad de los alimentos, los animales, las plantas y sus productos

3.145. De conformidad con la Ley de Inocuidad de los Alimentos, todos los alimentos, aditivos alimentarios y productos conexos importados deben cumplir las normas de inocuidad de los alimentos de China. Según las autoridades, durante el período objeto de examen adoptaron reglamentos relacionados con las normas de inocuidad de los alimentos en China la Comisión Nacional de Salud, el MARA y la SAMR. Entre ellos figuran el reglamento de 2021 por el que se establecen los Límites máximos de residuos de plaguicidas en los productos alimenticios (GB2763-2021), los Límites máximos de residuos de 41 medicamentos veterinarios en alimentos de 2022 (GB31650.1-2022) y los Límites máximos de residuos de 112 plaguicidas en alimentos de 2022 (GB2763.1-2022). Las autoridades señalan que, de conformidad con la Ley de Inocuidad de los Alimentos, China adopta normas nacionales de inocuidad de los alimentos de conformidad con principios internacionalmente aceptados. En cuanto a las normas de inocuidad de alimentos, animales, plantas y productos pertinentes, el MARA indicó que, a finales de marzo de 2024, China había acumulado 13.755 normas nacionales.

3.146. El 12 de abril de 2021, China adoptó las Medidas administrativas sobre la inocuidad de los alimentos importados y exportados (Anuncio N° 249 de la GACC), que entraron en vigor el 1 de enero de 2022. El reglamento proporciona detalles sobre las normas de la GACC en materia de inspección y evaluación de la inocuidad de los productos alimenticios importados y medidas para mitigar los riesgos en materia de inocuidad de los alimentos. También establece prescripciones sobre el etiquetado de productos alimenticios (sección 3.3.2.4).

3.147. Las Medidas exigen que los importadores obtengan autorización de cuarentena de la GACC antes de la importación, si tienen la intención de exportar un nuevo tipo de alimento a China, o si el alimento es originario de una entidad afectada por un brote notable de epizootia o enfermedad de las plantas. Este principio también es aplicable cuando el territorio exportador experimenta alteraciones sustanciales de sus reglamentos en materia de inocuidad de los alimentos. En esos casos, las Medidas facultan a la GACC para iniciar una evaluación de los reglamentos del territorio en materia de inocuidad de los alimentos.

3.148. En casos de alto riesgo, las autoridades pueden adoptar medidas más drásticas. Por ejemplo, si se producen incidentes relacionados con la inocuidad de los alimentos en la entidad exportadora, la GACC podrá optar, entre otras cosas, por i) intensificar las inspecciones del alimento importado de que se trate, o ii) suspender o prohibir las importaciones cuando la entidad exportadora esté experimentando una epidemia que afecte a plantas y animales, o si hay pruebas de que los alimentos importados están contaminados por patógenos. Las Medidas también describen el procedimiento de terminación y prórroga de tales medidas.

3.149. Las Medidas disponen que todas las empresas extranjeras productoras de alimentos que tengan la intención de exportar alimentos a China deben registrarse ante la GACC. Antes de la adopción de las Medidas, únicamente los fabricantes de productos cárnicos, productos acuáticos, productos lácteos y productos de la apicultura estaban obligados a registrarse ante la GACC. Este sistema fue actualizado por las Medidas, que han derogado las Medidas sobre inocuidad de las importaciones y exportaciones de alimentos adoptadas en 2011, y las medidas específicas sobre la miel, los productos acuáticos, los productos cárnicos y los productos lácteos exportados e importados.¹⁵⁸ Las autoridades indican que el sistema de registro se basa en la ciencia y en la

¹⁵⁷ Plataforma MSF y OTC de la OMC, *Servicios de información/organismos encargados de la notificación*. Consultada en: <https://eping.wto.org/en/EnquiryPoint/sps-nna>.

¹⁵⁸ Medidas para la inspección, cuarentena y administración de la miel exportada, Medidas para la supervisión y administración de la inspección y cuarentena de productos acuáticos importados y exportados,

evaluación del riesgo. También toma en consideración la situación de la gestión de la inocuidad de los alimentos en distintos países/regiones.

3.150. En el contexto del nuevo sistema de registro, El Reglamento sobre el Registro y la Gestión de Fabricantes Extranjeros de Productos Alimenticios Importados de 2021 describe las etapas específicas y la documentación necesaria para este proceso de registro.¹⁵⁹ La GACC dividió el registro en dos modelos. El primer modelo, según el cual los fabricantes pueden registrarse mediante el modo simplificado de "solicitud por la propia empresa" (solicitud directa del fabricante), abarca la mayoría de categorías de alimentos. Además, las empresas que producen determinadas categorías de alimentos están sujetas a prescripciones de registro más estrictas, y solo pueden registrarse si lo recomiendan las autoridades del territorio en el que se encuentran.¹⁶⁰ En este caso de "registro por recomendación oficial", las autoridades competentes inspeccionarán sus empresas recomendadas y presentarán la documentación de inspección pertinente que confirme que esas empresas han cumplido los requisitos. Algunos de los interlocutores comerciales de China han planteado preocupaciones en cuanto a la motivación para imponer estas prescripciones a todos los productos alimenticios, con independencia de su perfil de riesgo. Algunos también han expresado preocupación por las Medidas, por ser, entre otras cosas, "demasiado gravosas" y restringir el comercio más de lo necesario.¹⁶¹ Las autoridades sostienen que la GACC ha publicado sucesivamente la interpretación del Reglamento, las directrices y varios documentos justificantes y formularios para la solicitud del registro. La GACC también ha celebrado sesiones informativas y de formación con los interlocutores comerciales y ha establecido un punto de contacto específico para el Reglamento.

3.151. El marco de protección de la sanidad animal y la salud de los vegetales no sufrió reformas notables. La Ley de Prevención de Epizootias de 1997 trata de administrar, prevenir, contener y erradicar la propagación de epizootias, con el fin de salvaguardar la producción y la seguridad de la industria de cría y proteger la salud humana.

3.152. La Ley de Calidad e Inocuidad de los Productos Agrícolas de 2006 administra las normas de inocuidad y los protocolos de supervisión e inspección que se aplican a los productos agrícolas. Se modificó el 2 de septiembre de 2022 y entró en vigor el 1 de enero de 2023. El objeto de la revisión era armonizar sus disposiciones con las de la Ley de Inocuidad de los Alimentos, en particular en lo relativo a la recientemente adoptada Norma Nacional sobre Inocuidad de los Alimentos: Límites Máximos de Residuos de Plaguicidas en los Alimentos.

3.3.3.3 Medidas sanitarias y fitosanitarias

3.153. Entre abril de 2021 y marzo de 2024, China notificó unas 101 medidas sanitarias y fitosanitarias a la OMC (medidas ordinarias y de emergencia), de las cuales dos eran medidas de emergencia que afectaban a Miembros específicos.¹⁶²

3.154. En enero de 2022 se notificaron medidas de emergencia por las que se establecían prescripciones en materia de cuarentena fitosanitaria para las importaciones de madera de pino (incluidos los troncos para aserrar y la madera aserrada) procedentes de siete entidades (el Canadá, el Japón, la República de Corea, México, Portugal, España y los Estados Unidos) afectadas por *Bursaphelenchus lignicolus*.¹⁶³ Las medidas requieren que las autoridades competentes del país

Medidas para la supervisión y administración de la inspección y cuarentena de productos cárnicos importados y exportados, Medidas para la supervisión y administración de la inspección y cuarentena de productos lácteos importados y exportados, y Disposiciones sobre la administración del registro de empresas que producen alimentos exportados.

¹⁵⁹ GACC, Provisions of the People's Republic of China on the Registration and Administration of Overseas Manufacturers of Imported Food. Consultado en: <http://jckspj.customs.gov.cn/spj/zcfq18/bmqz91/3979122/index.html?ref=chinatrademonitor.com>.

¹⁶⁰ Estos tipos de alimentos incluyen la carne y los productos cárnicos, tripas, productos acuáticos, productos lácteos, nidos de ave y productos de nidos de ave, productos de la apicultura, huevos y sus productos, aceites y grasas comestibles, semillas oleaginosas, productos de pastelería rellenos, cereales comestibles, productos de la molinería y malta, hortalizas frescas y deshidratadas y legumbres secas, condimentos, frutos secos y semillas, frutas secas, café en grano sin tostar y cacao en grano, alimentos para regímenes especiales y alimentos funcionales.

¹⁶¹ Documento [G/SPS/R/102](#) de la OMC, de 17 de septiembre de 2021.

¹⁶² Plataforma MSF y OTC de la OMC, China. Consultada en: <https://eping.wto.org/en/Search/Index?domainIds=2&countryIds=C156&distributionDateFrom=2021-04-01&distributionDateTo=2024-02-29>.

¹⁶³ Documento [G/SPS/N/CHN/1243](#) de la OMC, de 6 de enero de 2022.

exportador realicen pruebas previas a la exportación, para garantizar que los troncos exportados estén libres de *Bursaphelenchus lignicolus* y se fumiguen posteriormente. La madera aserrada debe someterse a un tratamiento térmico, y la madera de pino debe entrar en China por puertos designados.

3.155. Además, en 2023 se presentó la notificación de emergencia en el Anuncio de la GACC por el que se suspendían las importaciones de todos los productos acuáticos procedentes del Japón.¹⁶⁴ Las autoridades sostienen que se trata de una medida de emergencia provisional, destinada a evitar completamente el riesgo de contaminación radiactiva de los productos alimenticios causada por la descarga de agua nuclear contaminada de Fukushima en el Japón, así como proteger la salud de los consumidores. Mencionaron que habían tratado activamente de obtener información adicional esencial para la evaluación, pero hasta el momento los resultados no habían satisfecho las expectativas.

3.156. Durante el período objeto de examen se plantearon 13 preocupaciones comerciales específicas relativas a medidas chinas en el Comité MSF de la OMC (cuadro 3.18).

Cuadro 3.18 Preocupaciones comerciales específicas relacionadas con las MSF planteadas contra China, abril de 2021 a febrero de 2024

Preocupación	Miembro(s) que plantea(n) la preocupación (Miembros que respaldan la preocupación)	Miembro(s) que responde(n) a la preocupación comercial	Planteada por primera vez/planteada por última vez (número de veces que se ha planteado)
Restricciones a la importación de productos pesqueros	México	China	2021, (1)
Restricciones a las importaciones de carne vacuna	India	China	2021/2022, (3)
Preocupación por la transparencia, los retrasos y las debidas garantías de procedimiento asociadas a los requisitos de China para la importación de productos agrícolas	Australia (Federación de Rusia)	China	2021/2022, (5)
Restricciones generales a la importación a causa de la encefalopatía espongiforme bovina (EEB)	Estados Unidos; Unión Europea (Canadá; Estados Unidos; Suiza; Uruguay)	Reino de la Arabia Saudita; Argentina; Australia; Brasil; China; Colombia; República de Corea; Egipto; Estados Unidos; Filipinas; Japón; Jordania; Malasia; Singapur; Sudáfrica; Tailandia; Taipei Chino; Türkiye; Ucrania; y algunos otros Miembros	2004/2023, (49)
Restricciones a la importación a causa de la peste porcina africana (ID 392)	Unión Europea	China	2015/2023, (19)
Restricciones a la importación a causa de la gripe aviar altamente patógena	Estados Unidos; Unión Europea (Estados Unidos; Unión Europea)	China	2016/2023, (21)
Medidas en relación con la COVID-19 que afectan al comercio de alimentos y productos agropecuarios	Australia; Canadá; Estados Unidos; Federación de Rusia; India; Japón; Taipei Chino; Unión Europea (Australia; Brasil; Federación de Rusia; India; Japón; Kenya; México; Noruega; Nueva Zelanda; Paraguay; Reino Unido; Suiza; Taipei Chino; Unión Europea)	China	2020/2023, (10)

¹⁶⁴ Documento [G/SPS/N/CHN/1283](#) de la OMC, de 31 de agosto de 2023.

Preocupación	Miembro(s) que plantea(n) la preocupación (Miembros que respaldan la preocupación)	Miembro(s) que responde(n) a la preocupación comercial	Planteada por primera vez/planteada por última vez (número de veces que se ha planteado)
Medidas administrativas para el registro de los fabricantes extranjeros de alimentos importados (26 de noviembre de 2019)	Australia; Canadá; Estados Unidos; Japón; Unión Europea (Canadá; República de Corea; Filipinas; Japón; Kenya; Noruega; Perú; Reino Unido; Senegal; Suiza; Tailandia; Taipei Chino; Uganda; Unión Europea)	China	2020/2023, (11)
Nuevo modelo de certificado sanitario propuesto para las importaciones de camarón	India	China	2021/2023, (6)
Retraso en la aprobación de las solicitudes de nueva inscripción y restablecimiento de establecimientos de exportación	Australia; Canadá; Estados Unidos; Japón; Unión Europea (Canadá; Estados Unidos; Noruega; Reino Unido; Unión Europea)	China	2021/2023, (9)
Suspensión de las importaciones de frutas frescas	Taipei Chino	China	2021/2023, (7)
Suspensión de las importaciones de carne de bovino debido a las restricciones relacionadas con la EEB	Canadá (Unión Europea)	China	2023, (3)
Restricciones a la importación de productos de aves de corral sometidos a tratamiento térmico destinados a la alimentación de los animales por motivo de la gripe aviar altamente patógena	Canadá	China	2023, (3)
Restricción sobre las importaciones de productos acuáticos después de la descarga en el mar del agua tratada mediante el ALPS	Japón	China; Federación de Rusia; Hong Kong, China; Macao, China	2023, (1)

Fuente: Sistema de Gestión de la Información MSF de la OMC. Consultado en: <http://spsims.wto.org>.

3.3.3.4 Inspección y cuarentena

3.157. Las inspecciones a los efectos de MSF, en particular los procedimientos de cuarentena, permanecieron en general sin cambios durante el período objeto de examen. La GACC se encarga de la inspección de entrada y salida y administra la cuarentena. De conformidad con la Ley de Cuarentena de Entrada y Salida de Fauna y Flora, la Ley de Inspección de Mercancías de Importación y Exportación y su Reglamento de aplicación, el Catálogo de Productos Básicos sujetos a Inspección y Cuarentena de Entrada y Salida establece la lista de animales, plantas y productos conexos sujetos a inspección y cuarentena a la entrada, la salida o el tránsito por China. La revisión más reciente del Catálogo se llevó a cabo mediante el Anuncio N° 79 de la GACC, de 2022. También podrá requerirse la inspección y cuarentena para algunos productos que no figuran en el catálogo, pero que se constata que plantean motivos de preocupación imprevistos.

3.158. Para las importaciones sujetas a cuarentena, los importadores han de presentar su solicitud, junto con los documentos pertinentes, a la GACC. La GACC está obligada a expedir un permiso de cuarentena o notificar la denegación en un plazo de 20 días hábiles contados a partir de la recepción de la solicitud. Por ley, los animales de cría grandes o medianos estarán sujetos a cuarentena en instalaciones de aislamiento animal durante 45 días; los animales acuáticos importados destinados a fines de cría, cultivo y ornamentales se someterán a cuarentena obligatoria durante al menos 14 días en instalaciones de cuarentena designadas; y los demás animales importados estarán sujetos a cuarentena durante 30 días. Si los artículos sujetos a cuarentena no superan la inspección de cuarentena, la GACC expedirá un aviso de régimen de cuarentena e informará al propietario o su representante para que lleven a cabo los tratamientos necesarios, tales como la desinfección.

3.159. Según las autoridades, desde 2021 el 22,74% de los animales grandes y medianos no superó la inspección previa a la llegada. Pueden presentarse apelaciones de conformidad con las leyes y los reglamentos pertinentes.

3.160. Las exportaciones de animales, vegetales y sus productos incluidos en el Catálogo también deben cumplir los reglamentos de cuarentena. Los exportadores están obligados a solicitar aprobación de cuarentena de la GACC en el puerto de exportación designado antes de enviar las mercancías.

3.161. En principio, de conformidad con el Reglamento de Aplicación de la Ley de Inspección de Mercancías de Importación y Exportación, los importadores tienen la opción de solicitar una nueva inspección en un plazo de siete días contados a partir de la recepción del informe de inspección si no están de acuerdo con sus constataciones.

3.162. Los animales, las plantas y sus productos también requieren certificados sanitarios o fitosanitarios de la autoridad competente del país o región de exportación (salvo disposición en contrario).

3.163. En abril de 2023, el MARA publicó Normas Detalladas para el Examen de Plantas Obtenidas por Edición Genética con Fines Agrícolas (edición provisional) para orientar los procedimientos de evaluación de la inocuidad y prestar apoyo a las organizaciones de investigación que realizan actividades de investigación y desarrollo. Las Normas especifican las normas de clasificación y el contenido del examen de plantas obtenidas por edición genética. En el caso de las plantas obtenidas por edición genética que no contengan genes exógenos, si los datos obtenidos de las pruebas indican que las plantas no plantearán un riesgo para la seguridad ambiental, pueden solicitarse directamente los certificados de inocuidad necesarios para la producción de plantas modificadas genéticamente.

3.3.4 Política de competencia y controles de precios

3.3.4.1 Política de competencia

3.3.4.1.1 Marco legislativo e institucional

3.164. La principal legislación relacionada con la competencia, la Ley Antimonopolio, contiene normas relativas a los siguientes tipos de conducta anticompetitiva: i) cárteles; ii) abuso de posición dominante; iii) concentraciones (fusiones y adquisiciones); y iv) abuso de facultades administrativas. La Ley se aplica a las prácticas anticompetitivas llevadas a cabo en China, pero también en el extranjero si esas prácticas "eliminan o restringen la competencia en el mercado interno de China".¹⁶⁵ La Ley no es aplicable a las "actuaciones conjuntas o concertadas de productores agrícolas y organizaciones económicas rurales en sus actividades comerciales, tales como la producción, la elaboración, la venta, el transporte o el almacenamiento de productos agrícolas".¹⁶⁶

3.165. La Ley Antimonopolio establece también un "examen de la competencia leal": los órganos estatales encargados de la adopción de los instrumentos legislativos que regulan las "actividades económicas de las entidades de mercado" llevarán a cabo un proceso de examen de la competencia leal con el fin de asegurarse de que la legislación propuesta no cree obstáculos a la entrada ni perjudique la competencia.

3.166. En 2021 se creó la Administración Antimonopolio, dependiente de la Administración Estatal de Reglamentación del Mercado (SAMR). La Oficina tiene la condición de institución "viceministerial", lo que le confiere una considerable independencia, como la posibilidad de recibir directamente instrucciones del Consejo de Estado, la posibilidad de interactuar directamente con otros organismos estatales y la facultad de redactar leyes relacionadas con la competencia.¹⁶⁷ Los tres departamentos de la Oficina se encargan de la redacción de reglamentos relacionados con la competencia, la

¹⁶⁵ Ley Antimonopolio, artículo 2. Consultada en: <https://www.chinalawtranslate.com/en/anti-monopoly-law-2022/>.

¹⁶⁶ Ley Antimonopolio, artículo 69. Consultada en: <https://www.chinalawtranslate.com/en/anti-monopoly-law-2022/>.

¹⁶⁷ A. Xue y H. Jing (2022), "What Was China's National Anti-Monopoly Administration Created For?", *CPI*, 6 de enero de 2022. Consultado en: https://www.pymnts.com/cpi_posts/what-was-chinas-national-anti-monopoly-administration-created-for/.

aplicación de la legislación contra los cárteles y los abusos de posición dominante, y el control de las fusiones.

3.3.4.1.2 Principales modificaciones legislativas

3.167. Durante el período objeto de examen, la Ley Antimonopolio fue objeto de modificaciones, que entraron en vigor el 1 de agosto de 2022. Se incluyeron normas de "puerto seguro" para abordar las situaciones en las que un acuerdo vertical no tiene el efecto de eliminar la competencia o cuando la cuota de mercado de una empresa es inferior al umbral prescrito por las Disposiciones sobre la Prohibición de los Acuerdos Monopolísticos (inferior al 15%). No se han introducido normas de "puerto seguro" para los acuerdos horizontales.

3.168. También hay nuevas normas que aumentan los umbrales para la notificación de fusiones y adquisiciones. Es necesario notificar la transacción cuando: i) el volumen de negocio mundial agregado de las empresas excede de CNY 12.000 millones y el volumen de negocio individual en China de al menos dos de las empresas asciende a CNY 800 millones; o ii) el volumen de negocio agregado de las empresas en China excede de CNY 4.000 millones y el volumen de negocio individual en China de al menos dos de las empresas asciende a CNY 800 millones. Si no se alcanzan esos umbrales, la fusión o adquisición tiene no obstante que ser notificada si el volumen de negocio en China de una de las empresas excede de CNY 100.000 millones y la otra empresa tiene un valor de mercado igual o superior a CNY 800 millones y genera en China más de una tercera parte de su volumen de negocio global. Aun cuando no se alcancen los umbrales establecidos, la autoridad encargada de la competencia puede exigir a las empresas que declaren la transacción en caso de que tenga o pueda tener un efecto anticompetitivo.¹⁶⁸

3.169. Aunque no se prohíba una fusión o adquisición, para limitar su posible efecto negativo en la competencia en el mercado la autoridad encargada de la competencia puede imponer condiciones restrictivas adicionales, como condiciones estructurales (por ejemplo, cesión de derechos de propiedad intelectual), condiciones de comportamiento (por ejemplo, concesión de licencias para tecnologías clave y de acceso a plataformas), o una combinación de unas y otras.¹⁶⁹ Si las empresas pueden demostrar que una fusión o adquisición no tendrá un efecto anticompetitivo o redundará en beneficio del interés público, se autorizará esa transacción.

3.170. Por lo que se refiere a los procedimientos de examen de las fusiones, las nuevas disposiciones sobre el "reloj detenido" permiten a la autoridad encargada de la competencia dejar en suspenso el período para el examen si: i) las empresas no han presentado los documentos o el material requeridos, imposibilitando así el examen; ii) han tenido lugar nuevos hechos nuevos importantes en relación con la fusión o adquisición; o iii) es necesaria una nueva evaluación de las condiciones restrictivas adicionales impuestas.

3.171. En el marco de un programa piloto, la SAMR puede encomendar a las autoridades provinciales encargadas de la competencia en Beijing, Shanghai, Chongqing, Shaanxi y Guangdong el examen de las notificaciones de fusiones y adquisiciones simplificadas en los casos en que: i) al menos un solicitante tenga su domicilio en la región pertinente; ii) la empresa o empresas adquieran el control de otra u otras empresas con domicilio en las regiones pertinentes; iii) las empresas hayan establecido nuevas empresas conjuntas domiciliadas en las regiones pertinentes; iv) el mercado geográfico relacionado con la concentración de empresas sea un mercado regional entera o principalmente situado en la región pertinente; y v) otros casos en los que la SAMR delegue el examen.¹⁷⁰ Incluso cuando las autoridades provinciales encargadas de la competencia realizan un examen, el SAMR examina los informes y recomendaciones de dichas autoridades y adopta una decisión.

¹⁶⁸ Ley Antimonopolio, artículo 26.

¹⁶⁹ Véanse las Disposiciones sobre el Examen de la Concentración de Empresas (Anuncio Nº 67 de la SAMR, 2023).

¹⁷⁰ Véase el Anuncio de la Administración Estatal de Reglamentación del Mercado sobre el Programa Piloto de Delegación del Examen Antimonopolio de Determinados Casos relacionados con la Concentración de Empresas (Anuncio Nº 23, 2022).

3.172. En lo que respecta al abuso de posición dominante, en la Ley Antimonopolio actual se reconoce explícitamente la función de las herramientas digitales y se prohíbe el uso de "datos o algoritmos, tecnologías y normas sobre plataformas con el fin de abusar de una posición dominante en el mercado".¹⁷¹

3.173. Además, en noviembre de 2022 se publicaron proyectos de modificación de la Ley de Represión de la Competencia Desleal de China.¹⁷² Para evitar superposiciones, la Ley Antimonopolio queda designada como la legislación primaria en materia de conductas anticompetitivas, mientras que la Ley de Represión de la Competencia Desleal aborda las conductas no abarcadas por la Ley Antimonopolio, por ejemplo la conducta de los agentes del mercado que disfrutan de una posición comparativamente ventajosa que no constituye una posición dominante y no está por tanto abarcada por la Ley Antimonopolio.

3.174. En junio de 2022 se publicaron también propuestas de modificación de los seis reglamentos que se indican a continuación para que fueran objeto de consultas públicas. El proyecto de Reglamento sobre los Umbrales para la Notificación de Concentración de Empresas aún no ha sido aprobado, mientras que los siguientes instrumentos legislativos ya están en vigor: i) Disposiciones sobre la Prohibición de los Acuerdos Monopolísticos (Anuncio N° 65 de la SAMR, 2023); ii) Disposiciones sobre la Prohibición del Abuso de Posición Dominante (Anuncio N° 66 de la SAMR, 2023); iii) Disposiciones sobre la Prohibición de la Eliminación y Restricción de la Competencia mediante el Abuso de Derechos de Propiedad Intelectual (Anuncio N° 79 de la SAMR, 2023); iv) Disposiciones sobre la Prohibición de la Eliminación y Restricción de la Competencia mediante el Abuso de Facultades Administrativas (Anuncio N° 64 de la SAMR, 2023); v) Disposiciones sobre la Concentración de Empresas (Anuncio N° 67 de la SAMR, 2023); y vi) Disposiciones sobre los Umbrales para la Notificación Previa de Concentración de Empresas (Anuncio N° 773 del Consejo de Estado, 2024).

3.3.4.1.3 Observancia

3.175. El régimen de observancia de China se ha visto reforzado por las modificaciones de la Ley Antimonopolio. Las partes privadas pueden ahora solicitar ante los tribunales la aplicación de medidas correctivas en caso de infracción de dicha Ley. La Ley Antimonopolio modificada permite asimismo a los fiscales públicos presentar ante los tribunales civiles reclamaciones contra infracciones de la legislación sobre competencia en caso de que esas infracciones perjudiquen el interés público. Actualmente, el Tribunal Supremo del Pueblo de China participa en el proceso de modificación de la Ley Antimonopolio para aclarar el alcance y la jurisdicción de esas alegaciones, dado que, hasta la fecha, los tribunales de China no han entendido en asuntos en materia de competencia relacionados con el interés público.¹⁷³

3.176. Los órganos administrativos también tienen expresamente prohibido abusar de sus facultades y restringir el acceso a los mercados o tratar de manera desigual a las empresas y eliminar de ese modo la competencia. Asimismo, la autoridad encargada de la competencia puede investigar las conductas pertinentes de esos órganos, como el supuesto abuso de facultades, la aplicación de restricciones al acceso a los mercados y la concesión a las empresas de un trato desigual que elimine la competencia. Además, la Ley Antimonopolio ha establecido la responsabilidad personal en caso de infracción de la legislación antimonopolio. Actualmente prescribe sanciones penales para las acciones que entrañen, entre otras cosas, abusos de autoridad, la obstrucción de una investigación o prácticas de licitación colusorias. Tanto las personas físicas como las jurídicas pueden incurrir en responsabilidad penal.

3.177. La Ley Antimonopolio prevé asimismo el aumento de las sanciones por infracción. Las infracciones de la Ley Antimonopolio quedan registradas en el historial crediticio de la empresa o empresas involucradas, lo que puede dar lugar a la suspensión de sus operaciones, a su exclusión respecto de la contratación pública y a la suspensión de programas de incentivos. Sobre la base de la Ley Antimonopolio actual, se aplican las siguientes sanciones: i) por ayudar a otras empresas a crear cárteles, multa de hasta CNY 1 millón; ii) por realizar fusiones que infrinjan la legislación sobre competencia y tengan el efecto de eliminar o restringir la competencia, multa de hasta el 10% de

¹⁷¹ Ley Antimonopolio, artículo 22. Consultada en: <https://www.chinalawtranslate.com/en/anti-monopoly-law-2022/>.

¹⁷² Las modificaciones aún no han entrado en vigor.

¹⁷³ Información facilitada por las autoridades.

las ventas globales de la empresa del año anterior; iii) por realizar fusiones que no hayan sido notificadas pero no tengan efectos anticompetitivos, multa de hasta CNY 5 millones; iv) si la infracción de la Ley Antimonopolio se considera grave, las sanciones pueden desde duplicarse hasta quintuplicarse; v) la falta de cooperación en investigaciones oficiales puede traducirse en una multa de hasta el 1% de las ventas correspondientes a los años anteriores o de hasta CNY 5 millones si no se dispone de datos sobre esas ventas; o vi) si el representante legal, la persona encargada o la persona directamente responsable de la empresa es responsable de la conclusión del acuerdo monopolístico, pueden ser objeto de una multa de hasta CNY 1 millón.

3.178. En la Ley Antimonopolio y en las Directrices de la Comisión Antimonopolio del Consejo de Estado sobre la Aplicación del Sistema de Clemencia en Casos de Acuerdos Monopolísticos Horizontales se prevé una política de clemencia.

3.179. Entre 2021 y 2023, las autoridades se ocuparon de varios centenares de casos referentes a la competencia, la mayoría de ellos relacionados con fusiones y adquisiciones (cuadro 3.19).

Cuadro 3.19 Estadísticas sobre la observancia en la esfera de la competencia, 2021-2023

	2021	2022	2023
1. Iniciación de investigaciones (número)			
a) Investigaciones sobre acuerdos contrarios a la competencia	30	18	15
I) Solicitudes de clemencia	1	0	2
d) Notificaciones de fusiones y adquisiciones	824	867	843
2. Investigaciones finalizadas (número)			
a) Acuerdos contrarios a la competencia	11	16	16
b) Abuso de posición dominante	11	13	11
c) Acuerdos amistosos	0	0	0
d) Fusiones y adquisiciones (número total de decisiones y número de fusiones y adquisiciones no aprobadas)	727 (1 fusión no aprobada, 4 fusiones aprobadas con sujeción a condiciones restrictivas)	794 (5 fusiones aprobadas con sujeción a condiciones restrictivas)	558 (4 fusiones aprobadas con sujeción a condiciones restrictivas)
3. Sanciones por infracción	CNY 25.300 millones	CNY 740 millones	CNY 2.200 millones
4. Apelaciones (número de decisiones de revisión judicial dictadas)	0	0	1

Fuente: Información facilitada por las autoridades.

3.3.4.1.4 Cooperación internacional

3.180. En varios acuerdos de libre comercio (ALC) modificados o firmados por China durante el período objeto de examen, con el Ecuador, Mauricio, Nicaragua, Nueva Zelandia y Serbia, y en el contexto del Acuerdo de Asociación Económica Amplia Regional (RCEP), se incluyen disposiciones sobre política de competencia.

3.181. Actualmente, China está negociando su adhesión al Tratado Integral y Progresista de Asociación Transpacífico (CPTPP) y al Acuerdo de Asociación sobre Economía Digital (DEPA), que contienen ambas disposiciones relacionadas con la competencia. Asimismo, China ha avanzado en las negociaciones con Israel, Noruega, Honduras y el Perú para la conclusión o mejora de ALC en los que figuran disposiciones relacionadas con la competencia.

3.182. China se muestra también activa en la firma de acuerdos de cooperación sobre cuestiones de competencia. Hasta la fecha ha firmado 63 acuerdos con 35 economías, entre ellas los Estados Unidos, la Unión Europea y la Federación de Rusia. En 2021, la SAMR firmó Memorandos de Entendimiento con la Comisión de Competencia y Consumo de Singapur, así como con la Unión Económica Euroasiática. En 2023 se firmó otro Memorandum de Entendimiento con el Organismo de Protección y Fomento de la Competencia de Kazajistán. Además, los jefes de las autoridades encargadas de la competencia de los BRICS firmaron la Declaración Conjunta de Chengdu en 2021 y la Declaración Conjunta de Delhi en 2023.

3.3.4.2 Controles de precios

3.183. La principal legislación por la que se rigen los controles de precios en China, la Ley de Precios de China adoptada en 1997, no se modificó durante el período objeto de examen. Los instrumentos jurídicos que se indican a continuación se refieren a la regulación de los precios:

- Disposiciones sobre Sanciones Administrativas por Infracciones relacionadas con los Precios;
- Disposiciones Provisionales sobre la Prohibición de la Especulación;
- Medidas Provisionales para la Aplicación de Medidas de Intervención en los Precios y Medidas de Emergencia en Tiempos Atípicos;
- Reglamento sobre la Prohibición del Dumping a Precios Bajos;
- Disposiciones sobre el Mercado Claro de los Precios y la Prohibición del Fraude en los Precios; y
- Orientaciones de la Administración Estatal de Reglamentación del Mercado sobre la Investigación y Sanción de los Actos Ilegales de Aumento Excesivo de los Precios.

3.184. En el marco del Plan Quinquenal actual (2021-2025), China ha mejorado la vigilancia de los precios del cobre, el hierro, el petróleo bruto y el gas natural.¹⁷⁴ Además, actualmente se aplica al arroz con cáscara y al trigo una política de precios de compra mínimos en las principales provincias productoras de los dos cultivos. Con respecto al carbón térmico, las autoridades han indicado que no existe un tope de precios.

3.185. En el cuadro 3.20 y el cuadro 3.21 se muestran los productos y servicios sujetos a controles de precios por parte del Gobierno central y los Gobiernos locales de China.

Cuadro 3.20 Productos y servicios sujetos a controles de precios por parte del Gobierno central, 2023

Producto/servicio	Elementos de la fijación de precios		Observaciones
Transmisión y distribución de electricidad	Precio del transporte y la distribución de electricidad a nivel provincial o superior		
Transporte de petróleo y gas por tuberías	Precio del transporte por tuberías interprovincial (región autónoma o municipio bajo el control directo del Gobierno central)		Salvo en el caso de tuberías para consumo interno de las empresas
Transporte básico	Servicios de transporte ferroviario	Tarifas de asientos y camas de trenes ordinarios de pasajeros en líneas ferroviarias que son propiedad exclusiva del Gobierno central o están bajo su control mediante una participación en el capital	No se incluyen en la horquilla de precios los trenes con vagones a motor ni las líneas ferroviarias recién construidas reservadas al transporte de pasajeros y controladas mediante inversión en el capital social
		Precios del transporte de carga a granel y de equipaje por líneas ferroviarias que son propiedad exclusiva del Gobierno central o están bajo su control mediante una participación en el capital	La horquilla de precios abarca los precios del transporte de carbón, petróleo, cereales, abonos y otras cargas de mercancías y equipajes por vagones completos, excepto el transporte de carga por líneas ferroviarias recién construidas y controladas mediante inversión en el capital social

¹⁷⁴ Reuters (2021), "China to Strengthen Commodity Price Controls in Five-Year Plan", 25 de mayo de 2021. Consultado en: <https://www.reuters.com/article/us-china-commodities-idUSKCN2D60A2/>.

Producto/servicio	Elementos de la fijación de precios		Observaciones
	Servicios portuarios	Tarifas de los servicios monopolísticos prestados en los puertos principales a lo largo de la costa y en el curso principal del río Yangtsé, así como en todos los demás puertos abiertos a embarcaciones de pabellón extranjero	La horquilla de precios abarca la entrada y salida de los puertos, el atraque y salida de buques, la seguridad portuaria y otros servicios
	Servicios de aviación civil	Tarifas de transporte de pasajeros en las rutas aéreas nacionales de aviación civil y en la sección interior de las rutas aéreas internacionales de aviación civil que no pueden ser objeto de licitación	Excepto las tarifas de primera clase y clase preferente
		Tarifas de la parte monopolística de los servicios de salvaguardia de la aviación civil	La horquilla de precios abarca las tarifas de los servicios monopolísticos prestados en los aeropuertos civiles y los aeropuertos de doble uso (civil y militar), las tarifas de los servicios de inspección de vuelos de las compañías aéreas civiles y las tarifas de los servicios de gestión del tráfico aéreo civil
Abastecimiento de agua en el marco de los principales proyectos de conservación del agua	Precios del agua suministrada en el marco de proyectos de conservación del agua interprovinciales (región autónoma o municipio bajo el control directo del Gobierno central) directamente dependientes del Gobierno central		Excepto los precios negociados voluntariamente entre proveedores y compradores
Servicios postales importantes	Tarifas de entrega de correo		Excepto en actividades competitivas (como el envío de paquetes cuyo precio se calcula en función del peso y el volumen)
	Tarifas de remesas postales		
	Tarifas de correspondencia clasificada		
	Tarifas de distribución de revistas y periódicos fijadas por el Estado		
	Tarifas de envío de paquetes de peso unitario inferior a 10 kg		
Servicios profesionales importantes	Tasas por servicios básicos de los bancos comerciales y comisiones por transacciones con tarjetas bancarias		La horquilla de precios abarca los servicios básicos de los bancos comerciales, como las transferencias y remesas, los envíos de efectivo y el cobro de facturas, así como los servicios de transacciones con tarjetas bancarias (excepto relaciones competitivas, como las comisiones por adquisición de servicios)
Medicamentos especiales y sangre	Medicamentos especiales	Precios de los estupefacientes y de la primera categoría de sustancias psicotrópicas	
	Sangre	Precios de la sangre para uso clínico de los ciudadanos suministrada por los bancos de sangre	

Fuente: Información facilitada por las autoridades.

Cuadro 3.21 Productos y servicios sujetos a controles de precios por parte de los Gobiernos locales, 2023

Producto/servicio	Tipo de control/justificación	Reglamentación
Tasas de protección ambiental	Las tasas por la utilización por compensación y la comercialización de los derechos de vertido de contaminantes y las tasas de eliminación de desechos peligrosos están reguladas por los Gobiernos locales. Justificación: servicios de utilidad pública	Reglamento sobre Drenaje Urbano y Tratamiento de Aguas Residuales
Tasas de eliminación de basuras domésticas en las zonas urbanas	Las tasas de eliminación de desechos domésticos en las zonas urbanas están reguladas por los Gobiernos locales. Justificación: servicios de utilidad pública	Circular sobre la Imposición de Tasas de Eliminación de Basuras Domésticas en las Zonas Urbanas y la Promoción de la Eliminación de Basuras mediante Tratamientos Industriales
Tasas de eliminación de aguas residuales	Las tasas de eliminación de aguas residuales están reguladas por los Gobiernos locales. Justificación: servicios de utilidad pública	Medidas relativas a la Administración de la Recaudación de las Tasas sobre el Vertido de Contaminantes
Precios de bienes inmuebles y tasas de servicios conexos	Las viviendas económicas y el alquiler de viviendas de bajo precio, así como las tasas por servicios relacionados con bienes inmuebles, están sujetos a la orientación de precios de los Gobiernos locales. Justificación: servicios de utilidad pública	Medidas Administrativas relativas a las Viviendas Económicas Medidas Administrativas relativas al Alquiler de Viviendas de Bajo Precio
Entrada a lugares de interés turístico propiedad del Estado	Los precios están sujetos a fijación u orientación por los Gobiernos locales. Justificación: servicios de utilidad pública	Ley de Turismo

Fuente: Información facilitada por las autoridades.

3.3.5 Comercio de Estado y empresas públicas

3.186. China presentó su última notificación completa sobre las empresas comerciales del Estado en 2021. La legislación y la reglamentación no han variado durante el período objeto de examen. Según las autoridades, los fines del comercio de Estado son los siguientes: asegurar la estabilidad del suministro y de los precios de los productos abarcados, garantizar la seguridad alimentaria, proteger los recursos naturales agotables y no reciclables y el medio ambiente, y lograr el objetivo de desarrollo sostenible.

3.187. Las empresas comerciales del Estado de China tienen el derecho exclusivo de importar o exportar los siguientes productos: tabaco, petróleo crudo y elaborado, carbón refinado, abonos químicos, tungsteno y sus productos, antimonio y sus productos, y plata. Según la notificación presentada, las empresas no comerciales del Estado con derechos registrados pueden gestionar parte del contingente de importación de determinados productos, como el trigo, el maíz, el arroz, el azúcar y el algodón, en las condiciones establecidas en los anuncios anuales. Además, algunas de estas empresas están autorizadas a importar o exportar abonos químicos, petróleo crudo y petróleo elaborado.

3.188. Las autoridades han señalado, entre las empresas comerciales del Estado cuyo funcionamiento se rige por el mecanismo del mercado, las siguientes sociedades: COFCO Corporation, China National Sugar and Alcohol Group Corporation Ltd, China Commercial Foreign Trade Corporation, China Tobacco International Inc., Sinochem Group, China International Petroleum and Chemicals Co. Ltd, China National United Oil Corporation, Zhu Hai Zhen Rong Company, China Aviation Oil Imp. & Exp. Co. Ltd, China National Offshore Oil Corporation, China National Agricultural Means of Production Group Co., Chinatex Corporation Ltd, Beijing Jiu Da Textiles Group Cooperation, Tianjin Textiles Industry Supply and Sales Co. Ltd, Shanghai Textiles Raw Materials Co. Ltd, China National Cotton Reserves Corporation, Xinjiang Yin Long International Agricultural Cooperation Co. Ltd, China National Cotton Group Corporation, Xinjiang Jintianlu Agricultural Products Logistics Co. Ltd, Jilin Grain Group Imp. & Exp. Co. Ltd, Beidahuang Group. Co. Ltd, y Beijing Oriental Desheng Grain Import & Export Co. Ltd.

3.189. En la economía china, la propiedad estatal de las empresas coexiste con diversas modalidades de propiedad privada, por lo que hay desde empresas de capital totalmente estatal hasta estructuras de propiedad mixta. Las autoridades consideran que la economía estatal es la fuerza principal de la economía nacional, y que la economía no pública es un componente importante de la economía socialista de mercado. El Gobierno promueve una economía mixta en un contexto de preponderancia de la propiedad pública, que las autoridades señalan como el núcleo de la "economía socialista de mercado"; la propiedad mixta pretende fomentar la integración entre el capital estatal, el capital colectivo, el capital privado y otras formas de capital. El sector privado es dominante en industrias tales como la del vestido, los alimentos y el montaje para la exportación, mientras que las empresas públicas predominan en sectores como la energía, los servicios públicos, el transporte y los servicios financieros y de telecomunicaciones. Las empresas públicas pueden ser entidades comerciales o entidades de protección social.

3.190. Aunque no está previsto privatizar las empresas públicas, se han logrado avances en la "reforma de la propiedad mixta". Según las autoridades, el plan de acción trienal (2020-2022) para la reforma de las empresas públicas chinas se tradujo en general en una mayor eficiencia y orientación hacia el mercado de las empresas públicas. En julio de 2023 se inició una nueva ronda de reforma de las empresas públicas centrada en la reorganización institucional e industrial y en la innovación tecnológica.

3.191. Durante el período examinado creció el número de empresas públicas, tanto en el sector industrial como en el de la construcción. El porcentaje de empresas públicas en el sector industrial aumentó ligeramente, a diferencia de lo ocurrido en el sector de la construcción (cuadro 3.22). Los beneficios de las empresas públicas del sector industrial también han aumentado, registrando un máximo en 2021. El valor bruto de la producción de las empresas públicas en el sector de la construcción aumentó de manera constante, mientras que su cuota de mercado fluctuó en torno al 12%. En los últimos años, la participación de las empresas públicas en los beneficios totales del sector de la construcción ha aumentado.

Cuadro 3.22 Las empresas públicas en la economía de China, 2017-2022

Sector	2017	2018	2019	2020	2021	2022
Sector industrial^a						
Número total de empresas	372.729	378.440	377.815	399.375	441.517	472.009
Número de empresas públicas ^b	19.022	18.670	20.683	22.072	25.180	27.065
Porcentaje de empresas públicas	5,1	4,9	5,5	5,5	5,7	5,7
Activos totales (en miles de millones de CNY)	112.191	113.438	120.587	130.350	146.672	160.193
Activos totales de las empresas públicas ^b (en miles de millones de CNY)	43.962	43.991	46.968	50.046	56.508	60.425
Porcentaje de empresas públicas	39,2	38,8	38,9	38,4	38,5	37,7
Beneficios totales (en miles de millones de CNY)	7.492	6.635	6.580	6.847	9.293	8.416
Beneficios totales de las empresas públicas ^b (en miles de millones de CNY)	1.722	1.858	1.607	1.535	2.444	2.440
Porcentaje de empresas públicas	23,0	28,0	24,4	22,4	26,3	29,0
Sector de la construcción						
Número de empresas	88.074	96.544	103.805	116.722	128.743	143.446
Número de empresas públicas	3.453	3.080	3.309	3.746	3.920	4.439
Porcentaje de empresas públicas	3,9	3,2	3,2	3,2	3,0	3,1
Valor de la producción bruta (en miles de millones de CNY)	21.394	23.509	24.844	26.395	29.308	30.794
Valor de la producción bruta de las empresas públicas (en miles de millones de CNY)	2.641	2.626	3.066	3.488	3.763	4.409
Porcentaje de empresas públicas	12,3	11,2	12,3	13,2	12,8	14,3

a Con inclusión de la minería, las manufacturas, y la producción y el suministro de electricidad, gas y agua.

b Las cifras se refieren a las empresas públicas, incluidas las empresas con participación del Estado.

Fuente: Oficina Nacional de Estadística de China, *China Statistical Yearbook* (varios números).

3.192. La Comisión de Supervisión y Administración de Activos Estatales (SASAC), de propiedad estatal, supervisa la creación de valor y el incremento del capital estatal, nombra y evalúa a los directivos de las empresas con arreglo a la ley, los recompensa o sanciona en función de los resultados obtenidos, y establece las directrices para la reforma de las empresas públicas y las fusiones y adquisiciones. La SASAC actúa como representante del Gobierno central y como inversor,

y depende directamente del Consejo de Estado. Las autoridades han señalado que la supervisión de las empresas públicas centrales por parte de la SASAC está sujeta a los derechos de los inversores, no a las facultades administrativas. En marzo de 2024, la SASAC tenía a su cargo 97 empresas públicas (el mismo número de empresas que en enero de 2021). La administración de las empresas públicas del sector financiero o empresas financieras centrales (26 en total) depende directamente del MOF.

3.193. En 2022 había 1.351 empresas públicas que cotizaban en bolsa (441 de ellas participadas por el Estado y 910 participadas por las administraciones locales), lo que representa el 26,6% de todas las empresas que cotizaban en bolsa. Entre las principales empresas que cotizan en bolsa y tienen un alto valor de mercado, el porcentaje de empresas participadas por el Estado es particularmente alto. Muchas grandes empresas formalmente privadas, incluso aquellas que cotizan en el mercado de valores, tienen al Estado como accionista importante o mayoritario, ya sea en virtud de la titularidad directa de participaciones o mediante instrumentos de inversión estatal.

3.194. La SASAC supervisa en la actualidad a 7 de las 10 mayores empresas públicas de China (Cuadro 3.23), frente a 3 en 2021. A finales de 2023, el número de trabajadores empleados en empresas supervisadas por la SASAC ascendía a unos 29,3 millones.

Cuadro 3.23 Las 10 mayores empresas públicas de China, 2023

(Miles de millones de USD)

Empresa	Ingresos
Red Eléctrica Estatal	530,0
China National Petroleum ^a	483,0
Grupo SINOPEC ^a	471,2
China State Construction Engineering ^a	305,9
Banco Industrial y Comercial de China	214,8
Banco de la Construcción de China	202,8
Banco Agrícola de China	187,1
Sinochem Holdings ^a	173,8
China Railway Engineering Group ^a	171,7
China National Offshore Oil ^a	164,8

a Empresa controlada por la SASAC.

Fuente: Fortune Global 500. Consultado en: <https://fortune.com/ranking/global500/>.

3.195. Las empresas públicas son un elemento esencial de la economía china. Aunque hay quien las considera instrumentos clave para aplicar las políticas públicas, prestar apoyo a los objetivos industriales nacionales y mantener el control estatal sobre sectores esenciales, fomentando así la estabilidad económica e influyendo en la competitividad mundial, las autoridades afirman que las empresas públicas de China operan de manera sistemática sobre la base de criterios comerciales y realizan actividades empresariales de acuerdo con principios orientados al mercado y basados en el Estado de derecho. Según el FMI, la productividad de las empresas públicas que cotizan en bolsa en China es por lo general baja, en comparación con la de las empresas privadas que cotizan; las reformas podrían cerrar esta brecha provocada por una deficiente asignación de los recursos. Se estima que cerrar la brecha de productividad entre las empresas públicas y las empresas privadas aumentaría la productividad en torno a un 6%.¹⁷⁵

3.196. El Fondo para la Reforma Estructural de China, creado en 2016 con una dotación inicial de CNY 131.000 millones, tiene por objeto optimizar la gestión y el desarrollo de las empresas públicas a través de la financiación de la reestructuración de estas empresas y de las fusiones y adquisiciones en el extranjero, con miras a incrementar la integración industrial y mejorar la eficiencia en general. La segunda fase del Fondo se puso en marcha en 2021, con un capital desembolsado de CNY 737.500 millones, y su finalidad es invertir en industrias emergentes estratégicas y en esferas clave que afectan a la seguridad nacional. Las autoridades afirman que el Fondo está constituido, invierte y opera en un régimen de mercado.

3.197. Existen diversos mecanismos de financiación respaldados por el Gobierno para cubrir las deudas y déficits de las empresas públicas. En julio de 2020, China constituyó un fondo de protección

¹⁷⁵ FMI (2021), *People's Republic of China: Selected Issues*, IMF Country Report N° 21/12. Consultado en: [https://www.elibrary.imf.org/view/journals/002/2021/012/article-A002-en.xml#:~:text=A%20Brief%20Overview%20of%20SOEs,country%20\(IMF%20Fiscal%20Monitor\)](https://www.elibrary.imf.org/view/journals/002/2021/012/article-A002-en.xml#:~:text=A%20Brief%20Overview%20of%20SOEs,country%20(IMF%20Fiscal%20Monitor).).

del crédito para las empresas públicas centrales con la finalidad de recaudar CNY 100.000 millones y una dotación inicial de CNY 10.000 millones destinados a proporcionar financiación de emergencia a las empresas públicas para evitar posibles impagos. Desde entonces, 11 Gobiernos provinciales o municipales también han creado fondos de protección del crédito para cubrir los riesgos de impago de los bonos emitidos por empresas públicas. No se dispone de información sobre la tasa de utilización o los desembolsos del fondo.

3.198. La importancia global de las empresas públicas en la economía de China puede afectar al funcionamiento de las políticas y prácticas de mercado y tener repercusiones mundiales. Según el FMI, las empresas públicas de China pueden beneficiarse de créditos concedidos por bancos estatales u otras formas de financiación, de garantías implícitas, de inyecciones de capital y de un acceso preferencial a los insumos. Las autoridades rechazan esta afirmación e indican que las empresas públicas de China operan en condiciones de mercado, sin privilegios otorgados por el Gobierno. Además, las autoridades afirman que "no hay datos empíricos que respalden la afirmación de que se están ofreciendo [a las empresas públicas] garantías implícitas o un acceso preferencial al crédito".¹⁷⁶

3.3.6 Contratación pública

3.3.6.1 Panorama general

3.199. Según las autoridades, el valor total de la contratación pública en China ascendió a CNY 3,5 billones en 2022 (último año sobre el que se dispone de datos), lo que equivale al 2,9% del PIB (cuadro 3.24). Como en los años precedentes, la mayor parte de la contratación pública tiene lugar a nivel de los Gobiernos subcentrales.

Cuadro 3.24 Valor de la contratación pública y proporción del PIB, 2020-2022

(Miles de millones de CNY y %)

Año	Nivel	Valor total de la contratación	Proporción del PIB (%)	Bienes	Servicios de construcción e ingeniería	Otros servicios
2020	Gobierno central	285,3	..	149,4	74,5	61,3
	Gobiernos subcentrales	3.411,8	..	768,2	1.674,7	968,9
	Otros (empresas públicas, servicios públicos, etc.)	..	..	..	..	..
	Total	3.697,1	3,6	917,6	1.749,2	1.030,2
2021	Gobierno central	296,2	..	156,6	80,2	59,3
	Gobiernos subcentrales	3.343,7	..	783,3	1.615,9	944,5
	Otros (empresas públicas, servicios públicos, etc.)	..	..	..	..	..
	Total	3.639,9	3,2	939,9	1.696,1	1.003,8
2022	Gobierno central	329,7	..	188,8	78,3	62,6
	Gobiernos subcentrales	3.169,7	..	714,0	1.488,1	967,5
	Otros (empresas públicas, servicios públicos, etc.)	..	..	..	..	..
	Total	3.499,3	2,9	902,8	1.566,4	1.030,1

.. No disponible.

Fuente: Información facilitada por las autoridades.

3.3.6.2 Marco jurídico e institucional

3.3.6.2.1 Marco vigente y evolución reciente

3.200. Desde el anterior examen no se han producido cambios importantes en el marco institucional por el que se rige la contratación pública en China.¹⁷⁷ La Ley de Contratación Pública (promulgada en 2002 y revisada en 2014) y su reglamento de aplicación siguen siendo las disposiciones legislativas básicas que regulan las actividades de contratación pública en China. Se aplica a todas

¹⁷⁶ FMI (2024), *China: Staff Report for the Article IV Consultation and Statement by Zhengxin Zhang, Executive Director for People's Republic of China*, IMF Country Report N° 24/38, página 8.

¹⁷⁷ Para más información sobre el marco jurídico e institucional de China en materia de contratación pública, véanse los documentos de la OMC [WT/TPR/S/415/Rev.1](#), de 9 de marzo de 2022 (sección 3.3.6.2), y [WT/TPR/S/375/Rev.1](#), de 14 de septiembre de 2018 (sección 3.3.6.2).

las actividades de contratación realizadas por órganos estatales de todos los niveles, instituciones públicas y organizaciones sociales financiadas con cargo a fondos fiscales ordinarios, pero no a la contratación llevada a cabo por las empresas públicas. Además, la Ley de Licitaciones (promulgada en 1999 y revisada en 2017) regula la contratación de los grandes proyectos de construcción (incluidos los proyectos de grandes obras de infraestructura y de servicios públicos). Es, de hecho, el instrumento legislativo que regula el régimen de contratación de las empresas públicas.

3.201. Por lo que se refiere al principio de no discriminación, el artículo 16 de la Ley de Inversión Extranjera dispone que las empresas con inversión extranjera establecidas en China "pueden participar en las actividades de contratación pública en condiciones de competencia leal" y que "los productos fabricados y los servicios prestados por empresas con inversión extranjera en el territorio de China recibirán un trato igualitario en la contratación pública". En la actualidad, las leyes y los reglamentos de contratación pública de China no contienen disposiciones específicas en materia de no discriminación de las empresas extranjeras. Sin embargo, el artículo 18 de la Ley dispone que no se excluirá a los licitadores potenciales mediante la imposición de condiciones no razonables, y que en la contratación no se discriminará a ningún licitador potencial. Sigue existiendo la posibilidad de otorgar a los proveedores, mercancías y servicios nacionales un trato más favorable que el otorgado a los proveedores, las mercancías y los servicios extranjeros. A título de ejemplo:

- El artículo 10 de la Ley de Contratación Pública dispone que las entidades contratantes deben contratar bienes, servicios de construcción y otros servicios, con las excepciones siguientes: i) cuando los bienes, servicios de construcción u otros servicios requeridos no están disponibles en el territorio de China o, si lo están, no puedan adquirirse en condiciones comerciales razonables; ii) cuando los bienes, los servicios de construcción y otros servicios se adquieren para su uso en el extranjero; y iii) cuando otras leyes y reglamentos administrativos dispongan otra cosa. Además, las Medidas relativas a la Administración de la Contratación Pública de Productos Importados (Cai Ku Nº 119, 2007) disponen que las autoridades financieras han de verificar, en cada caso específico, las condiciones que permiten la contratación de productos importados.
- El artículo 9 de la Ley de Contratación Pública establece que la contratación pública se llevará a cabo de manera que facilite el logro de los objetivos marcados por las políticas estatales de desarrollo económico y social, entre los que figuran la protección del medio ambiente, la asistencia a zonas poco desarrolladas o con minorías étnicas, y la promoción del crecimiento de las pequeñas y medianas empresas. Además, otras medidas obligan a las autoridades chinas a conceder un trato preferencial a las pymes nacionales, a las empresas del sector penitenciario y a las empresas de personas discapacitadas y de zonas afectadas por la pobreza. En lo que respecta a las pymes, y con el fin de aplicar los requisitos pertinentes de la Circular del Consejo de Estado sobre la adopción de un paquete de medidas de política para estabilizar la economía (Guo Fa [2022] Nº 12)¹⁷⁸, el Ministerio de Hacienda publicó un Anuncio sobre la intensificación del apoyo a las pymes en la contratación pública (Anuncio Nº 19 de 2022).¹⁷⁹ Este Anuncio dispone que las entidades contratantes pertinentes deben i) aplicar de manera rigurosa las políticas de contratación pública para apoyar a las pymes (por ejemplo, el Anuncio del MOF Cai Ku [2020] Nº 46, que contiene información sobre la política de contratos reservados a las pymes); ii) incrementar las preferencias de precios para las pymes; y iii) aumentar la proporción de contratos reservados a las pymes. Según las autoridades, la participación de las pymes en la contratación asciende a cerca del 75%.¹⁸⁰

¹⁷⁸ Véase la Circular Nº 12 del Consejo de Estado, de 2022, sobre la adopción de un conjunto de medidas de política sólido para estabilizar la economía. Consultado en: https://www.gov.cn/zhengce/content/2022-05/31/content_5693159.htm.

¹⁷⁹ Véase el Anuncio Nº 19 del Ministerio de Hacienda, de 2022, sobre la intensificación del apoyo a las pymes en la contratación pública. Consultado en: https://gks.mof.gov.cn/quizhangzhidu/202205/t20220531_3814923.htm.

¹⁸⁰ Para poder acogerse a las políticas destinadas a las pymes, las empresas deben presentar la Carta de Declaración para las Pequeñas y Medianas Empresas, de conformidad con las Medidas administrativas para promover el desarrollo de las pequeñas y medianas empresas por medio de la contratación pública.

3.202. Durante el período objeto de examen se adoptaron diversas medidas relacionadas con la contratación para aplicar la Ley de Contratación Pública y la Ley de Licitaciones. En el cuadro 3.5 se ofrece un panorama general de las principales medidas relacionadas con la contratación adoptadas durante el período examinado.

Cuadro 3.25 Lista de medidas relacionadas con la contratación pública adoptadas durante el período examinado

Ley/reglamento/medida	Año de promulgación
Medidas administrativas en materia de contratación pública de servicios	Anuncio Nº 102 del MOF (2020)
Medidas administrativas en materia de prescripciones sobre la contratación pública	Anuncio Nº 21 del MOF Cai Ku [2021]
Anuncio del Ministerio de Hacienda sobre la aplicación de políticas pertinentes en materia de igualdad de trato de las empresas nacionales y extranjeras en los procedimientos de contratación pública	Anuncio Nº 21 del MOF Cai Ku [2021]
Catálogo de productos sujetos a contratación pública	Anuncio Nº 102 del MOF Cai Ku [2013]
Medidas provisionales relativas a la administración de la contratación pública mediante acuerdos marco	Anuncio Nº 110 del MOF (2022)
Anuncio sobre la intensificación del apoyo a las pymes en la contratación pública	Anuncio Nº 19 del MOF (2022)
Dictamen del Consejo de Estado sobre la optimización del entorno de inversión extranjera y la intensificación de los esfuerzos para atraer inversiones extranjeras	Consejo de Estado, Guo Fa Nº 11 [2023]
Directrices sobre la aplicación de las políticas y proyectos de contratación pública para apoyar la utilización de materiales de construcción ecológicos ^a	MOF, Biblioteca de la Oficina de Finanzas, Anuncio Nº 52 (2023)
Anuncio del Ministerio de Hacienda, el Ministerio de Seguridad Pública y la Administración Estatal de Reglamentación del Mercado relativo a la rectificación de los "cuatro tipos" de prácticas ilegales y no conformes en la contratación pública (2023)	MOF, Biblioteca de la Oficina de Finanzas, Anuncios Nº 243 y Nº 28 (2023)
Anuncio relativo a la ampliación del ámbito de aplicación de las políticas de contratación pública para apoyar la utilización de materiales de construcción ecológicos y promover la calidad de la construcción	MOF, Biblioteca de la Oficina de Finanzas, Anuncio Nº 35 (2022)
Anuncio relativo al programa piloto en el ámbito de la contratación pública para apoyar la utilización de materiales de construcción ecológicos y promover la calidad de la construcción	MOF, Biblioteca de la Oficina de Finanzas, Anuncio Nº 31 (2020)
Anuncio relativo a las normas de embalaje de productos sujetos a contratación pública (edición provisional) y las normas de embalaje de correo urgente sujeto a contratación Pública (edición provisional)	MOF, Biblioteca de la Oficina de Finanzas, Anuncio Nº 123 (2020)

- a Anuncio Nº 52 de 2023 del MOF relativo a la publicación de directrices sobre la aplicación de las políticas y proyectos de contratación pública para apoyar la utilización de materiales de construcción ecológicos. Consultado en:
https://gks.mof.gov.cn/quizhangzhidu/202303/t20230324_3874534.htm.

Fuente: Información facilitada por las autoridades y complementada por la Secretaría.

3.203. En agosto de 2023, el Consejo de Estado emitió un dictamen¹⁸¹ encaminado a optimizar el entorno empresarial para la inversión extranjera en China. Este dictamen hace referencia a la contratación pública y aclara que las empresas con capital extranjero establecidas en China deben poder participar en las actividades de contratación pública de manera no discriminatoria, de conformidad con la legislación aplicable. En él también se indica que i) se introducirán lo antes posible políticas y medidas complementarias para aclarar mejor los criterios específicos sobre la "producción en China"; ii) se llevarán a cabo inspecciones especiales para garantizar la participación equitativa de los proveedores en las actividades de contratación pública; y iii) se investigarán y tratarán las infracciones de la ley, como el trato diferenciado de las empresas con capital extranjero.

¹⁸¹ Véase Consejo de Estado, Dictamen Nº 11 de 2023 sobre la optimización del entorno de inversión extranjera y la intensificación de los esfuerzos para atraer inversiones extranjeras. Consultado en:
https://www.gov.cn/zhengce/content/202308/content_6898048.htm.

3.3.6.2.2 Revisiones en curso de la Ley de Contratación Pública y la Ley de Licitaciones

3.204. Durante el período objeto de examen prosiguió el proceso de revisión de la Ley de Contratación Pública y la Ley de Licitaciones.

- El proyecto de Ley de Licitaciones modificada se publicó en línea para que pudieran formularse alegaciones públicas en diciembre de 2019.¹⁸² En julio de 2020, la Comisión Nacional de Desarrollo y Reforma presentó al Consejo de Estado un nuevo proyecto revisado que reflejaba las observaciones recibidas; en abril de 2024, la revisión seguía en curso.
- El proyecto de Ley de Contratación Pública modificada se publicó en línea para que pudieran formularse alegaciones públicas en dos ocasiones (diciembre de 2020 y julio de 2022).¹⁸³ Según las autoridades, el poder legislativo de China aún está examinando la versión más reciente del proyecto.

3.205. Según las autoridades, se espera que la revisión de ambas leyes adapte en mayor medida el marco de contratación pública de China a los instrumentos internacionales en el ámbito de la contratación pública, incluido el Acuerdo sobre Contratación Pública (ACP de 2012) y la Ley Modelo de la CNUDMI sobre la Contratación Pública, y armonice la aplicación de las dos leyes.

3.3.6.3 Métodos de contratación y utilización de la contratación electrónica

3.206. Durante el período examinado se introdujeron pocos cambios en los principales métodos y procedimientos de contratación.¹⁸⁴ En particular, el MOF adoptó medidas provisionales (Anuncio N° 110 del MOF¹⁸⁵) para introducir la posibilidad de utilizar acuerdos marco en las contrataciones frecuentes y de valor reducido.

3.207. Según las autoridades, en 2022 la contratación mediante licitación pública representó el 77,2% de la contratación pública total, la licitación selectiva el 0,8%, la petición de precios el 0,9%, la negociación competitiva el 2,2% y la contratación de proveedor único el 3,3%. El valor de la contratación de proveedor único disminuyó de CNY 1,596 billones en 2020 a CNY 1,153 billones en 2022 (cuadro 3.26).

3.208. Según las autoridades, durante el período examinado China siguió trabajando en la creación de un sistema nacional único de contratación electrónica y en la elaboración de las normas técnicas y especificaciones de datos necesarias para todo el proceso de contratación electrónica. Además, los organismos de contratación centralizada, el Gobierno central y los Gobiernos locales han creado plataformas electrónicas para apoyar la contratación basada en acuerdos marco.

Cuadro 3.26 Valor de los contratos adjudicados a nivel del Gobierno central y de los Gobiernos locales, por método de contratación (2020-2022)

(Miles de millones de CNY y %)

Método de contratación		2020	2021	2022
Licitación pública	Valor	2.931,3	2.825,2	2.702,6
	Porcentaje	79,3%	77,6%	77,2%
Licitación selectiva	Valor	40,3	37,3	27,3
	Porcentaje	1,1%	1,0%	0,8%
Petición de precios	Valor	40,4	36,7	30,7
	Porcentaje	1,1%	1,0%	0,9%

¹⁸² Para más información sobre la naturaleza y el contenido de las enmiendas propuestas, véase el documento de la OMC [WT/TPR/S/415/Rev.1](#), de 9 de marzo de 2022, párrafo 3.3.

¹⁸³ Para más información sobre la naturaleza y el contenido de las enmiendas propuestas, véase el documento de la OMC [WT/TPR/S/415/Rev.1](#), de 9 de marzo de 2022, párrafo 3.4.

¹⁸⁴ La Ley de Contratación Pública, su reglamento de aplicación y las Medidas administrativas pertinentes establecen seis métodos de contratación: i) licitación pública; ii) licitación selectiva; iii) petición de precios; iv) negociación competitiva; v) consultas competitivas; y vi) contratación de proveedor único. Para ampliar la información sobre los métodos y procedimientos de contratación, véase el documento [WT/TPR/S/375/Rev.1](#) de la OMC, de 14 de septiembre de 2018, párrafos 3.197 a 3.207.

¹⁸⁵ Véanse las Medidas administrativas provisionales sobre la utilización de acuerdos marco en la contratación pública (Anuncio N° 110 del MOF). Consultado en: <https://lawinfochina.com/display.aspx?id=38586&lib=law>.

Método de contratación		2020	2021	2022
Negociación competitiva	Valor	119,3	103,3	77,4
	Porcentaje	3,2%	2,8%	2,2%
Consultas competitivas	Valor	283,5	352,7	384,1
	Porcentaje	7,7%	9,7%	11,0%
Contratación de proveedor único	Valor	159,6	137,5	115,3
	Porcentaje	4,3%	3,8%	3,3%
Total	Valor	3.574,3	3.492,7	3.337,3
	Porcentaje	96,7%	96,0%	95,4%

Fuente: Información facilitada por las autoridades.

3.3.6.4 Procedimientos internos de revisión

3.209. Los procedimientos administrativos y judiciales de revisión de China apenas han variado durante el período examinado.¹⁸⁶ La Ley de Contratación Pública y las Medidas relativas a la Gestión de Impugnaciones y Reclamaciones contra los Procesos de Contratación Pública (Anuncio N° 94 del MOF, de 2017) exige que las autoridades financieras en los diferentes niveles del Gobierno examinen las reclamaciones de los proveedores en relación con las actividades de contratación pública en sus respectivos niveles. En 2022, último año sobre el que se dispone de cifras, se presentaron unas 11.000 reclamaciones administrativas (cuadro 3.27). Según las autoridades, los proveedores extranjeros tienen por lo general la posibilidad de plantear objeciones y presentar recursos de conformidad con la reglamentación pertinente.

Cuadro 3.27 Reclamaciones relacionadas con la contratación pública a nivel del Gobierno central y de los Gobiernos locales, 2020-2022

	2020	2021	2022
Número total de reclamaciones administrativas	10.371	12.307	11.008

Fuente: Información facilitada por las autoridades.

3.3.6.5 Adhesión al ACP de 2012 y otra cooperación internacional

3.210. China solicitó la adhesión al ACP de 2012 en diciembre de 2007, cumpliendo así el compromiso de iniciar las negociaciones de adhesión al Acuerdo que había asumido en el momento de su adhesión a la OMC en 2001. La oferta más reciente de acceso a los mercados presentada por China, su sexta oferta revisada, se distribuyó en octubre de 2019, y sus respuestas actualizadas a la lista recapitulativa de preguntas se distribuyeron en junio de 2020. Durante el período examinado se ha avanzado poco. En su informe anual de 2023, el Comité de Contratación Pública de la OMC alentó a China a que siguiera trabajando y a que distribuyera una nueva oferta revisada de acceso a los mercados tan pronto como fuera posible.¹⁸⁷

3.211. Según las autoridades, hay seis zonas francas experimentales en las que se están aplicando normas económicas y comerciales internacionales de alto nivel, incluso en el ámbito de la contratación pública (por ejemplo, disciplinas similares a las previstas en el ACP), con el fin de adquirir experiencia e ideas para la adhesión al ACP. Las entidades contratantes de estas zonas están obligadas a justificar la contratación con un único proveedor.

3.212. China no ha incluido ningún compromiso de acceso a los mercados en la esfera de la contratación pública en ninguno de sus ALC. Algunos de los ALC firmados por China (por ejemplo, el Acuerdo de Asociación Económica Amplia Regional y el ALC actualizado con Nueva Zelandia) contienen disposiciones sobre contratación pública destinadas principalmente a promover la transparencia y la cooperación entre los signatarios.

¹⁸⁶ Para ampliar la información sobre el mecanismo de reclamación por los proveedores, véase el documento [WT/TPR/S/375/Rev.1](#) de la OMC, de 14 de septiembre de 2018, párrafos 3.215 y 3.216.

¹⁸⁷ Documento [GPA/AR/6](#) de la OMC, de 6 de diciembre de 2023, sección 3.1.2.2.

3.3.7 Derechos de propiedad intelectual

3.3.7.1 Panorama general

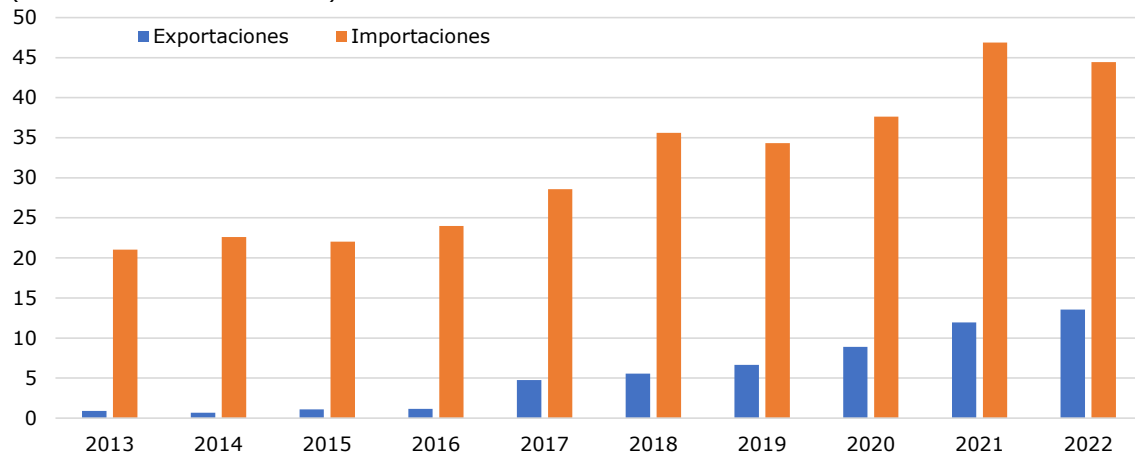
3.213. Durante el período objeto de examen, China siguió incorporando la propiedad intelectual (PI) a su economía y adaptó su sistema nacional para dar respuesta a la evolución tecnológica y mejorar su eficacia y el cumplimiento de los compromisos internacionales.

3.214. En 2023, China ocupaba el puesto 12º entre las 132 economías incluidas en el Índice Mundial de Innovación.¹⁸⁸ Este puesto elevado se debió a la evolución positiva del régimen de PI de China, que registró el mayor número de patentes en vigor, 4,2 millones, en 2022.¹⁸⁹

3.215. La participación de China en el comercio de PI ha experimentado un aumento, como demuestra el incremento de los ingresos totales percibidos por concepto de derechos de PI, que pasaron de USD 20.000 millones en 2013 a casi USD 45.000 millones en 2022 (gráfico 3.4).

Gráfico 3.4 Derechos relacionados con las exportaciones y las importaciones de PI, 2013-2022

(En miles de millones de USD)



Fuente: Portal de Datos de la OMC. Consultado en: <https://data.wto.org/>.

3.3.7.2 Reformas institucionales y políticas relacionadas con la PI

3.216. Durante el período objeto de examen, China siguió reformando su régimen de propiedad intelectual, entre otras cosas: se promulgó una Ley de Derecho de Autor revisada, se modificaron la Ley de Patentes y una nueva Ley de Semillas, y se revisó la Ley de Marcas de Fábrica o de Comercio. Se está preparando una modificación de la Ley de Represión de la Competencia Desleal para reforzar la regulación de la competencia desleal relacionada con los derechos de PI. Esta modificación incluirá prohibiciones respecto de la venta de mercancías que causen confusión deliberadamente, y las sanciones correspondientes.

3.217. En 2023, el Comité Central del Partido Comunista de China y el Consejo de Estado publicaron el Programa para la Reforma de las Instituciones del Partido y del Estado, en el que se establece expresamente que se mejorará la administración de los derechos de PI. En concreto, el Programa prevé acelerar el proceso de conversión de China en un país donde la PI sea competitiva mejorando de manera integral la creación, el uso, la protección, la administración y los servicios en materia de PI. La Administración Nacional de la Propiedad Intelectual de China (CNIPA) fue reestructurada y pasó de ser una oficina nacional dependiente de la SAMR a un organismo dependiente directamente del Consejo de Estado. La observancia de la legislación sobre marcas de fábrica o de comercio y

¹⁸⁸ OMPI (2023), *Global Innovation Index 2023*. Consultado en: wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-en-main-report-global-innovation-index-2023-16th-edition.pdf.

¹⁸⁹ OMPI (2023), *Datos y cifras de la OMPI sobre PI, edición de 2023*. Consultado en: <https://www.wipo.int/edocs/pubdocs/es/wipo-pub-943-2023-es-wipo-ip-facts-and-figures-2023.pdf>.

patentes sigue estando a cargo del equipo responsable de la supervisión del mercado y admite la orientación profesional de la CNIPA.

3.218. El MIIT y la CNIPA publicaron conjuntamente el Plan de Acción relativo a la Propiedad Intelectual para la Innovación y el Desarrollo en la Industria (2023-2027)¹⁹⁰, que fijó el objetivo de mejorar la capacidad para crear patentes de alto valor para las principales industrias fabriles. El 27 de julio de 2023, la CNIPA publicó las Orientaciones¹⁹¹ de 2023 para la Construcción de un País Pujante en materia de Propiedad Intelectual y el Plan de Fomento de la Aplicación del 14º Plan Quinquenal. El Plan tiene por objeto fomentar la modernización mediante la innovación y los avances tecnológicos, así como fomentar la producción de alta gama, inteligente y ecológica. Además, incluye la mejora de la eficiencia de los servicios públicos de propiedad intelectual, el fortalecimiento del uso integral de los derechos de PI y su protección judicial.

3.3.7.3 Contexto internacional

3.219. China es uno de los Estados miembros de la Organización Mundial de la Propiedad Intelectual (OMPI) y participa en diversos convenios y tratados internacionales relacionados con los derechos de propiedad intelectual (cuadro 3.28). Durante el período objeto de examen, China se adhirió al Tratado de Marrakech para facilitar el acceso a las obras publicadas a las personas ciegas, con discapacidad visual o con otras dificultades para acceder al texto impreso y al Arreglo de La Haya relativo al Registro internacional de dibujos y modelos industriales (Acta de Ginebra de 1999), que entraron en vigor el 5 de mayo de 2022.¹⁹²

Cuadro 3.28 Participación en convenios y tratados internacionales sobre los derechos de propiedad intelectual, marzo de 2024

Organización internacional	Instrumento internacional	Situación	Fecha de entrada en vigor o firma
OMPI	Tratado VIP de Marrakech	En vigor	5 de mayo de 2022
	Arreglo de La Haya	En vigor	5 de mayo de 2022
	Tratado de Beijing	En vigor	28 de abril de 2020
	Tratado de la OMPI sobre Derecho de Autor	En vigor	9 de junio de 2007
	Tratado de la OMPI sobre Interpretación o Ejecución y Fonogramas (WPPT)	En vigor	9 de junio de 2007
	Arreglo de Estrasburgo	En vigor	19 de junio de 1997
	Arreglo de Locarno	En vigor	19 de septiembre de 1996
	Protocolo de Madrid	En vigor	1 de diciembre de 1995
	Tratado de Budapest	En vigor	1 de julio de 1995
	Arreglo de Niza	En vigor	9 de agosto de 1994
	Tratado de Cooperación en materia de Patentes (PCT)	En vigor	1 de enero de 1994
	Convenio Fonogramas	En vigor	30 de abril de 1993
	Convenio de Berna	En vigor	15 de octubre de 1992
	Arreglo de Madrid (Marcas)	En vigor	4 de octubre de 1989
	Convenio de París	En vigor	19 de marzo de 1985
	Convenio de la OMPI	En vigor	3 de junio de 1980
	Tratado VIP de Marrakech	Firmado	firmado el 28 de junio de 2013
	Tratado de Singapur	Firmado	firmado el 29 de enero de 2007
	Tratado sobre el Derecho de Marcas (TLT)	Firmado	firmado el 28 de octubre de 1994
	Tratado de Washington	Firmado	firmado el 1 de mayo de 1990
UPOV	Convenio de la UPOV	En vigor	23 de abril de 1999
UNESCO	Convención Universal sobre Derecho de Autor	En vigor	30 de octubre de 1992

Fuente: Recopilado por la Secretaría de la OMC.

¹⁹⁰ Oficina de Derecho de Patentes y Marcas de Fábrica o de Comercio de Shanghai (2023), *Deepen the Synergy and Linkage between Technological Development and IP Rights: Action Plan of IP for Industrial Innovation and Development (2023-2027)* Released. Consultado en: <https://www.lexology.com/library/detail.aspx?g=26f38bfe-4cb3-40f1-9fba-d58104ccc5ca>.

¹⁹¹ Consultado en: https://mp.weixin.qq.com/s/d7HTD6JKGBn4b4b99lwZtg?scene=25#wechat_redirect.

¹⁹² Portal de PI de la OMPI, *Tratados administrados por la OMPI: Partes contratantes: China*. Consultado en: <https://www.wipo.int/wipolex/es/treaties/ShowResults?code=CN>.

3.220. China es parte en 23 acuerdos comerciales bilaterales; también es parte en 13 ACR que tienen un capítulo sobre PI. En particular, en enero de 2022 entró en vigor para China el Acuerdo de Asociación Económica Amplia Regional (RCEP). Su capítulo sobre PI abarca una amplia variedad de temas, como el derecho de autor, las marcas de fábrica o de comercio, las indicaciones geográficas, las patentes, los dibujos y modelos industriales, los recursos genéticos, los conocimientos tradicionales y el folclore, la protección contra la competencia desleal, la observancia, la cooperación, la transparencia y la asistencia técnica.

3.221. La CNIPA ha desarrollado una amplia red de Programas de Tramitación Acelerada de Patentes (PPH). Entre 2023 y 2024, se firmaron acuerdos de cooperación de PPH con las oficinas de propiedad intelectual de Alemania, Chile, Dinamarca, la Federación de Rusia, el Japón, Noruega, el Reino de la Arabia Saudita, la República Checa y la Oficina Euroasiática de Patentes.¹⁹³

3.3.7.4 Derecho de autor y derechos conexos

3.222. Durante el período objeto de examen, China revisó su Ley de Derecho de Autor, que entró en vigor en junio de 2021. La Ley contiene actualizaciones que responden al rápido desarrollo de nuevas tecnologías y los respectivos mecanismos de exigencia del cumplimiento. Asimismo, aplica el Tratado de Marrakech y amplió el alcance del uso razonable de "transcribir en braille las obras publicadas y publicar la transcripción" a "distribuir obras publicadas a las personas con trastornos de lectura en un formato accesible y que puedan percibir".¹⁹⁴

3.223. Las Disposiciones Provisionales sobre la Distribución de Obras para las Personas con Discapacidad Visual en un Formato Accesible son unas directrices concretas relativas a la producción y distribución de formatos accesibles, y hacen cumplir la protección prevista en la Ley de Derecho de Autor y el Tratado de Marrakech.¹⁹⁵

3.224. El régimen de derecho de autor incluye asimismo el Reglamento de Aplicación de la Ley de Derecho de Autor, el Reglamento sobre la Protección de los Programas Informáticos, el Reglamento sobre la Administración Colectiva del Derecho de Autor, el Reglamento sobre la Protección del Derecho de Divulgación de Información a través de las Redes, y las Medidas Provisionales sobre el Pago por las Estaciones de Radio y de Televisión de una Remuneración por la Radiodifusión de Grabaciones de Sonido.

3.225. Desde el punto de vista institucional, la Administración Nacional del Derecho de Autor administra el registro del derecho de autor. En el caso de los programas informáticos, el registro de las obras amparadas por el derecho de autor está a cargo del Centro para la Protección del Derecho de Autor.

3.226. En abril de 2021, la Administración Nacional del Derecho de Autor de China y el Ministerio de Cultura y Turismo distribuyeron conjuntamente un Anuncio sobre el Mantenimiento del Buen Funcionamiento del Mercado de los Derechos de Autor en el Sector del Karaoke para mejorar la gestión colectiva de los derechos de autor; crear un mecanismo sólido, científico y razonable de protección del derecho de autor en el sector del karaoke; proteger los derechos e intereses legítimos de los titulares y usuarios del derecho de autor; y promover un desarrollo regulado del sector de los derechos de autor.¹⁹⁶

3.227. El procedimiento de registro previsto en la Ley de Derecho de Autor no ha variado desde el anterior examen. El registro es voluntario y no es necesario para que el derecho de autor esté protegido.¹⁹⁷ La nueva Ley de Derecho de Autor prevé la concesión de licencias de derechos de autor y la transferencia de derechos. La infracción del derecho de autor puede sancionarse con multas.

¹⁹³ CNIPA, *PPH News*. Consultado en: <https://english.cnipa.gov.cn/col/col1356/index.html>.

¹⁹⁴ Información facilitada por las autoridades.

¹⁹⁵ Información facilitada por las autoridades, (Guo Ban Fa [2022] Nº 1).

¹⁹⁶ Información facilitada por las autoridades (Guo Ban Fa [2021] Nº 1).

¹⁹⁷ Los ciudadanos chinos y las personas jurídicas u otras organizaciones chinas gozan automáticamente de protección del derecho de autor sobre sus obras; esto también se aplica a los extranjeros cuyas obras se publiquen por primera vez en China. La protección del derecho de autor de las obras publicadas en el extranjero no ha variado desde el anterior examen.

3.228. La duración de la protección del derecho de autor para las personas físicas, y para determinadas obras¹⁹⁸, abarca la vida del autor más 50 años.¹⁹⁹ La protección de los programas informáticos se concede a partir de la fecha en que se terminó su elaboración. La duración de la protección de los dibujos y modelos tipográficos es de 10 años. La duración de la protección de las obras fotográficas es la vida del autor más 50 años; y las obras audiovisuales están protegidas durante 50 años.

3.229. Hay cinco organizaciones de administración colectiva del derecho de autor en China: la Sociedad de Derechos de Autor de Obras Musicales de China; la Asociación de Derechos de Autor de Obras Audiovisuales de China; la Sociedad de Derechos de Autor de Obras Escritas de China; la Sociedad China del Derecho de Autor sobre las Imágenes; y la Asociación China del Derecho de Autor sobre Películas Cinematográficas (cuadro 3.29).

Cuadro 3.29 Organizaciones de administración colectiva del derecho de autor - Derechos y composición

Organización	Derechos percibidos (en millones de CNY, 2023)	Nº de miembros (2023)
Sociedad de Derechos de Autor de Obras Musicales de China	417	12.079
Asociación de Derechos de Autor de Obras Audiovisuales de China	454	553 (con inclusión de entidades miembros y miembros particulares)
Sociedad de Derechos de Autor de Obras Escritas de China	20,7	10.520
Sociedad China del Derecho de Autor sobre las Imágenes	7,2	22.000
Asociación China del Derecho de Autor sobre Películas Cinematográficas	0,0388	104

Fuente: Información facilitada por las autoridades.

3.3.7.5 Propiedad industrial

3.3.7.5.1 Marcas de fábrica o de comercio

3.230. Durante el período objeto de examen, China estaba revisando la Ley de Marcas de Fábrica o de Comercio y sus reglamentos para abordar el registro abusivo y los actos que afectan negativamente al registro de marcas de fábrica o de comercio y coartan los derechos de marcas de fábrica o de comercio. Además, la revisión tiene por objeto optimizar los procedimientos para otorgar y verificar derechos sobre marcas de fábrica o de comercio; mejorar la protección de las marcas de fábrica o de comercio notoriamente conocidas no registradas; crear un mecanismo de solución de diferencias; reforzar la observancia; y fomentar la colaboración entre los distintos sectores para mejorar los servicios públicos. Los proyectos de modificación de la Ley de Marcas de Fábrica o de Comercio estuvieron a disposición del público para que se formularan observaciones del 13 de enero al 27 de febrero de 2023.

3.231. Desde la reforma del régimen de marcas de fábrica o de comercio en 2018, el examen de las solicitudes y el registro y la administración de las marcas de fábrica o de comercio están a cargo de la CNIPA. El registro sigue siendo un requisito previo para la protección, y la propiedad se determina en función de quién es el primer solicitante. Conforme al artículo 18 de la Ley de Marcas de Fábrica o de Comercio, las empresas extranjeras deben designar un agente de marcas chino. La duración de la protección es de 10 años. Según las autoridades, la solicitud de renovación del registro debe presentarse 12 meses antes de la fecha de expiración.

¹⁹⁸ Entre ellas figuran las obras de una persona jurídica u otra organización; las obras creadas en el marco de la actividad profesional y cuyos derechos de autor correspondan a una persona jurídica u otra organización; y las obras cinematográficas y fotográficas. Las producciones audiovisuales, las emisiones de radiodifusión y las interpretaciones o ejecuciones en público gozan también de protección durante 50 años a partir del primer día de producción, radiodifusión o interpretación.

¹⁹⁹ En caso de haber más de un titular del derecho de autor, la protección se otorga hasta 50 años después de la muerte del último titular del derecho superviviente.

3.232. En diciembre de 2022, la SAMR publicó el reglamento sectorial denominado Disposiciones sobre la Supervisión y Administración de las Agencias de Marcas de Fábrica o de Comercio para mejorar la calidad de los servicios prestados por los agentes de marcas de fábrica o de comercio y promover la buena salud del mercado.²⁰⁰

3.233. Durante el período objeto de examen, el número de solicitudes y registros de marcas de fábrica o de comercio siguió aumentando. En 2022, el 97% de las solicitudes y el 97% de los registros de marcas de fábrica o de comercio correspondían a residentes (cuadro 3.30).

Cuadro 3.30 Solicitudes y registros de marcas de fábrica o de comercio, 2020-2022

(Número)

Marcas de fábrica o de comercio		2020	2021	2022
Solicitudes	Residentes	9.116.454	9.192.675	7.304.007
	No residentes	231.114	257.832	211.954
	Solicitudes presentadas en el marco del Sistema de Madrid por solicitantes chinos	6.721	5.296	5.074
Registro	Residentes	5.576.545	7.545.358	6.001.698
	No residentes	184.107	193.589	175.472

Fuente: Información facilitada por las autoridades; y datos del Sistema de Madrid obtenidos del Centro de Datos Estadísticos sobre Propiedad Intelectual de la OMPI (consultado el 27 de junio de 2023).

3.3.7.5.2 Indicaciones geográficas

3.234. Las indicaciones geográficas pueden obtener protección en forma de marcas de certificación o de marcas colectivas, con arreglo a la Ley de Marcas de Fábrica o de Comercio, o mediante un sistema *sui generis* previsto en las Disposiciones sobre la Protección de las Indicaciones Geográficas de Productos y administrado por la CNIPA. El régimen de indicaciones geográficas tiene por objeto promover el desarrollo de industrias especializadas, contribuyendo a la revitalización del medio rural. Las indicaciones geográficas que no hayan sido registradas oficialmente siguen estando protegidas por las leyes pertinentes, por ejemplo, la Ley de Marcas de Fábrica o de Comercio, la Ley de Represión de la Competencia Desleal, la Ley de Inocuidad de los Alimentos y la Ley de Calidad e Inocuidad de los Productos Agrícolas.

3.235. El 1 de marzo de 2021 entró en vigor el acuerdo bilateral entre la UE y China para proteger las indicaciones geográficas. El Acuerdo protege 200 denominaciones de productos agroalimentarios europeos y chinos contra la imitación y la usurpación. Durante un período de cuatro años a partir de su entrada en vigor, el alcance del acuerdo se ampliará para abarcar otras 350 indicaciones geográficas de ambas partes. Estas indicaciones geográficas tendrán que seguir el mismo procedimiento de aprobación (es decir, la evaluación y la publicación para la formulación de observaciones) que los 200 nombres inicialmente abarcados por el acuerdo.²⁰¹

3.236. En junio de 2022, China había aprobado 2.493 productos protegidos por indicaciones geográficas, había certificado 6.927 indicaciones geográficas para su registro como marcas colectivas y marcas de certificación, y había autorizado a unas 19.400 entidades mercantiles a utilizar símbolos especiales de indicaciones geográficas.²⁰²

3.3.7.5.3 Patentes

3.237. El 17 de octubre de 2020, el 13^{er} Comité Permanente del Congreso Nacional del Pueblo en su 22^o período de sesiones adoptó una modificación de la Ley de Patentes. La Ley de Patentes revisada entró en vigor el 1 de junio de 2021. La nueva Ley establece muchas medidas concretas destinadas a proteger los derechos e intereses de los titulares de patentes, a promover la aplicación de patentes y a mejorar el sistema de concesión de patentes. Entre esas medidas figuran el establecimiento de sistemas de indemnización punitiva, el aumento del límite máximo de la indemnización legal y el establecimiento de una licencia abierta y una prórroga de la duración de las

²⁰⁰ Información facilitada por las autoridades; y Anuncio N° 63 de la SAMR.

²⁰¹ MOFCOM. Consultado en: <http://tfs.mofcom.gov.cn/article/zscq/202009/20200903002354.shtml>.

²⁰² CNIPA (2022), "GIs Offer Win-Win to Both China and Foreign Business", 17 de agosto de 2022.

Consultado en: https://english.cnipa.gov.cn/art/2022/8/17/art_2829_177354.html.

patentes, lo que pone de relieve la orientación hacia la mejora de la protección de la propiedad intelectual y el fomento de la innovación.

3.238. Durante el período objeto de examen, se modificaron varios reglamentos. El 21 de diciembre de 2023, la CNIPA publicó la versión final del Reglamento de Aplicación de la Ley de Patentes y de las Directrices para el Examen de Patentes revisados, que entraron en vigor el 20 de enero de 2024. Estos instrumentos revisados completan los esfuerzos legislativos por introducir cambios en el sistema de patentes de China mediante la modificación de la Ley de Patentes promulgada en junio de 2021. Uno de esos cambios es la prórroga de la duración de las patentes introducida en virtud el artículo 41.3 de la Ley de Patentes para compensar la pérdida de la duración real de la patente como consecuencia del tiempo dedicado a la aprobación de la comercialización de nuevos medicamentos.

3.239. En una reunión ejecutiva del Consejo de Estado celebrada en octubre de 2023 se aprobó el Plan de Acción Especial para la Comercialización y Utilización de Patentes (2023-2025). El objetivo del Plan es potenciar la comercialización de patentes de universidades e institutos de investigación que, en conjunto, representan el 25,3% de todas las patentes de invención válidas cuya titularidad pertenece a usuarios chinos.²⁰³

3.240. Las autoridades están revisando las disposiciones detalladas del Reglamento de Aplicación de la Ley de Patentes y de las Directrices para el Examen de Patentes, a fin de mejorar el sistema de examen de patentes, fortalecer la protección de las patentes y promover la conversión y aplicación de patentes con arreglo a la nueva Ley de Patentes.

3.241. La CNIPA es el organismo encargado de recibir y tramitar las solicitudes de patentes y de otorgar las patentes. El período de protección de las patentes es de 20 años. Las personas físicas y jurídicas interesadas pueden recurrir a un tribunal popular o a la autoridad administrativa para la solución de diferencias relativas a las patentes.

3.242. Conforme a lo dispuesto en el artículo 75 de la Ley de Patentes, se permiten las importaciones paralelas de productos patentados. Los artículos 53 a 63 contienen disposiciones sobre licencias obligatorias. Se pueden conceder licencias obligatorias de patentes por razones de interés público o en caso de emergencia nacional o en circunstancias extraordinarias. Hasta la fecha no se han concedido licencias obligatorias en China.

3.243. Según los informes de la Oficina Nacional de Estadística, en 2022 los sectores con un uso intensivo de patentes alcanzaron un valor añadido de CNY 15,32 billones. La fabricación de nuevos equipos generó un valor añadido de CNY 4,17 billones, lo que representa el 27,2% del valor añadido global de los sectores con un uso intensivo de patentes. Le sigue el sector de los servicios de tecnologías de la información y las comunicaciones, que contribuye con CNY 3,39 billones y representa el 22,1% del total. La industria manufacturera de las tecnologías de la información y las comunicaciones generó un valor añadido de CNY 3,18 billones, que representa el 20,8% del total.²⁰⁴

3.244. En 2022, la CNIPA se clasificó como la principal oficina de propiedad intelectual del mundo, al alcanzar el 46,8% del total mundial de solicitudes de patentes, lo que equivale a 1,6 millones de solicitudes de patentes en 2022 (gráfico 3.5). El número de patentes solicitadas en China aumentó un 2,1% en 2022, tras un aumento del 5,9% en 2021 y del 6,9% en 2020. Desde 2015, la CNIPA ha recibido más de un millón de solicitudes anuales. En 2022, China tenía el mayor número de patentes en vigor, a saber, 4,2 millones.²⁰⁵

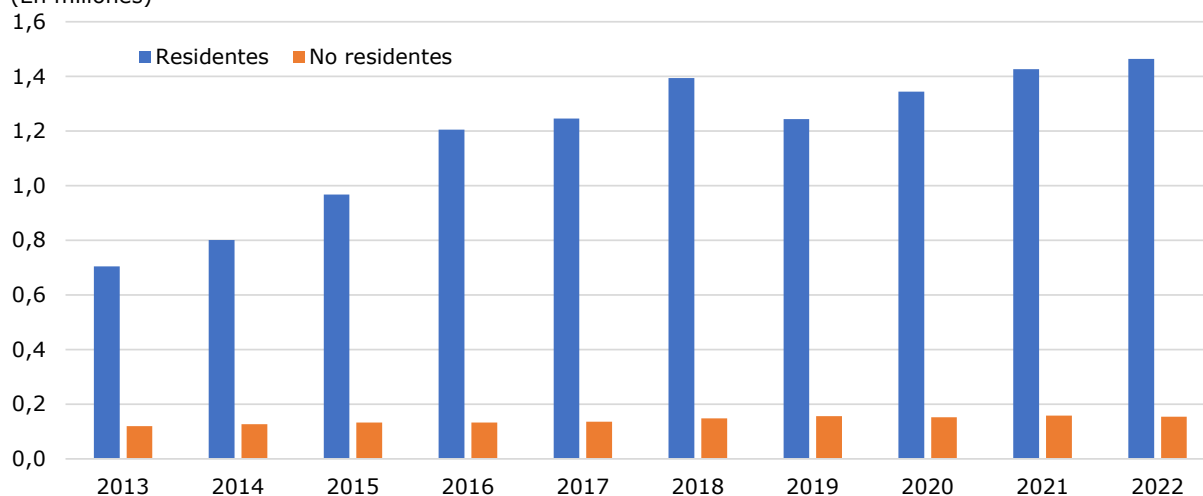
²⁰³ CNIPA (2023), *A Three-Year Special Action Set to Boost Patent Commercialization and Utilization in China*. Consultado en: https://english.cnipa.gov.cn/art/2023/11/8/art_3090_188462.html.

²⁰⁴ *China IP Magazine* (2024), "China's Patent-Intensive Industries Achieve Remarkable Growth: Added Value Surpasses 15 Trillion Yuan in 2022, Marking a 7.1% Increase", 1 de diciembre de 2024. Consultado en: <http://www.chinaipmagazine.com/en/news-show.asp?id=12853>.

²⁰⁵ OMPI, *World Intellectual Property Indicators 2023*. Consultado en: <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2023-en-world-intellectual-property-indicators-2023.pdf>.

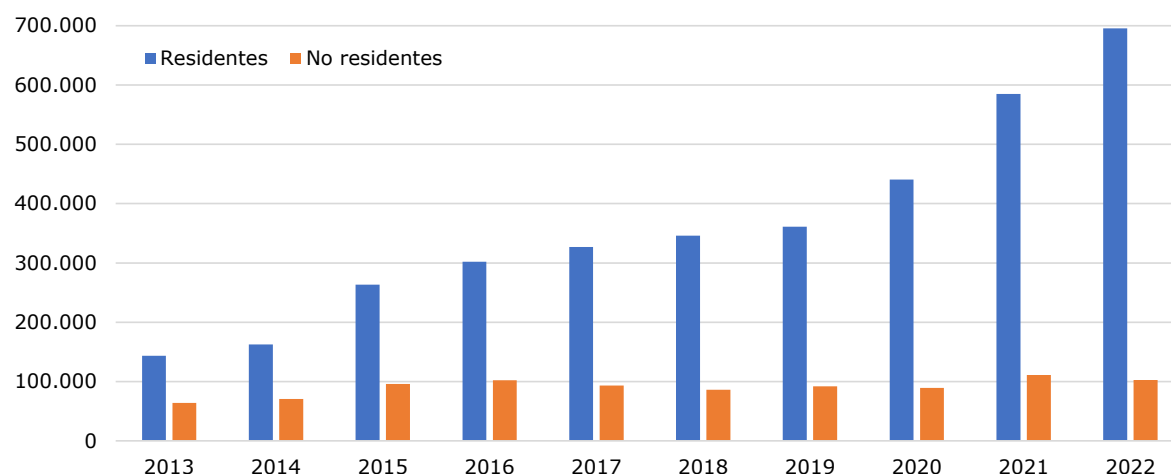
Gráfico 3.5 Solicitudes de patentes, 2013-2022

(En millones)



Fuente: Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

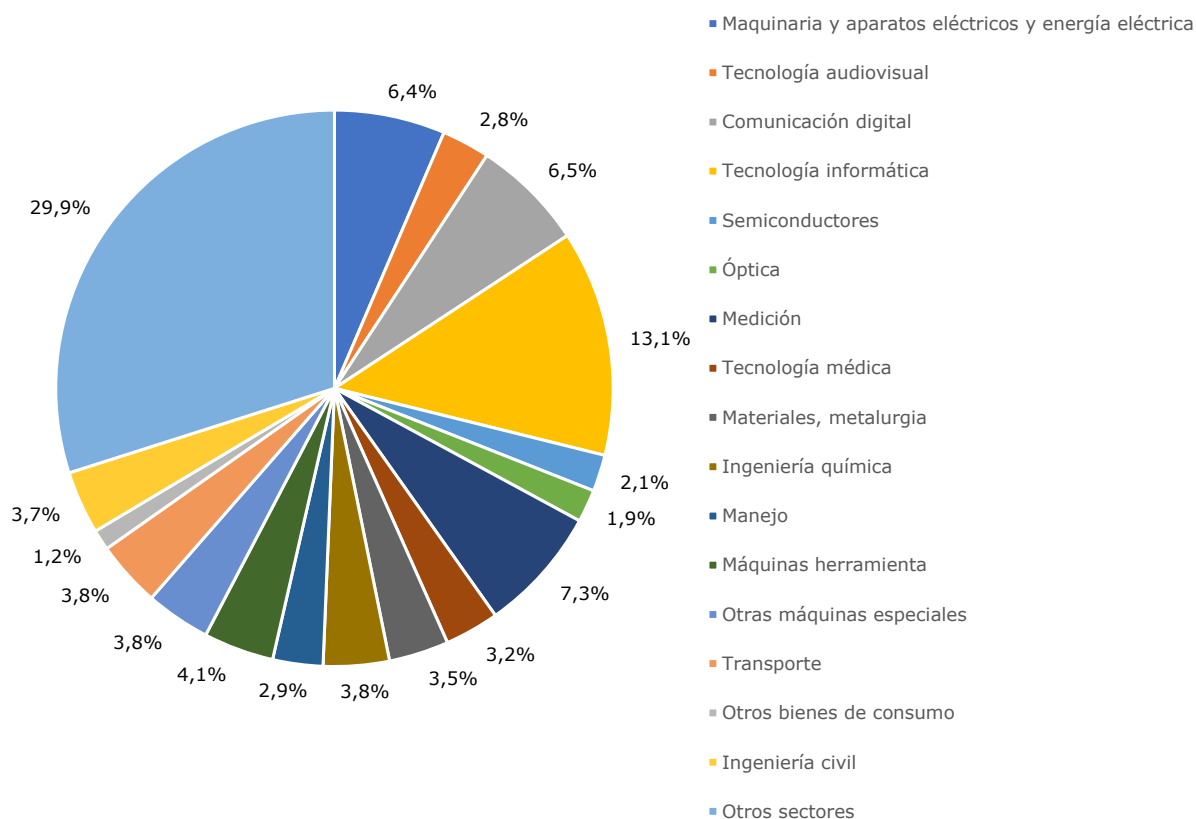
3.245. En 2022 se concedieron un total de 1.619.268 patentes: 1.464.605 a residentes y 154.663 a no residentes (gráfico 3.6).²⁰⁶

Gráfico 3.6 Concesiones de patentes, 2013-2022

Fuente: Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

3.246. Según los datos de la OMPI, en 2022 el 13% de las patentes concedidas correspondían al sector de la tecnología informática, seguido de las tecnologías de medición (7,3%); maquinaria y aparatos eléctricos y energía eléctrica (6,4%); y comunicación digital (6,5%). En el gráfico 3.7 se muestran los 16 principales sectores tecnológicos, así como el porcentaje de otros sectores.

²⁰⁶ Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

Gráfico 3.7 Concesiones de patentes en los principales sectores tecnológicos, 2022

Fuente: Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

3.3.7.5.4 Modelos de utilidad

3.247. El número de solicitudes y registros de modelos de utilidad siguió aumentando durante el período objeto de examen. El 99% del total de las solicitudes y los registros fueron presentados por residentes (cuadro 3.31).²⁰⁷

Cuadro 3.31 Solicitudes y registros de modelos de utilidad, 2020-2022

Modelos de utilidad		2020	2021	2022
Solicitudes	Residentes	2.918.874	2.844.555	2.944.139
	No residentes	7.759	7.664	6.514
Registro	Residentes	2.368.651	3.111.943	2.796.049
	No residentes	8.572	8.047	8.106

Fuente: Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

²⁰⁷ Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

3.3.7.5.5 Dibujos y modelos industriales

3.248. El número de solicitudes y registros de dibujos y modelos industriales siguió aumentando durante el período objeto de examen. El 97% del total de las solicitudes y el 96% de los registros fueron presentados por residentes (cuadro 3.32).²⁰⁸

Cuadro 3.32 Solicitudes y registros de dibujos y modelos industriales, 2020-2022

Dibujos y modelos industriales		2020	2021	2022
Solicitudes	Residentes	752.339	785.857	777.724
	No residentes	18.023	19.853	18.487
Registro	Residentes	711.559	767.078	709.604
	No residentes	20.359	18.443	12.400

Fuente: Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats>.

3.3.7.5.6 Esquemas de trazado (topografías) de los circuitos integrados

3.249. Los esquemas de trazado (topografías) de los circuitos integrados están protegidos por el Reglamento sobre la Protección de los Esquemas de Trazado de los Circuitos Integrados y sus Normas de Aplicación.

3.250. La CNIPA se encarga del registro de los esquemas de trazado de los circuitos integrados. Las autoridades afirman que un esquema de trazado dejará de estar protegido 15 años después de la fecha de finalización de su creación, con independencia de su registro o explotación comercial.

3.3.7.5.7 Obtenciones vegetales

3.251. El 24 de diciembre de 2021, el Comité Permanente del 13^{er} Congreso Nacional del Pueblo, en su 32^o período de sesiones, adoptó la decisión de revisar la Ley de Semillas, cuyo texto revisado entró en vigor el 1 de marzo de 2022. El objetivo principal de esta revisión es fortalecer la protección de los derechos de propiedad intelectual en la industria de las semillas mediante la ampliación del alcance de los mecanismos de protección de los derechos sobre obtenciones vegetales, el establecimiento del sistema de variedades esencialmente derivadas, la mejora del sistema de compensación por infracción de derechos y la promoción del establecimiento de sistemas que fomenten y apoyen la innovación en la reproducción.²⁰⁹

3.252. En noviembre de 2021, China publicó un Catálogo de Obtenciones Vegetales Protegidas (Recursos Forestales y Herbáceos) (octavo lote), en el que incluyó nueve nuevos géneros (especies).²¹⁰

3.253. El plazo de protección de las obtenciones vegetales es de 20 años a partir de la fecha de autorización en el caso de las vides, los árboles forestales, los árboles frutales y los árboles ornamentales, y de 15 años en el de las demás plantas.

3.254. El MARA y la Administración Nacional de Silvicultura y Pastizales (NFGA) son responsables conjuntamente de la protección de las obtenciones vegetales. Entre 2021 y 2023, China recibió un total de 35.198 solicitudes de obtenciones vegetales (de las cuales 1.294 eran solicitudes extranjeras) y se autorizaron 14.978 solicitudes (964 de ellas extranjeras).

3.3.7.5.8 Información no divulgada y secretos comerciales

3.255. El régimen por el que se rige la protección de la información no divulgada y los secretos comerciales se compone de la Ley de Represión de la Competencia Desleal (modificada por última vez en 2019), la Ley de Licencias Administrativas (modificada por última vez en 2019), el

²⁰⁸ Portal de PI de la OMPI, Centro de Datos Estadísticos sobre Propiedad Intelectual. Consultado en: <https://www3.wipo.int/ipstats/>.

²⁰⁹ MARA, Department of Laws and Regulations (2022), *Seed Law Revised to Strengthen Protection of Seed Industry Intellectual Property Rights*. Consultado en: http://english.moa.gov.cn/datastatistics/202204/t20220408_300834.html.

²¹⁰ Información facilitada por las autoridades.

Código Penal (modificado por última vez en 2020), la Ley del Trabajo, el Reglamento de Aplicación de la Ley de Administración de Productos Farmacéuticos, y el Reglamento sobre la Administración de Productos Químicos Agrícolas.

3.256. En marzo de 2022, la SAMR publicó el Anuncio de Publicación del Plan de Trabajo para el Programa Piloto de Protección Innovadora de Secretos Comerciales en todo el País, y llevó a cabo proyectos piloto nacionales de innovación para la protección de los secretos comerciales. En julio de 2022 se anunció el primer lote de 20 regiones piloto innovadoras, que puso en marcha oficialmente el proyecto piloto de innovación. En abril de 2023, la SAMR publicó un aviso para iniciar el proceso de solicitud para el segundo lote.

3.257. Varias regiones han estudiado formas de abordar las dificultades que entraña la protección de los secretos comerciales. Se han puesto en marcha iniciativas como el establecimiento de oficinas de orientación para la protección de secretos comerciales (servicio de información), empresas de demostración y bases de demostración, que han mejorado eficazmente los conocimientos de las empresas sobre sus derechos y los niveles de servicios gubernamentales. Hasta la fecha, los departamentos de supervisión de mercados a todos los niveles en el conjunto del país han establecido 8.634 bases de demostración, servicios de información sobre protección de derechos, empresas de demostración, etc.

3.3.7.6 Observancia

3.3.7.6.1 Panorama general

3.258. El régimen de observancia de los derechos de la propiedad intelectual en China sigue evolucionando. Ha surgido un sistema judicial especializado, encabezado por la División de DPI del Tribunal Supremo del Pueblo y administrado por cuatro tribunales de DPI. Los asuntos se someten principalmente a los 27 tribunales locales del pueblo de nivel intermedio, con el apoyo de los tribunales de DPI de los tribunales locales del pueblo en todos los niveles (cuadro 3.33). El 20 de abril de 2022, el Tribunal Supremo del Pueblo publicó el Aviso sobre Diversas Disposiciones relativas a la Jurisdicción de Primera Instancia en Asuntos Civiles y Administrativos en Materia de Propiedad Intelectual, y las correspondientes medidas de apoyo. El número de tribunales del pueblo de nivel inferior con jurisdicción sobre los asuntos civiles de DPI en China, incluidos los tribunales de internet, asciende a 558.

Cuadro 3.33 Observancia de los derechos de PI, 2021-2023

	2021	2022	2023
Asuntos tramitados por la Administración de Aduanas de China en la frontera	79.253	60.968	..
Asuntos sometidos a los tribunales			
Asuntos civiles relativos a DPI admitidos en primera instancia	599.436	521.972	526.027
Asuntos civiles relativos a DPI resueltos en primera instancia	515.861	457.805	460.306
Asuntos sobre patentes admitidos	43.800	52.283	60.986
Asuntos sobre patentes resueltos	30.524	36.060	47.676
Asuntos sobre marcas de fábrica o de comercio admitidos	135.454	135.301	147.302
Asuntos sobre marcas de fábrica o de comercio resueltos	112.566	119.250	132.188
Asuntos sobre derecho de autor admitidos	380.678	294.950	276.424
Asuntos sobre derecho de autor resueltos	341.361	270.136	246.032
Asuntos sobre contratos técnicos admitidos	5.033	5.566	7.816
Asuntos sobre contratos técnicos resueltos	3.703	4.267	6.286
Asuntos sobre competencia desleal admitidos	10.317	12.088	12.761
Asuntos sobre competencia desleal resueltos	7.518	9.543	10.263
Otros asuntos sobre DPI admitidos	24.154	21.784	20.738
Otros asuntos sobre DPI resueltos	20.189	18.549	17.861
Asuntos civiles relativos a DPI admitidos en segunda instancia	53.533	58.667	46.914
Asuntos civiles relativos a DPI resueltos en segunda instancia	45.468	48.614	38.713

.. No disponible.

Fuente: Información facilitada por las autoridades.

3.3.7.6.2 Procedimientos administrativos

3.259. En 2021 y 2022, la SAMR utilizó sus funciones de coordinación y organizó reuniones nacionales periódicas sobre la lucha contra las infracciones y la falsificación, publicó los puntos clave anuales de los esfuerzos nacionales para combatir la infracción y la falsificación, y aclaró las principales tareas y responsabilidades de diversas regiones y departamentos. También ha aplicado orientaciones sobre el fortalecimiento de la protección de los derechos de propiedad intelectual de empresas con financiación extranjera.

3.260. Con la intención de abordar las infracciones relacionadas con marcas de fábrica o de comercio y patentes, la SAMR organizó medidas de observancia e investigó las actividades ilegales. La SAMR también publicó el Programa de Acción "Puño de Hierro" para la Investigación y Tramitación de Asuntos en el Ámbito de los Medios de Subsistencia del Pueblo, 2021 y 2023, dirigido especialmente a combatir la infracción de las marcas de fábrica o de comercio. Con el fin de hacer frente a los registros de marcas de fábrica o de comercio maliciosos, la SAMR reforzó el intercambio de información con la CNIPA y organizó departamentos de supervisión de los mercados locales para aplicar medidas más rigurosas de observancia de la legislación.

3.261. En 2021 y 2022, la SAMR organizó en todo el país acciones destinadas a destruir las mercancías infractoras, falsificadas y de calidad inferior para impedir la circulación de esos productos. En noviembre de 2022, 18 provincias (regiones autónomas y municipios) destruyeron simultáneamente más de 30 categorías y más de 100 variedades de productos infractores, falsificados y de calidad inferior, por un valor total de CNY 500 millones, protegiendo eficazmente los derechos e intereses legítimos de empresas nacionales y con financiación extranjera.

3.262. La CNIPA publica anualmente el Plan de Trabajo de Protección Administrativa Nacional de la Propiedad Intelectual, que se centra en áreas clave y en regiones de alta incidencia en las que el público tiene grandes intereses y preocupaciones, y despliega más de 20 tareas específicas de rectificación especial. También formula un plan anual de evaluación de resultados, que incluye una rápida protección coordinada, inspecciones organizadas y la mejora del nivel de observancia de la legislación y de la capacidad de tramitación de asuntos. La CNIPA ha promovido también la construcción de sistemas de apoyo técnico para casos de solución de diferencias por infracción de la propiedad intelectual, y ha publicado Disposiciones Provisionales sobre la Participación de Investigadores Técnicos en la Resolución Administrativa de Diferencias relacionadas con la Infracción de Patentes y Esquemas de Trazado de Circuitos Integrados y las Orientaciones sobre el Fortalecimiento de la Evaluación de la Propiedad Intelectual.

3.263. En un esfuerzo conjunto con el Tribunal Supremo del Pueblo, la Fiscalía Suprema del Pueblo, el Ministerio de Seguridad Pública y la SAMR, la CNIPA formuló los Dictámenes sobre el Fortalecimiento de la Armonización entre Autoridades en la Evaluación de los Derechos de Propiedad Intelectual, promoviendo el desarrollo profesional de las instituciones de evaluación de la propiedad intelectual. Además, la CNIPA organiza cursos anuales de formación para la resolución administrativa de diferencias relacionadas con la infracción de patentes y cursos de formación para mejorar la capacidad de protección de la propiedad intelectual de casi 900 directivos. También apoya y orienta a las autoridades locales con más de 40 cursos de formación sobre la protección administrativa de la propiedad intelectual, enviando a 46 conferenciantes y formando a 3.500 empleados de empresas y funcionarios de base encargados de hacer cumplir la ley a nivel provincial, municipal, de condado y de aldea.

3.264. Desde 2021, la Administración Nacional del Derecho de Autor ha emprendido sistemáticamente medidas especiales para combatir las infracciones del derecho de autor y la piratería en línea, medidas estacionales para proteger los derechos de autor de los jóvenes, campañas especiales para combatir la piratería de libros y campañas especiales para combatir la grabación y difusión no autorizadas de películas cinematográficas. Ha reforzado las principales normas que regulan el derecho de autor en línea y ha adoptado medidas enérgicas contra la infracción del derecho de autor y la piratería en ámbitos clave en línea, redoblando continuamente los esfuerzos de protección del derecho de autor, optimizando el entorno empresarial y promoviendo el desarrollo de alta calidad.

3.3.7.6.3 Medidas judiciales

3.265. El Tribunal Supremo del Pueblo promulgó Disposiciones sobre Varias Cuestiones relativas a la Aplicación de la Ley en Litigios Civiles de Patentes relacionados con Medicamentos cuyo Registro se Solicita, el Aviso sobre Diversas Disposiciones relativas a la Aplicación Específica de la Ley en el Enjuiciamiento por Infracciones de Derechos sobre Obtenciones Vegetales, y Disposiciones sobre Varias Cuestiones relativas a la Aplicación de la Ley en Litigios Civiles de Monopolio. También ha formulado la Interpretación de Varias Cuestiones relativas a la Aplicación de la Ley de Represión de la Competencia Desleal de la República Popular China, para dar respuesta a las necesidades judiciales en nuevos ámbitos y promover la formación de una competencia leal y un mercado nacional abierto y unificado; la Interpretación sobre la Aplicación de Indemnizaciones Punitivas en Litigios Civiles de Infracción de la Propiedad Intelectual, para garantizar unas normas uniformes en materia de indemnizaciones punitivas; y la Respuesta Oficial del Tribunal Supremo del Pueblo sobre las Cuestiones relativas a la Reclamación por el Demandado de una Indemnización por Gastos Razonables Alegando que el Demandante Abusa de sus Derechos en una Acción por Infracción de los Derechos de Propiedad Intelectual, a fin de apoyar las reclamaciones de gastos razonables a litigantes abusivos, y orientar a las partes para que ejerzan sus derechos procesales de buena fe.

3.266. El Tribunal Supremo del Pueblo también lleva a cabo una amplia labor de mediación en línea en diferencias sobre propiedad intelectual, y tramita más de 20.000 asuntos de solución de diferencias en materia de propiedad intelectual.

3.3.7.6.4 Medidas aduaneras

3.267. El marco jurídico para la observancia de los derechos de PI en la frontera lo conforman la Ley de Aduanas, el Reglamento sobre la Protección en Aduana de los Derechos de Propiedad Intelectual y las Normas de la Administración de Aduanas de Aplicación del Reglamento sobre la Protección en Aduana de los Derechos de Propiedad Intelectual.

3.268. En 2022, la Administración de Aduanas de China incautó 60.900 lotes y 77,9 millones de unidades de mercancías sospechosas de infringir los DPI, frente a 79.200 lotes y 71,8 millones de unidades de mercancías en 2021.

3.269. La Administración de Aduanas de China ha organizado campañas especiales como la "Acción Dragón Volador" para el fortalecimiento integral de la protección de la propiedad intelectual, la "Acción Red Azul" dirigida a los canales postales, y la "Acción Limpieza de Redes" centrada en las mercancías que transitan por un tercero. La Administración de Aduanas de China también ha mejorado la observancia de la legislación fomentando la aplicación de equipos de alta tecnología en la protección aduanera. Ha hecho un amplio despliegue de tecnología de reconocimiento de marcas de fábrica o de comercio mediante terminales móviles, con el fin de ayudar a los funcionarios de aduanas a identificar en línea las marcas falsificadas infractoras y acelerar la verificación de la situación de los DPI de las mercancías importadas y exportadas. La Administración de Aduanas de China también ha proporcionado a los funcionarios cursos, plataformas de intercambio laboral y formación en el empleo para mejorar las capacidades de observancia de la legislación en primera línea. En 2021 y 2022 se impartieron un total de 1.260 sesiones de formación en materia de observancia a más de 70.000 participantes.

3.270. En 2020 se incautaron 61.900 envíos, que contenían 56,2 millones de unidades de mercancías sospechosas. En 2021 y 2022 estas cifras ascendieron a 79.200 envíos y 60.900 envíos, con 71,8 millones y 77,9 millones de unidades de mercancías sospechosas, respectivamente. Aún no se dispone de las cifras correspondientes a 2023.

3.3.7.6.5 Procedimientos penales

3.271. Desde 2021, el Ministerio de Seguridad Pública ha facultado a los organismos nacionales de seguridad pública para desempeñar plenamente sus funciones de observancia penal, reprimir diversas infracciones de la propiedad intelectual conforme a lo dispuesto en la legislación, proteger los derechos e intereses legítimos de los titulares de DPI y contribuir a la creación de un entorno empresarial de primera clase. De 2021 a 2022 se tramitaron un total de 48.000 asuntos relacionados con la infracción de la propiedad intelectual y la fabricación y venta de mercancías falsificadas; los asuntos más importantes se sometieron a una supervisión especial.

3.272. El Ministerio de Seguridad Pública coordina con los organismos de seguridad de diversas regiones la adhesión a un principio básico de equidad en la protección de la propiedad intelectual, otorgando idéntica protección a las diversas entidades del mercado, incluidas las empresas de propiedad estatal, las empresas privadas, las empresas nacionales y extranjeras, y las grandes, medianas, pequeñas empresas y microempresas. Apoyándose en diversos mecanismos de cooperación internacional a nivel bilateral y multilateral para la observancia de la legislación, el Ministerio colaboró en asuntos transnacionales y transfronterizos. Por invitación de INTERPOL, los organismos de seguridad pública chinos siguen participando activamente en la "Operación Opso" contra los delitos alimentarios, la "Operación Pangea" contra los delitos relacionados con medicamentos y la "Operación Falcon" contra los delitos relacionados con la propiedad intelectual en internet.

4 POLÍTICAS COMERCIALES, POR SECTORES

4.1 Agricultura, silvicultura y pesca

4.1. La agricultura, la ganadería, la silvicultura y la pesca aportaron el 5,9% del PIB corriente en 2023, frente al 6,4% en 2021. La tasa de crecimiento real y el empleo fluctuaron de año en año (cuadro 4.1).

Cuadro 4.1 Principales indicadores de la agricultura, la ganadería, la silvicultura y la pesca, 2018-2023

	2018	2019	2020	2021	2022	2023
Contribución proporcional al crecimiento del PIB (%) ^a	4,1	3,9	10,4	6,4	10,8	5,9
Proporción del PIB corriente (%)	7,3	7,5	8,0	7,6	7,7	7,5
Tasa de crecimiento real (%)	3,6	3,2	3,3	7,1	4,4	4,2
Empleo (porcentaje del empleo total)	25,7	24,7	23,6	22,9	24,1	22,8
Proporción del valor de la producción bruta (%)						
Agricultura	54,1	53,3	52,1	53,3	54,1	..
Ganadería	25,3	26,7	29,2	27,1	26,0	..
Silvicultura	4,8	4,7	4,3	4,4	4,4	..
Pesca	10,7	10,1	9,3	9,9	9,9	..

.. No disponible.

a Las cifras se refieren al sector primario, que no incluye los servicios auxiliares de las industrias agrícola, forestal, ganadera y pesquera.

Fuente: Oficina Nacional de Estadística; y datos facilitados por las autoridades.

4.1.1 Agricultura

4.1.1.1 Características del comercio en la agricultura

4.2. China sigue siendo un país importador neto de productos agropecuarios; en 2023 las importaciones de esos productos representaron el 8,4% de las importaciones totales de mercancías. Las principales exportaciones agropecuarias de China, por líneas arancelarias (a nivel de 4 dígitos del SA), siguen siendo las frutas y las hortalizas. Las importaciones de productos agropecuarios siguen consistiendo predominantemente en habas de soja (soya) (cuadro 4.2).

Cuadro 4.2 Comercio agrícola, 2018-2023

	2018	2019	2020	2021	2022	2023
Exportaciones (millones de USD)	57.631,5	58.451,4	57.517,4	63.088,9	69.320,5	70.976,1
% del total de las exportaciones	2,3	2,3	2,2	1,9	1,9	2,1
Tasa de crecimiento (variación porcentual)	5,6	1,4	-1,6	9,7	9,9	2,4
Diez principales productos de exportación a nivel de 4 dígitos del SA (% del total de las exportaciones agrícolas)						
2106 Preparaciones alimenticias no expresadas ni comprendidas en otra parte	3,2	3,5	4,0	4,4	4,7	5,5
0703 Cebollas, chalotes, ajos y demás hortalizas aliáceas, frescas o refrigeradas	3,4	4,5	4,6	4,0	3,5	4,3
2008 Frutas u otros frutos, preparados o conservados	5,1	4,5	4,4	4,3	4,2	4,0
2309 Preparaciones de los tipos utilizados para la alimentación de los animales	3,7	3,3	3,6	4,2	4,3	3,9
1302 Jugos y extractos vegetales; materias pécticas, pectinatos y pectatos; agar-agar y demás mucílagos y espesativos derivados de los	2,6	2,6	2,8	3,3	4,0	3,3

	2018	2019	2020	2021	2022	2023
vegetales, incluso modificados						
2103 Salsas; condimentos y sazonadores, compuestos	2,1	2,2	2,7	3,3	3,3	3,0
2005 Hortalizas preparadas, n.e.p.	3,8	3,7	3,5	3,4	3,4	2,9
1518 Grasas y aceites, animales o vegetales, y sus fracciones	0,7	0,9	1,3	2,1	3,2	2,8
0712 Hortalizas secas, incluidas las cortadas en trozos o en rodajas o las trituradas o pulverizadas, pero sin otra preparación	7,0	5,0	3,7	3,5	2,8	2,5
0902 Té	3,1	3,5	3,5	3,6	3,0	2,5
Importaciones (millones de USD)	123.803,2	133.148,0	157.497,6	205.284,9	217.638,4	214.823,2
% del total de las importaciones	5,8	6,4	7,6	7,6	8,0	8,4
Tasa de crecimiento (variación porcentual)	7,2	7,5	18,3	30,3	6,0	-1,3
Diez principales productos de importación a nivel de 4 dígitos del SA (% del total de las exportaciones agrícolas)						
1201 Habas (porotos, frijoles, fréjoles) de soja (soya), incluso quebrantadas.	30,8	26,5	25,1	26,1	28,1	27,7
0202 Carne de animales de la especie bovina, congelada.	3,8	6,0	6,2	5,8	7,8	6,3
1005 Maíz	0,6	0,8	1,6	3,9	3,3	4,2
0810 Frutas u otros frutos, frescos, n.e.p. del Capítulo 8	2,0	2,4	2,6	3,1	2,8	3,9
2106 Preparaciones alimenticias, n.e.p.	2,2	2,4	2,4	2,0	2,2	2,5
1511 Aceite de palma y sus fracciones, sin modificar químicamente	2,7	3,1	2,6	2,9	2,7	2,4
1901 Preparaciones alimenticias de cereales, harina o leche	4,4	4,4	3,7	2,5	2,4	2,3
1001 Trigo y morcajo (tranquillón)	0,6	0,7	1,4	1,5	1,7	2,0
0207 Carne y despojos comestibles de aves, frescos, refrigerados o congelados.	0,9	1,5	2,2	1,7	1,9	1,9
5201 Algodón sin cardar ni peinar	2,6	2,7	2,3	2,0	2,4	1,9

Nota: Definición de agricultura de la OMC: Capítulos 1 a 24 del SA, menos el pescado y los productos de pescado (capítulo, partida y códigos 3, 0508, 0511.91, 1504.10, 1504.20, 1603-1605 y 2301.20 del SA), más determinados productos (partidas y códigos 2905.43-2905.45, 3301, 3501-3505, 3809.10, 3823, 3824.60, 4101-4103, 4301, 5001-5003, 5101-5103, 5201-5203 y 5301-5302 del SA). Los 10 principales productos agropecuarios de exportación y de importación a nivel de 4 dígitos del SA son los correspondientes al año 2023.

Fuente: Cálculos de la Secretaría de la OMC basados en cifras comerciales procedentes de la base de datos UN Comtrade.

4.3. Las tierras cultivables pertenecen a las colectividades de campesinos, situación que no ha variado desde el anterior examen.¹ Las autoridades afirman que se alienta a los agricultores y a las organizaciones económicas colectivas rurales a que, de manera voluntaria, recauden fondos para programas destinados al bien público y aporten mano de obra para esos programas, así como a que participen en la roturación, explotación y gestión de las tierras agrícolas. También afirman que se mejorará el sistema de tenencia de las tierras rurales y se garantizarán los derechos e intereses sobre la tierra reconocidos por la ley correspondientes a los agricultores que se han afincado en ciudades. Las autoridades están estudiando el establecimiento de un mecanismo de vigilancia del

¹ Ley de Contratación de Tierras en Zonas Rurales. Consultada en: http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-01/07/content_2070250.htm.

uso de las tierras cultivables. Según las autoridades, en el marco del Programa Piloto para la Profundización de la Reforma del Sistema de Fincas Rurales, publicado en 2020, la reforma piloto del sistema en 104 condados, ciudades y distritos y 3 ciudades de nivel de prefectura ha abarcado 1.719 municipios y 25.590 aldeas administrativas. Las autoridades afirman que la reforma afectó, entre otras cosas a la asignación, transferencia, aprobación y supervisión de fincas rurales y a la garantía de una vivienda para los agricultores.

4.1.1.2 Marco jurídico e institucional

4.4. El Ministerio de Agricultura y Asuntos Rurales (MARA) sigue siendo el principal ministerio competente, encargado, entre otras cosas, de las políticas relativas a las tierras cultivables, del desarrollo agrícola y rural y de la ejecución de la estrategia de revitalización del medio rural. La Administración Nacional de Reservas Alimentarias y Estratégicas (NAFRA), que depende de la Comisión Nacional de Desarrollo y Reforma (NDRC), sigue a cargo de: i) la organización y aplicación del sistema de compra, almacenamiento, rotación y administración cotidiana de las reservas de emergencia de conformidad con el plan general de desarrollo y el catálogo del sistema nacional de reservas; ii) la construcción y gestión de la infraestructura conexa; y iii) la supervisión e inspección de las reservas del Gobierno y de las empresas administradas por la NAFRA y la aplicación de las políticas de constitución de reservas; y iv) la supervisión de las orientaciones para el sector en materia de distribución de los cereales y gestión administrativa de las reservas centrales de cereales y de algodón (Recuadro 4.1). El Ministerio de Ciencia y Tecnología (MOST) administra la Fundación Nacional de Ciencias Naturales de China (NSFC), un organismo público de financiación de las actividades científicas. El MARA, junto con la NDRC, el Ministerio de Hacienda y el Ministerio de Comercio (MOFCOM), entre otras instituciones, está a cargo de la aplicación de la política agrícola.

Recuadro 4.1 La producción de algodón en China

Según datos facilitados por las autoridades, en 2023 la superficie dedicada al cultivo de algodón en el conjunto de China era de 41,82 millones de *mu* (1/15 de hectárea), lo que supone un disminución interanual del 7,1%. La pauta de distribución de las zonas de cultivo que ha cobrado forma consiste en "una zona principal y dos zonas secundarias" (la zona algodонера del interior noroccidental es la zona principal y las zonas algodoneiras de la cuenca del río Amarillo y la cuenca del río Yangtsé son las zonas secundarias). En 2023 la zona algodонера de Xinjiang tenía una superficie de 35,54 millones de *mu*, que representaban el 85% de la superficie total de cultivo en China. En los últimos años el rendimiento unitario de la producción de algodón ha aumentado sustancialmente a raíz de la promoción e introducción de nuevas especies y tecnologías. En 2023 el rendimiento unitario de la producción de algodón fue de 134,3 kg/*mu*, lo que supone un aumento interanual de 1,5 kg/*mu* y un aumento de casi el 30% respecto de 2015. En 2023 el volumen total de la producción de algodón fue de 5,62 millones de toneladas, de las que 5,11 millones de toneladas (el 91% del volumen total de producción) correspondían a Xinjiang. La tasa de autosuficiencia de China sigue rondando el 70%.

Fuente: Información facilitada por las autoridades.

4.5. Entre las empresas de propiedad estatal dependientes del Gobierno central y sus filiales supervisadas por la Comisión de Supervisión y Administración de Activos Estatales (SASAC) que operan en el sector agropecuario y sectores conexos, como los de elaboración de alimentos y producción de semillas, abonos y plaguicidas, cabe mencionar las siguientes: el Grupo de Desarrollo Agrícola de China, la Corporación Nacional de Cereales, Aceites y Productos Alimenticios de China (COFCO), el Grupo de Reservas de Grano de China, el Grupo de la Industria de la Sal de China, Sinochem, el Grupo Químico Nacional de China y el Grupo Nacional de Semillas de China.

4.6. En el Cuadro 4.3 se indican las principales leyes relativas al sector agropecuario. El 29 de abril de 2021 se promulgó la Ley de Fomento de la Revitalización del Medio Rural, que establece los objetivos, principios y prescripciones generales en materia de revitalización del medio rural. Con la estrategia de revitalización del medio rural las autoridades pretenden impulsar el crecimiento económico a través del desarrollo industrial, el apoyo al talento, la prosperidad cultural, la protección ecológica, la protección de las organizaciones y la integración de los medios urbano y rural.² Entre las medidas de apoyo pertinentes figurarán establecer y mejorar un sistema de garantía de las inversiones financieras, establecer un mecanismo de apoyo y asistencia a largo plazo para la población rural de ingresos bajos y las zonas subdesarrolladas, mejorar el mercado de capitales, y

² Government of China, Rural Revitalization Strategy. Consultado en: https://www.gov.cn/gongbao/content/2018/content_5331958.htm.

establecer y mejorar el servicio financiero rural y el sistema de seguros agrícolas, con el objetivo de reforzar el apoyo a la revitalización del medio rural.

4.7. La Ley de Semillas se revisó el 24 de diciembre de 2021, y la norma revisada, cuyo objetivo es reforzar la protección de los derechos de propiedad intelectual en la industria semillera, entró en vigor el 1 de marzo de 2022. La revisión amplió el alcance de la protección de los derechos sobre nuevas obtenciones vegetales, estableció el sistema de variedades esencialmente derivadas, mejoró el sistema de compensación por infracción de derechos, y mejoró los sistemas que alientan y apoyan la innovación en la reproducción (sección 3.3.7).³ Además, el 24 de junio de 2022 se adoptó la Ley de Protección de la Tierra Negra, que entró en vigor el 1 de agosto de 2022, con el fin de proteger los recursos de tierra negra y restablecer y aumentar la fertilidad básica de la tierra negra.⁴ La Ley de Protección de la Fauna y Flora Silvestres se revisó el 30 de diciembre de 2022, y la norma revisada, que tiene, entre otros, los objetivos de reforzar la protección de los hábitats de la fauna y flora silvestres, perfeccionar las medidas control de las poblaciones de fauna y flora silvestres, y reforzar la prevención y el control de la invasión por especies exóticas, entró en vigor el 1 de mayo de 2023. La Ley de Protección del Río Yangtsé, que se adoptó el 26 de diciembre de 2020 y entró en vigor el 1 de marzo de 2021, tiene el objetivo de alcanzar determinadas prioridades ecológicas y el desarrollo verde, y la Ley de Protección del Río Amarillo se adoptó el 30 de octubre de 2022 y entrará en vigor el 1 de abril de 2024.⁵ Ley de Ganadería se revisó el 30 de octubre de 2022, y la norma revisada, que tiene, entre otros, los objetivos de garantizar el suministro de productos para la ganadería y la avicultura, fomentar la cría y promoción de razas excelentes de ganado y aves de corral, revitalizar las industrias de cría ganadera y avícola, prevenir los riesgos para la salud pública y promover un desarrollo de alta calidad de la industria ganadera, entró en vigor el 1 de marzo de 2023. Ley de Prevención de Epizootias se revisó el 22 de enero de 2021, y la norma revisada, cuyo objetivo es reforzar la prevención de las epizootias, entró en vigor el 1 de enero de 2023. La Ley de Calidad e Inocuidad de los Productos Agrícolas se revisó en septiembre de 2022 y la norma revisada entró en vigor el 1 de enero de 2023.⁶

4.8. La Ley de Administración de Tierras, la Ley de Organización de Comités Rurales, la Ley de Cuarentena de Entrada y Salida de Fauna y Flora y la Ley de Promoción de la Mecanización Agrícola no han variado desde el anterior examen.

4.9. Las restricciones a la IED en la agricultura no han variado desde el anterior examen de China.

Cuadro 4.3 Principales leyes relacionadas con la agricultura, abril de 2024

Ley (fecha de la última modificación)	Ámbito de aplicación
Ley de Agricultura, 1993 (2012)	Principios para el desarrollo, gestión y protección de la agricultura. La agricultura comprende la plantación de cultivos, la silvicultura, la ganadería y la pesca.
Ley de Ganadería, 2005 (2022)	Disposiciones sobre la estandarización de la producción ganadera y avícola, la garantía del suministro, calidad e inocuidad de los productos para la ganadería y la avicultura, la protección y la utilización razonable de los recursos genéticos en la ganadería y la avicultura, la obtención y promoción de razas excelentes de ganado y aves de corral, la revitalización de las industrias de cría ganadera y avícola, la salvaguardia de los derechos e intereses legítimos en la producción y explotación ganaderas y avícolas, la prevención de los riesgos para la salud pública y la promoción de un desarrollo de alta calidad de la industria ganadera.
Ley de Cooperativas Especializadas de Agricultores, 2006 (2017)	Reglamentación sobre las normas aplicables a las cooperativas especializadas de agricultores y sobre el ejercicio de su actividad.

³ MARA, *Seed Law Revised to Strengthen Protection of Seed Industry Intellectual Property Rights*. Consultado en: http://english.moa.gov.cn/datastatistics/202204/t20220408_300834.html.

⁴ Gobierno de China. Consultado en: https://www.gov.cn/xinwen/2022-06/25/content_5697698.htm.

⁵ La Ley establece, entre otras cosas, medidas de ahorro de agua y mejora de la eficiencia en la agricultura, ahorro de agua y reducción de emisiones en la industria, y ahorro de agua y reducción de pérdidas en las ciudades.

⁶ Gobierno de China. Consultado en: https://www.gov.cn/xinwen/2022-09/03/content_5708127.htm.

Ley (fecha de la última modificación)	Ámbito de aplicación
Ley de Prevención de Epizootias, 1997 (2021)	Disposiciones sobre el refuerzo de la gestión de las actividades de prevención de epizootias, la prevención, control, eliminación y erradicación de enfermedades de los animales, la promoción del desarrollo de la ganadería, la prevención y control de las enfermedades infecciosas zoonóticas y la garantía de la salud pública y la salud humana.
Ley de Promoción de la Mecanización Agrícola, 2004 (2018)	Disposiciones para alentar y apoyar a los agricultores y las entidades de producción y explotación agrícolas en el uso de maquinaria agrícola avanzada y adecuada, y promover la mecanización agrícola.
Ley de Contratación de Tierras en Zonas Rurales, 2002 (2018)	Disposiciones para estabilizar y perfeccionar el sistema de explotación de dos niveles, que consiste en el sistema de responsabilidad contractual de las unidades familiares complementado por una gestión unificada, y confiere a los habitantes de las poblaciones rurales un derecho de uso de la tierra duradero y garantizado.
Ley de Extensión de Ingeniería Agrícola, 1993 (2012)	Disposiciones para reforzar la extensión de ingeniería agrícola y promover la investigación científica agronómica y las nuevas tecnologías agrícolas con el fin de asegurar el desarrollo y la modernización del sector agropecuario.
Ley de Administración de Tierras, 1986 (2019)	Disposiciones sobre los derechos de propiedad y uso de la tierra, la planificación de la utilización de la tierra, la protección de las tierras cultivadas, los terrenos edificables y la supervisión e inspección.
Ley de Calidad e Inocuidad de los Productos Agrícolas, 2006 (2022)	Disposiciones sobre las normas de calidad e inocuidad, el origen, la producción, el envasado y etiquetado, y la supervisión e inspección de los productos agropecuarios.
Ley de Organización de Comités Rurales, 1998 (2018)	Disposiciones sobre la composición y las funciones de los comités rurales, la elección de los comités, su reuniones y la supervisión y gestión democráticas.
Ley sobre las Empresas Establecidas en los Municipios, 1996	Disposiciones sobre el apoyo a las empresas establecidas en los municipios y la orientación de su desarrollo sostenible y adecuado, la protección de los derechos e intereses de esas empresas reconocidos por la ley y la regulación del ejercicio de su actividad.
Ley de Fomento de la Revitalización del Medio Rural, 2021	Disposiciones sobre la ejecución integral de la estrategia de revitalización del medio rural y la promoción de la revitalización de la industria, el talento, la cultura, la ecología y las organizaciones rurales.
Ley de Mediación y Arbitraje en Diferencias sobre Contratos Agrarios, 2009	Disposiciones sobre la resolución justa y oportuna de diferencias relativas a los contratos agrarios y a la gestión de las tierras rurales, y sobre la protección de los derechos e intereses legítimos de las partes.
Ley de Cuarentena de Entrada y Salida de Fauna y Flora, 1991 (2009)	Disposiciones sobre la prevención de la entrada o salida del país de enfermedades infecciosas, enfermedades parasitarias, enfermedades peligrosas de las plantas, insectos, malas hierbas y otros organismos nocivos, y sobre la protección de la agricultura, la silvicultura, la ganadería, la producción pesquera y la salud humana.
Ley de Protección de la Tierra Negra, 2022	Disposiciones sobre la protección de los recursos de tierra negra y el restablecimiento y la mejora de la fertilidad básica de la tierra negra.
Ley de Semillas, 2000 (2021)	Disposiciones sobre la protección y la utilización racional de los recursos de germoplasma, la normalización de la obtención de variedades, la producción de semillas, las prácticas de explotación y gestión, la promoción de la investigación científica y tecnológica en la industria semillera, el fomento de la innovación en la obtención de variedades, la protección de los derechos sobre las obtenciones vegetales, la salvaguardia de los derechos e intereses legítimos de los productores y usuarios de semillas, la mejora de la calidad de las semillas y el desarrollo de una industria semillera moderna.

Fuente: FAO, base de datos FAOLEX, consultada en: <https://www.fao.org/faolex/es/>; Ley de Administración de Tierras, consultada en: http://www.moj.gov.cn/Department/content/2019-09/18/592_3232173.html; Ley de Promoción de la Mecanización Agrícola, consultada en: http://www.moa.gov.cn/gk/zcfg/fl/202007/t20200716_6348748.htm; Ley de Calidad e Inocuidad de los Productos Agrícolas, consultada en: http://www.moj.gov.cn/Department/content/2019-01/17/592_226992.html; Ley de Organización de Comités Rurales, consultada en: http://www.moj.gov.cn/Department/content/2019-01/17/592_227048.html; y Ley de Contratación de Tierras en Zonas Rurales, consultada en: <http://www.npc.gov.cn/npc/c30834/201901/cd063e4c0f19465e9d41946001fe839c.shtml>; e información facilitada por las autoridades.

4.10. Las autoridades consideran que el comercio electrónico ha acercado a los agricultores al mercado. Al final de 2023 la penetración de internet en las zonas rurales alcanzaba el 66,5%, y la brecha entre el campo y la ciudad sigue reduciéndose. En 2023 el volumen nacional de ventas al por

menor en línea rurales alcanzó la cifra de CNY 2,49 billones, con un aumento interanual del 12,9%. En 2023 el volumen nacional de ventas al por menor en línea de productos agropecuarios alcanzó la cifra de CNY 587.030 millones, con un aumento interanual del 12,5%. Al final de 2023 el número de comerciantes (comercios) rurales en línea en el conjunto del país ascendía a 18,4 millones, con un aumento interanual del 6,3%. Al final de 2023 se habían establecido en el conjunto del país más de 2.900 centros de servicio público de comercio electrónico y centros de distribución logística urgente a nivel de condado. La tasa nacional de cobertura del servicio urgente en las aldeas administrativas ha alcanzado el 95%, y en más de un tercio de los condados los paquetes pueden entregarse en cualquier aldea del condado en el mismo día de su expedición. Más de 100 millones de paquetes entran y salen de las zonas rurales cada día. En 2023 había 6,69 millones de empresas rurales de comercio electrónico en tiempo real, que representaban el 36,4% de las empresas rurales de comercio electrónico. La venta al por menor instantánea a nivel condado se ha desarrollado rápidamente, con una tasa de crecimiento anual de más del 50%, según estimaciones del sector.

4.1.1.3 Objetivos de política y reformas

4.11. Las autoridades indican que, durante el período objeto de examen, China se centró, entre otras cosas, en: i) reforzar la preparación de tierras agrícolas de alta calidad, ejecutar medidas para aumentar la capacidad de producción de cereales en 50 millones de toneladas, y estudiar el establecimiento de un mecanismo de vigilancia de la utilización de la tierra cultivable; ii) modernizar las instalaciones y la infraestructura agrícolas, con especial atención a una renovación y mejora integrales de las instalaciones anticuadas de cultivo y transformación de hortalizas y verduras; iii) establecer un sistema de suministro de alimentos diversificado para coordinar los cultivos de cereales, los cultivos económicos y los cultivos alimentarios; integrar la agricultura, la silvicultura, la ganadería y la pesca; y cultivar plantas y microorganismos y criar animales; iv) reforzar la supervisión de la inocuidad de los alimentos y la calidad de la producción agropecuaria; v) mejorar el sistema de tierras rurales; y vi) mejorar el entorno vital rural, intensificar la construcción de infraestructuras rurales, y mejorar los servicios públicos básicos para promover la planificación y construcción de poblaciones rurales.

4.12. La estrategia agrícola de China se refleja principalmente el Documento Central Nº 1 sobre el Desarrollo Agrícola y Rural, que se publica cada año. El principal objetivo del Documento Central Nº 1 publicado en 2023 es acelerar el desarrollo de una agricultura robusta; el objetivo se articula en 33 puntos, entre los que cabe destacar la promoción de la revitalización del medio rural y el refuerzo del apoyo conexo.

4.13. Los objetivos de política en materia de agricultura se reseñaron también en las Líneas Generales del 14º Plan Quinquenal (2021-2025) de Desarrollo Económico y Social Nacional y los Objetivos a Largo Plazo hasta 2035, anunciados en marzo de 2021. En noviembre de 2021 el Gobierno publicó el Aviso sobre la Planificación de la Modernización Agrícola y Rural, con el objetivo de promover el 14º Plan Quinquenal.⁷ En respuesta a diversas cuestiones relacionadas con la agricultura, los agricultores y las zonas rurales, se establecen los siguientes objetivos: garantizar eficazmente el suministro de cereales y otros productos agropecuarios importantes; mejorar continuamente la calidad, eficiencia y competitividad de la agricultura; hacer progresos en la construcción de infraestructuras rurales; mejorar el entorno ecológico rural; seguir mejorando la capacidad de gobernanza rural; aumentar los ingresos de los residentes en zonas rurales; y consolidar y ampliar los logros en materia de reducción de la pobreza.⁸

⁷ Government of China, Guo Fa Nº 25 [2021]. Consultado en: https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm.

⁸ Guo Fa Nº 25 [2021], artículo V.

4.14. Otras estrategias son el Plan de Desarrollo Digital Agrícola y Rural (2019-2025)⁹, el Libro Blanco sobre la Seguridad Alimentaria en China, el Plan de Acción Quinquenal (2021-2025) para la Mejora del Hábitat Rural, y el Plan de Acción sobre la Construcción Rural.¹⁰

4.15. El Plan Nacional para el Desarrollo de Industrias Rurales 2020-2025, publicado por el MARA en julio de 2020, sigue en vigor¹¹; en el período objeto de examen las provincias introdujeron sus respectivos planes de desarrollo industrial rural, en consonancia con el Plan Nacional.¹²

4.16. Las autoridades también se proponen construir parques agroindustriales, ciudades industriales y conglomerados industriales modernos, así como introducir nuevos tipos de actividad industrial (por ejemplo, agricultura recreativa, turismo rural y comercio electrónico rural). Se ha apoyado el establecimiento de parques y municipios agroindustriales y conglomerados industriales modernos, así como el desarrollo de nuevos modelos empresariales (a saber, agricultura recreativa, turismo rural y comercio electrónico rural); desde 2021 se han establecido 150 parques agroindustriales modernos, 180 conglomerados industriales 698 centros urbanos agroindustriales.

4.17. En los últimos años, el MOFCOM, junto con los departamentos pertinentes, ha promovido el desarrollo del comercio electrónico rural en respuesta a la tendencia al desarrollo de internet y de la urbanización, con el fin de promover la transformación y mejora de la agricultura, impulsar los mercados de consumo rurales y aumentar los ingresos de los agricultores.

4.1.1.4 Instrumentos de política

4.1.1.4.1 Medidas en frontera

4.18. Los productos agropecuarios (definición de la OMC) están sujetos a tipos aplicados *ad valorem*, con la excepción de algunos productos de origen animal.¹³ En 2024, el arancel NMF medio aplicado a los productos agropecuarios era del 12,6% (12,7% en 2021). Entre los grupos de productos que se benefician de una protección arancelaria superior a la media figuran los azúcares y artículos de confitería (30,6%); los cereales y las preparaciones alimenticias (20,2%); las bebidas y el tabaco (15,8%); el algodón, la seda y la lana (14,2%); y el café, el té, el cacao y las especias (12,7%). El promedio aritmético de los aranceles aplicados a los productos lácteos fue el más bajo (11,1%) entre los correspondientes a los productos agropecuarios. Además, la variabilidad de los aranceles es mayor en el caso de los productos agropecuarios (desviación típica de 11,0) que en el de los productos no agrícolas (desviación típica de 4,5), y especialmente alta en el caso de los cereales y las preparaciones alimenticias (desviación típica de 22,0) y las bebidas y el tabaco (desviación típica de 16,9), seguidos por el azúcar y los artículos de confitería (desviación típica de 16,2) y el algodón, la seda y la lana (desviación típica de 12,3) (cuadro A3. 1).

4.19. China sigue utilizando contingentes arancelarios.¹⁴ La NDRC y el MOFCOM anuncian públicamente cada año los reglamentos de aplicación para la administración de los contingentes arancelarios de importación. Salvo en el caso del algodón sin peinar, los tipos arancelarios aplicables dentro y fuera de los contingentes son *ad valorem*. China aplica a una determinada cantidad de algodón sin peinar (SA 5201.00.00) importado fuera del contingente un tipo provisional en forma de derecho móvil que no puede exceder del 40% (es decir, del tipo consolidado para el algodón). Desde 2020, la tasa de utilización de los contingentes arancelarios ha fluctuado en el caso de algunos productos, entre ellos el trigo, el arroz, la lana y el algodón (cuadro 4.4). Las autoridades han

⁹ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2020-01/20/content_5470944.htm.

¹⁰ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/2022-05/23/content_5691881.htm.

¹¹ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2020-07/17/content_5527720.htm.

¹² En el Plan se establecen los objetivos y las metas de ingresos para el desarrollo de industrias rurales, con prioridades como la modernización de las industrias de elaboración de productos agropecuarios, la expansión de las industrias rurales especializadas, la mejora del turismo agrícola, el desarrollo de nuevos tipos de industrias de servicios rurales, la promoción de sinergias entre la integración vertical de la agricultura y el desarrollo de industrias rurales, y el fomento del espíritu empresarial y de la innovación en las zonas rurales.

¹³ Esos productos corresponden a cuatro líneas arancelarias de la partida 0207 del SA, carne y despojos comestibles de aves, congelados, de la especie *Gallus domesticus*. Tres líneas arancelarias de la partida 4001 del SA (caucho natural) están sujetas a tipos alternativos o mixtos; esos tres tipos alternativos son derechos provisionales.

¹⁴ Documento [G/LIC/N/3/CHN/18](#) de la OMC, de 30 de enero de 2020.

indicado que las fluctuaciones de las tasas de utilización se deben a los cambios en las condiciones de los mercados interno e internacional.

Cuadro 4.4 Contingentes arancelarios para productos agropecuarios y su utilización, 2020-2022

Productos	Tipos fuera del contingente	Tipos dentro del contingente	Cuantía del contingente arancelario	Importaciones dentro del contingente		
				2020	2021	2022
	(%)		(toneladas)			
Trigo (7 líneas)			9.636.000	8.151.565	9.502.113	9.636.000
Trigo y morcajo (tranquillón) (4 líneas)	65	1				
Harina de trigo o de morcajo (tranquillón) (1 línea)	65	6				
Grañones y sémola de trigo (1 línea)	65	9				
"Pellets" de trigo (1 línea)	65	10				
Maíz (5 líneas)			7.200.000	7.200.000	7.200.000	7.200.000
Maíz para siembra (1 línea)	20	1				
Maíz, excepto para siembra (1 línea)	65	1				
Harina de maíz (1 línea)	40	9				
Grañones y sémola de maíz (1 línea)	65	9				
Maíz aplastado o en copos (1 línea)	65	10				
Arroz (14 líneas)			5.320.000 ^a	2.911.464	2.536.517	2.797.362
Arroz, excepto partido (8 líneas)	65	1				
Arroz partido (2 líneas)	10	1				
Harina de arroz (2 líneas)	40	9				
Sémola de arroz (2 líneas)	10	9				
Azúcar (7 líneas)	50	15	1.945.000	1.945.000	1.945.000	1.945.000
Lana (6 líneas)	38	1	287.000	221.000	226.169	230.392
Lana peinada y lana cardada (3 líneas)	38	3	80.000	..	..	..
Algodón (2 líneas)	40	1	894.000	894.000	894.000	738.308

.. No disponible.

a La cantidad del contingente arancelario es de 2.660.000 toneladas para el arroz de grano corto y el arroz de grano medio combinados y de 2.660.000 toneladas para el arroz de grano largo.

Nota: El número de líneas arancelarias indicado entre paréntesis (al nivel de 8 dígitos del SA) se refiere al Arancel de 2024.

Fuente: Documentos de la OMC [G/AG/N/CHN/56](#), de 29 de junio de 2021; [G/AG/N/CHN/57](#), de 13 de septiembre de 2022; [G/AG/N/CHN/70](#), de 21 de septiembre de 2023; [G/LIC/N/3/CHN/18](#), de 30 de enero de 2020; [G/LIC/N/3/CHN/18/Corr.1](#), de 5 de febrero de 2020; y cálculos de la Secretaría de la OMC basados en datos facilitados por las autoridades.

4.20. La NDRC está encargada de asignar los contingentes de cereales y algodón, y el MOFCOM adjudica el resto. Algunos productos sujetos a contingentes arancelarios (por ejemplo, los cereales, el algodón y el azúcar) también son objeto de comercio de Estado. En esos casos, una parte del contingente se asigna a empresas comerciales del Estado y el resto a otras empresas. Los métodos de administración de los contingentes arancelarios descritos por China en su notificación a la OMC

no han variado.¹⁵ La importación de cereales (trigo, maíz y arroz), azúcar, tabaco y algodón es objeto de comercio de Estado (sección 3.3.5).

4.21. De conformidad con el Aviso del Consejo de Estado relativo a la Profundización de la Reforma para Separar los Permisos de las Licencias Comerciales y Aumentar la Vitalidad del Desarrollo de los Participantes en el Mercado (Guo Fa [2021] Nº 7), publicado el 19 de mayo de 2021, el 1 de julio de 2021 el MARA eliminó el requisito de examen de la importación y exportación de semillas por el Departamento de Agricultura y Asuntos Rurales de los Gobiernos provinciales. En cambio, el MARA comenzó a aceptar y aprobar directamente esas importaciones y exportaciones (sección 3.2). Desde el 1 de diciembre de 2021, el proceso de aprobación está plenamente digitalizado y las solicitudes en línea no precisan materiales impresos.

4.22. En 2023, el tipo del IVA aplicable a los productos agropecuarios de producción nacional e importados se mantuvo en el 9% (sin cambios desde el examen anterior). Los productos agropecuarios de producción propia vendidos por los productores están exentos del IVA. La hoja de tabaco (es decir, el tabaco en hoja secado al sol y el tabaco en hoja tostado) comprada en China está sujeta al impuesto aplicable a la hoja de tabaco, del 20%.¹⁶ Según las autoridades, ese impuesto no se aplica a la hoja de tabaco importada.

4.1.1.4.2 Medidas que afectan a las exportaciones

4.23. China ha notificado a la OMC que en los años civiles 2020 y 2022 no se concedieron subvenciones a la exportación de productos agropecuarios.¹⁷ China aplica programas de financiación de las exportaciones (es decir, créditos a la exportación, garantías de créditos a la exportación y programas de seguro) que abarcan los productos agropecuarios. China ha indicado, en sus respuestas al cuestionario sobre la competencia de las exportaciones distribuido el 17 de enero de 2020, que aplica programas de financiación de las exportaciones (por ejemplo, apoyo a corto plazo a la financiación del comercio para la exportación de productos agropecuarios sobre la base de facturas, recibos o cartas de crédito, etc.; préstamos de capital de explotación para proveedores; seguros de crédito a la exportación a medio y largo plazo, seguros de inversión en el extranjero y seguros de crédito a la exportación a corto plazo) que abarcan, entre otras cosas, los productos agropecuarios.¹⁸

4.24. Las autoridades indican que, desde que en 2009 se estableció el Fondo Fiduciario para la Cooperación Sur-Sur con la Organización de las Naciones Unidas para la Alimentación y la Agricultura (FAO), China ha donado un total de USD 130 millones y ha enviado al extranjero a numerosos expertos y técnicos. En el marco del Fondo para el Desarrollo Mundial y la Cooperación Sur-Sur, China ha cooperado con la FAO y el Programa Mundial de Alimentos en la aplicación de unos 50 proyectos de cooperación Sur-Sur.

4.25. Se aplican impuestos de exportación a cuatro líneas arancelarias (al nivel de 8 dígitos del SA) relativas a productos de origen animal, y a dos líneas arancelarias correspondientes a los cueros y pieles en bruto (cuadro 3.11).¹⁹

4.26. Según las autoridades, durante el período objeto de examen no se han modificado las leyes y reglamentos relativos a las licencias de importación o exportación. Las exportaciones de arroz, maíz, tabaco y algodón son objeto de comercio de Estado.²⁰ Las autoridades indican que, durante el período objeto de examen, se han añadido dos nuevas empresas comerciales del Estado exportadoras de algodón (Xinjiang Xintianlu Agricultural Products Co. Ltd y China National Cotton Group Corporation). Esos productos, excepto el tabaco, están además sujetos a contingentes de

¹⁵ Documento [G/AG/N/CHN/2](#) de la OMC, de 25 de septiembre de 2003, cuadro MA.1.

¹⁶ Ley del Impuesto sobre el Tabaco, 2017.

¹⁷ Documentos [G/AG/N/CHN/58](#), [G/AG/N/CHN/59](#) y [G/AG/N/CHN/68](#) de la OMC, de 16 de noviembre de 2022, 16 de noviembre de 2022 y 20 de septiembre de 2023, respectivamente.

¹⁸ Documento [G/AG/W125/Rev.12/Add.2](#) de la OMC, de 20 de julio de 2020.

¹⁹ Se trata de las líneas siguientes: 0506.10.00 (oseína y huesos acidulados); 0506.90.11, 0506.90.19 y 0506.90.90 (polvo y desperdicios de huesos); y 4103.90.11 y 4103.90.19 (cueros y pieles de caprino, secos).

²⁰ Documento [G/STR/N/18/CHN](#) de la OMC, de 12 de noviembre de 2021.

exportación, que son administrados por la NDRC y el MOFCOM y solo se asignan a empresas comerciales del Estado. El trigo también está sujeto a contingentes de exportación (cuadro 4.5).

Cuadro 4.5 Productos agropecuarios sujetos a contingentes y licencias de exportación, marzo de 2024

Productos	Tipo de licencia	Observaciones
Productos sujetos a contingentes y licencias		
Arroz, maíz, trigo y algodón	Licencia para contingentes de exportación	La NDRC y el MOFCOM asignan el contingente y el MOFCOM expide la licencia.
Animales vivos de las especies bovina y porcina (exportación a Hong Kong, China, y Macao, China); pollos vivos (exportación a Hong Kong, China); y harina de maíz, arroz y trigo, madera aserrada, juncos y regaliz	Licencia para contingentes de exportación	El MOFCOM asigna el contingente.
Productos sujetos a licencia		
Animales vivos de las especies bovina y porcina (destinados a mercados distintos de Hong Kong, China, y Macao, China); y pollos (destinados a mercados distintos de Hong Kong, China) y carnes de bovino, de porcino y de pollo congeladas o refrigeradas	Licencia de exportación	La licencia se concede si el exportador tiene el correspondiente contrato de exportación.

Fuente: Información facilitada por las autoridades.

4.27. Los contingentes de exportación para la harina de maíz y la harina de arroz disminuyeron entre 2020 y 2022; los contingentes de exportación para la harina de trigo disminuyeron en 2021, pero aumentaron en 2022 (cuadro 4.6).

Cuadro 4.6 Contingentes de exportación de harina de maíz, harina de arroz y harina de trigo, 2020-2022

(Toneladas)

Producto	2020	2021	2022
Harina de maíz	803	913	412
Harina de arroz	76	55	18
Harina de trigo	181.312	79.553	140.543

Fuente: Información facilitada por las autoridades.

4.1.1.4.3 Medidas internas

4.1.1.4.3.1 Medidas de ayuda

4.28. La ayuda que presta el Gobierno central a los agricultores adopta la forma de incentivos fiscales (cuadro 4.7) o de asignaciones presupuestarias (cuadro 4.8). En 2022, China notificó al Comité de Agricultura de la OMC la ayuda otorgada al sector agropecuario para el año 2017.²¹ China notificó los programas de ayuda correspondientes al período 2021-2022 en el marco del Acuerdo sobre Subvenciones y Medidas Compensatorias (Acuerdo SMC).²² Según las autoridades, durante el período objeto de examen, las medidas de ayuda de China para los principales productos agropecuarios fueron principalmente precios mínimos de compra para el arroz con cáscara y el trigo, subvenciones para el arroz con cáscara, subvenciones a los productores de maíz, subvenciones a los productores de soja y subvenciones basadas en los precios de referencia del algodón.

²¹ Documento [G/AG/N/CHN/62](#) de la OMC, de 14 de diciembre de 2022.

²² Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

Cuadro 4.7 Incentivos fiscales otorgados por el Gobierno central al sector agropecuario, 2023

Título <i>Fundamento jurídico</i>	Objetivo	Subvención	Fecha de inicio
Políticas fiscales preferenciales para productos de la agricultura, la silvicultura, la ganadería y la pesca <i>Ley del Impuesto sobre la Renta de las Sociedades, 2007;</i> <i>Reglamento de Aplicación de la Ley del Impuesto sobre la Renta de las Sociedades, 2007;</i> <i>Circular del MOF, Cai Shui Nº 149 [2008]; Circular del MOF, Cai Shui Nº 26 [2011]</i>	Apoyar el desarrollo de la agricultura	Trato fiscal preferencial. En el caso de los ingresos obtenidos de proyectos de agricultura, silvicultura, ganadería y pesca, las empresas pueden beneficiarse de la exención o reducción del impuesto sobre la renta de las sociedades.	2008
Trato fiscal preferencial para los productos importados con objeto de sustituir las plantaciones de adormidera <i>Circular del MOF, Cai Shui Nº 63 [2000]</i>	Apoyar la sustitución de las plantaciones de adormidera en las zonas fronterizas de la provincia de Yunnan	Exención del IVA y los aranceles	2000
Políticas fiscales preferenciales para las importaciones de semillas y especies <i>Circular del MOF, Cai Guan Shui Nº 29 [2021]</i>	Introducir y promover especies mejoradas, reforzar la protección de las especies existentes y desarrollar ramas de producción agrícolas y forestales de alta calidad, productivas y eficaces	Exención del IVA	2016
Trato fiscal preferencial otorgado al té vendido en las zonas fronterizas <i>Anuncio Nº 83 del MOF y la SAT, 2019; Anuncio Nº 4 del MOF y la SAT, 2021; Anuncio Nº 59 del MOF y la SAT sobre la Continuación de la Aplicación de la Política en materia del IVA a la Venta de Té en Zonas Fronterizas, 2023</i>	Reducir los costos de los grupos étnicos minoritarios que residen en zonas fronterizas para comprar té vendido en zonas fronterizas, y garantizar el suministro del té vendido en zonas fronterizas donde residen grupos étnicos minoritarios	Exención del IVA	1994

Fuente: Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

Cuadro 4.8 Asignaciones presupuestarias del Gobierno central al sector agropecuario, 2023

Título <i>Fundamento jurídico</i>	Objetivo(s)	Subvención	Fecha de inicio	Asignaciones presupuestarias (millones de CNY)
Fondo para el Desarrollo de la Producción Agrícola <i>Circulares del MOF, Cai Nong Nº 10 [2020], y Cai Nong Nº 25 [2022]</i>	Impulsar la producción agrícola, optimizar la estructura industrial, promover la integración agrícola, mejorar la eficiencia agrícola, etc.	Se concede principalmente a agricultores, nuevos tipos de entidades agrícolas y explotaciones y personas que desempeñan tareas en el marco de proyectos	2017	2021: 210.303 2022: 232.483
Fondo de Subvenciones para la Protección de los Recursos Agrícolas y el Medio Ambiente <i>Circular del MOF, Cai Nong Nº 10 [2020]; Circular del MOF, Cai Nong Nº 25 [2022]</i>	Conservación de los recursos agrícolas, protección del medio ambiente, compensación de los pagos de intereses, etc.	Se concede principalmente a agricultores, ganaderos, pescadores, nuevos tipos de entidades agrícolas y explotaciones y personas que desempeñan tareas en el marco de proyectos	2021	2021: 37.189 2022: 44.849
Fondo para la Conservación de los Recursos Hídricos <i>Circular del MOF, Cai Nong Nº 54 [2019]</i>	Apoyar el desarrollo de proyectos de conservación de los recursos hídricos y el suelo y prevenir y controlar la erosión del suelo	Se concede a los Gobiernos provinciales para proyectos de conservación de los recursos hídricos y el suelo en tierras de cultivo	1983	2021: 4.500 2022: 5.029
Fondo para la Prevención de Catástrofes y el Socorro en el Sector de la Producción Agrícola <i>Circular del MOF, Cai Nong Nº 117 [2019]</i>	Respaldar la respuesta a las catástrofes, las inundaciones y las sequías que afectan a la agricultura	Se asigna a los beneficiarios que se determinen según la situación de emergencia	2019	2021: 7.400 2022: 16.273,5

Título <i>Fundamento jurídico</i>	Objetivo(s)	Subvención	Fecha de inicio	Asignaciones presupuestarias (millones de CNY)
Fondo de Subvenciones para una Nueva Serie de Iniciativas de Reconversión de Tierras de Cultivo en Bosques y en Pastizales (incluida una donación para actividades de divulgación) <i>Zi Ran Zi Fa</i> Nº 191 [2022]; <i>Circular del MOF, Cai Zi Huan</i> Nº 171 [2022]	Promover la construcción de una civilización ecológica y el desarrollo sostenible	Se concede a los Gobiernos provinciales con miras a su distribución a los agricultores para que reconviertan tierras de cultivo en bosques y en pastizales	2014	2021: 13.557 2022: 10.730

Nota: En este cuadro no se incluyen las subvenciones relacionadas con la silvicultura, a excepción de las destinadas a la reconversión de tierras de cultivo en bosques.

Fuente: Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

4.29. También se han notificado a la OMC algunos programas de subvenciones destinados a apoyar a los agricultores a nivel de los Gobiernos subcentrales.²³

4.1.1.4.3.2 Controles de precios y sistemas de sostenimiento de los precios del mercado

4.30. China sigue aplicando una política de precios de compra mínimos para el arroz y el trigo en las principales zonas productoras. Los precios mínimos de compra se ajustan en función de factores como los costos de producción, la oferta y la demanda del mercado, los precios de los mercados interno y externo y el desarrollo industrial. Según las autoridades, durante el período objeto de examen aumentaron los precios mínimos de compra en un contexto de incremento de los precios de producción. Los precios mínimos de compra del trigo, el arroz indica con cáscara temprano, el arroz indica con cáscara semitardío y tardío y el arroz japónica con cáscara fueron más elevados en 2023 que en 2021 (cuadro 4.9).²⁴

Cuadro 4.9 Precios de compra mínimos, 2020-2023

(CNY/tonelada)

	2020	2021	2022	2023
Trigo	2.240	2.260	2.300	2.340
Arroz indica con cáscara temprano	2.420	2.440	2.480	2.520
Arroz indica con cáscara semitardío y tardío	2.540	2.560	2.580	2.580
Arroz japónica con cáscara	2.600	2.600	2.620	2.620

Fuente: Información facilitada por las autoridades.

²³ Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023. Se trata de los siguientes programas: i) asistencia del Fondo de Subvención Fiscal para promover la revitalización del medio rural (municipio de Xinzhou, provincia de Shanxi); ii) subvenciones para el reconocimiento de "los alimentos ecológicos, los alimentos orgánicos y las indicaciones geográficas" de la producción agropecuaria (Liga de Alxa, región autónoma de Mongolia Interior); iii) Fondo de Subvenciones para el Desarrollo de la Industria Tabacalera (distrito de Fuling, municipio de Chongqing); iv) Fondo Especial para la Construcción de Instalaciones para la Conservación del Agua a Nivel Provincial (provincia de Guangdong); v) donación financiera de la provincia para promover la revitalización del medio rural, Fondo de Subvención Fiscal para Ayudar a Promover la Revitalización del Medio Rural, Fondo para la Conservación de los Recursos Hídricos (provincia de Guizhou); vi) subvención de las primas del seguro de cultivo de tabaco (provincia de Yunnan); vii) Fondo de Subvenciones para Ayudar a Promover la Revitalización del Medio Rural, Fondo para la Conservación de los Recursos Hídricos (región autónoma del Tíbet); viii) Fondo de Subvenciones para la Política de Reconversión de Tierras de Cultivo en Bosques (región autónoma de Ningxia Hui); ix) Fondo de Subvenciones para Ayudar a Promover la Revitalización del Medio Rural (región autónoma de Xinjiang Uygur); x) Fondo para la Conservación de los Recursos Hídricos, Fondo de Subvenciones para la Creación de Tierras de Cultivo (ciudad de Dalian, provincia de Liaoning); y xi) Fondo de Subvención Fiscal para Ayudar a Promover la Revitalización del Medio Rural (ciudad de Qingdao, provincia de Shandong).

²⁴ Las autoridades afirman que, en general, los agricultores venden los cereales a precios de mercado. Los agricultores solo pueden vender a las empresas designadas el arroz y el trigo que cumplen los requisitos de calidad cuando los precios de esos productos caen por debajo de los precios de compra mínimos, a fin de reducir las pérdidas causadas por el descenso de los precios de los cereales. Esos precios, así como la limitación de los volúmenes totales de compra, los fija anualmente la NDRC en consulta con el MARA y con otros organismos gubernamentales.

4.31. Durante el período objeto de examen no se modificó el sistema de reservas de cereales para el maíz, el arroz, las habas de soja y el trigo que mantienen el Gobierno central y los Gobiernos locales.

4.1.1.4.3.3 Otras medidas

4.32. Durante el período objeto de examen, el Banco Popular de China (PBOC) ha dado orientaciones a las instituciones financieras para que aumenten la concesión de créditos al sector agropecuario. Entre los documentos de política pertinentes figuran los Dictámenes sobre la Ayuda Financiera para la Consolidación y Ampliación de los Logros en la Reducción de la Pobreza y el Avance Integral de la Revitalización del Medio Rural (Yin Fa Nº 171 [2021]), los Dictámenes sobre la Conclusión Efectiva de la Labor Fundamental para la Promoción Integral de la Revitalización del Medio Rural en 2022 (Yin Fa Nº 74 [2022]) y las Orientaciones sobre la Ayuda Financiera para la Promoción Integral de la Revitalización del Medio Rural y la Aceleración de la Creación de una Potencia Agrícola (Yin Fa Nº 97 [2023]). La finalidad de esos documentos es orientar a las instituciones financieras para que sigan aumentando la concesión de créditos al sector agropecuario. A finales de 2023, el saldo de los préstamos en moneda nacional y en divisas era de CNY 56,6 billones, lo que supone un incremento interanual del 14,9%. El saldo de los préstamos rurales (condados y entidades de menor tamaño) era de CNY 47,26 billones, el saldo de los préstamos a los hogares rurales era de CNY 16,86 billones y el saldo de los préstamos a la agricultura, la ganadería, la silvicultura y la pesca era de CNY 5,83 billones.

4.33. China también ha realizado esfuerzos por ampliar los canales de financiación directa en el sector agrícola. Se ha alentado a los bancos y las instituciones financieras a que emitan bonos especiales destinados a la agricultura y la microfinanciación, movilicen fondos para conceder préstamos para la agricultura y las microempresas, aumenten la capacidad de préstamo y amplíen las fuentes de fondos disponibles. En 2021, la Asociación Nacional de Inversores Institucionales del Mercado Financiero (NAFMII) publicó notas sobre la revitalización del medio rural basadas en las experiencias adquiridas en la reducción de la pobreza, apoyando a las empresas admisibles para que emitieran bonos para la revitalización del medio rural y otros instrumentos de financiación de la deuda con el fin de promover el desarrollo rural. A finales de 2023, 157 empresas habían recibido apoyo para la emisión de bonos para la revitalización del medio rural por un valor total de CNY 198.770 millones, y los bancos de todo el país habían emitido bonos especiales destinados a la agricultura y la microfinanciación por un total acumulado de CNY 2,37634 billones.

4.34. El Gobierno central y los Gobiernos locales apoyan la participación de los agricultores en programas de seguro; el plan de seguros cubre desastres naturales como lluvias torrenciales, inundaciones y sequías. La distribución de la financiación entre el Gobierno central y los Gobiernos locales varía según el cultivo (cuadro 4.10). No se dispone de datos sobre los gastos totales. El 31 de diciembre de 2021, China revisó las Medidas relativas a la Administración de las Subvenciones para Primas de Seguros Agropecuarios por el Gobierno Central.²⁵ En consecuencia, se ha ampliado a todos los principales condados productores de cereales de China el costo total del seguro para el trigo, el arroz y el maíz. Las autoridades indican que, en 2021 y 2022, las primas de los seguros agrícolas ascendieron a CNY 96.500 millones y CNY 119.200 millones, respectivamente.

Cuadro 4.10 Distribución de la financiación del programa de seguros agrícolas entre las autoridades centrales y locales

	Cultivos	Cría de ganado	Silvicultura no comercial	Silvicultura comercial	Variedades tibetanas y caucho natural
Gobierno central	45% en las regiones central, occidental y nororiental; 35% en la región oriental	50% en las regiones central y occidental; 40% en la región oriental	50%	30%	40%
Gobiernos locales	25%	25%	25%	25%	25%

Fuente: Información facilitada por las autoridades.

²⁵ Gobierno de China. Consultado en: https://www.gov.cn/gongbao/content/2022/content_5683856.htm.

4.35. Según las autoridades, todos los bancos pueden proporcionar financiación para proyectos agrícolas en condiciones comerciales.

4.36. En los últimos años, el PBOC ha aplicado las decisiones del Comité Central del Partido Comunista de China y del Consejo de Estado para fortalecer la orientación sobre las políticas monetarias y crediticias; orientar a las instituciones financieras para que observen los principios de orientación al mercado y legalización; aumentar los recursos asignados a la revitalización del medio rural y la mejora de la agricultura; y mejorar la capacidad y el nivel de los servicios financieros con respecto a la agricultura, las zonas rurales y los agricultores. Junto con la Administración Nacional de Reglamentación Financiera, la Comisión de Reglamentación de Valores de China, el MOF y el MARA, el PBOC publicó las Orientaciones sobre la Ayuda Financiera para la Promoción Integral de la Revitalización del Medio Rural y la Aceleración de la Creación de una Potencia Agrícola y aplicó varias políticas para fortalecer el apoyo financiero al sector. Las autoridades han indicado que, a finales de septiembre de 2023, el saldo de los préstamos agrícolas ascendía a CNY 55,8 billones, lo que supone un aumento interanual del 15,1%. El PBOC también fomentó la ampliación del alcance de las garantías y los avales con arreglo a las necesidades de financiación de las entidades agrícolas y la revitalización de los activos rurales para desarrollar las operaciones agrícolas y aumentar los ingresos y la riqueza de los agricultores. A finales de septiembre de 2023, el saldo de los préstamos a los agricultores era de CNY 16,7 billones, lo que representa un aumento interanual del 12,6%, y el saldo de los préstamos agrícolas era de CNY 5,8 billones, lo que supone un aumento interanual del 14,6%. El PBOC también ha apoyado la emisión de letras de revitalización del medio rural en el mercado interbancario por las empresas admisibles con el fin de recaudar fondos para ámbitos fundamentales como el empleo y el aumento de los ingresos de los agricultores, la modernización de la agricultura y la construcción de infraestructuras. También ha alentado a los bancos a emitir bonos financieros especiales para "la agricultura, las zonas rurales y los agricultores" con el fin de obtener fondos destinados específicamente a la concesión de préstamos agrícolas. A finales de septiembre de 2023, había prestado apoyo a 147 empresas para la emisión de letras de revitalización del medio rural por valor de CNY 188.400 millones, y se habían emitido bonos financieros especiales para la agricultura, las zonas rurales y los agricultores por valor de CNY 136.700 millones. La Comisión de Reglamentación de Valores de China presta apoyo a las empresas admisibles para la emisión de letras de revitalización del medio rural en el mercado cambiario. Los fondos recaudados se utilizan para consolidar los logros en la reducción de la pobreza, fomentar el desarrollo de zonas en las que se ha erradicado la pobreza y revitalizar el medio rural. A finales de 2023, se había prestado apoyo a 86 empresas para la emisión de letras corporativas de revitalización del medio rural por un total de CNY 73.600 millones.

4.37. La Administración Nacional de Reglamentación Financiera (NFRA) ha publicado avisos de orientación para que los sectores de la banca y los seguros se ocupen adecuadamente de la labor financiera relativa a la revitalización del medio rural y aclaren sus objetivos y tareas fundamentales cada año. A finales de 2023, el saldo de los préstamos agrícolas en todo el país ascendía a CNY 56,6 billones, un 15,11% más que a comienzos del año. El saldo de los préstamos agrícolas inclusivos ascendía a CNY 12,59 billones, un 20,34% más que a comienzos del año, y 10,2 puntos porcentuales más que la tasa media de crecimiento de los diversos préstamos. El saldo de los préstamos concedidos en las principales zonas productoras de cereales del país ascendía a CNY 3,71 billones, un 21,77% más que a comienzos del año. La NFRA también alentó el establecimiento de sucursales de bancos e instituciones financieras en zonas en las que en la actualidad no están presentes. A finales de 2023, la tasa de cobertura de los bancos e instituciones financieras en zonas rurales era del 97,93%. El Banco de Desarrollo, el Banco de Desarrollo Agrícola de China y seis grandes bancos han establecido instituciones internas dedicadas a la revitalización del medio rural que prestan apoyo en materia de políticas en relación con los precios internos de transferencia, la asignación de personal y la evaluación de los incentivos para los préstamos agrícolas.

4.1.1.4.4 Niveles de ayuda

4.38. En diciembre de 2022, China notificó sus compromisos en materia de ayuda interna correspondientes al año civil 2020.²⁶ La notificación muestra que la ayuda del compartimento azul (programas de limitación de la producción) ascendió a CNY 89.800 millones en 2020, frente a CNY 38.400 millones en 2019. La ayuda notificada en el marco del compartimento verde ascendió

²⁶ Documento [G/AG/N/CHN/65](#) de la OMC, de 14 de diciembre de 2022.

a CNY 1,2561 billones en 2020, frente a CNY 1,2199 billones en 2019. La ayuda del compartimento ámbar (incluida la ayuda *de minimis*) fue nula en 2020 (frente a CNY 205.400 millones en 2019).

4.39. La OCDE sigue calculando estimaciones de la ayuda a la agricultura en China que ofrecen indicadores relativos al período objeto de examen (datos disponibles hasta 2022). Según la OCDE, la estimación de la ayuda total en 2022 fue de alrededor de CNY 2,0555 billones (el 1,69% del PIB), frente a CNY 2,0750 billones en 2021 (el 1,81% del PIB).²⁷ Las estimaciones de la ayuda a los productores y el sostenimiento de los precios del mercado también disminuyeron durante el período objeto de examen.

4.1.2 Silvicultura

4.40. La principal legislación por la que se rige el sector forestal comprende la Ley Forestal, la Ley de Pastizales, la Ley de Protección de los Humedales, la Ley de Conservación de la Fauna y Flora Silvestres, la Ley de Semillas y la Ley de Prevención y Control de la Desertificación. Durante el período objeto de examen, con miras a reforzar la protección de los humedales, mantener las funciones ecológicas y la biodiversidad de estas zonas y garantizar la seguridad ecológica, el 24 de diciembre de 2021 se adoptó la Ley de Protección de los Humedales, que entró en vigor el 1 de junio de 2022. En virtud de la Ley, se adoptó una definición de humedales, se instauró el sistema de gestión de estas zonas y las responsabilidades departamentales conexas, y se estableció, entre otras cosas, la gestión de la clasificación de los humedales y la regulación de la utilización, el uso racional y el restablecimiento de estas zonas, proporcionando garantías jurídicas más sólidas para su protección y gestión. Además, la Ley de Protección de la Fauna y Flora Silvestres se modificó el 30 de diciembre de 2022 y entró en vigor el 1 de mayo de 2023. Según las autoridades, la Administración Nacional de Silvicultura y Pastizales está tratando de promover la revisión de la legislación pertinente, incluida la Ley de Parques Nacionales, el Reglamento sobre Reservas Naturales, el Reglamento sobre Enclaves Pintorescos y Lugares Históricos, el Reglamento de Aplicación de la Ley Forestal y el Reglamento sobre la Protección de las Obtenciones Vegetales.

4.41. El promedio de los aranceles aplicados a la madera y las manufacturas de madera (Capítulo 44 del SA) fue del 0,3% en 2024 (1,0% en 2021). La madera en bruto (SA 4403) gozó de franquicia arancelaria en 2021 y 2024.

4.42. Las restricciones en materia de IED en el sector de la silvicultura no se han modificado desde el examen anterior.

4.1.3 Pesca

4.1.3.1 Características y evolución del mercado

4.43. China es uno de los principales productores de pescado del mundo. Desde 2021, la producción acuícola se mantuvo relativamente estable (cuadro 4.11). En el mismo período, las exportaciones de pescado (definición de la OMC) representaron aproximadamente el 0,6% del valor de las exportaciones totales de China. Las importaciones de pescado aumentaron gradualmente del 0,6% al 0,9% de las importaciones totales durante el mismo período (cuadro 4.12). En 2024, el promedio aritmético de los aranceles aplicados al pescado y los productos de pescado (definición de la OMC) fue del 6,8%, con aranceles que oscilan entre el 0% y el 15% (cuadro A3. 1). Se aplican derechos de exportación a una línea arancelaria correspondiente al pescado y los crustáceos, a saber, anguilas, alevines, vivos (subpartida 0301.92.10 del SA) (cuadro 3.11).

²⁷ OCDE (2023), *Agricultural Policy Monitoring and Evaluation 2023*. Consultado en: <https://www.oecd.org/publications/agricultural-policy-monitoring-and-evaluation-22217371.htm>. Los informes anuales de la OCDE de seguimiento y evaluación de las políticas agropecuarias utilizan una metodología para calcular el valor de la ayuda que se expresa en varios indicadores, entre ellos los siguientes: i) la Estimación de la Ayuda a los Productores (EAP) en el caso de las transferencias brutas de los consumidores y contribuyentes a los productores del sector agropecuario; ii) la Estimación de la Ayuda Total (EAT) en el de las transferencias al sector agropecuario en general; y iii) las Transferencias para un Solo Producto (TSP) en el de las transferencias para productos específicos. La EAP representa el valor de las transferencias a los productores. Por consiguiente, el valor de la ayuda que se notifica a la OMC no es compatible ni comparable con los valores calculados por la OCDE.

Cuadro 4.11 Indicadores del sector pesquero, 2020-2022

	2020	2021	2022
Empleo	12.395.858	11.846.287	11.779.185
Embarcaciones pesqueras (embarcaciones de pesca motorizadas)	563.262 (374.757)	520.845 (356.994)	511.046 (342.418)
Capturas marinas (en miles de t) (algas)	11.790,7 (21,7)	11.761,1 (20,3)	11.838,3 (19,4)
Producción acuícola (en miles de t) (algas)	52.242,0 (2.621,4)	53.944,1 (2.722,9)	55.654,6 (2.723,9)

Notas: Los datos sobre el empleo se basan en los indicadores de los empleados del sector pesquero que figuran en el Anuario Estadístico de la Pesca de China.

Salvo en el caso de la medusa, que se mide por peso después de desalar, y diversos tipos de algas, que se miden por peso en estado seco, todos los demás productos acuáticos se miden por peso efectivo en el momento de la captura. Los datos sobre la producción pesquera comunicados por China pueden diferir de los datos publicados por la FAO porque el Gobierno informa sobre el peso de las algas en estado seco, mientras que la FAO informa sobre el peso de las algas en estado húmedo. La FAO obtiene y publica datos sobre la producción basados en pesos calculados científicamente aportados por el Gobierno.

Fuente: Información facilitada por las autoridades.

Cuadro 4.12 Comercio de pescado y productos del pescado, 2018-2023

	2018	2019	2020	2021	2022	2023
Exportaciones (en millones de USD)	21.738,8	20.160,8	18.587,2	21.338,4	22.431,7	19.877,3
% de las exportaciones totales	0,9	0,8	0,7	0,6	0,6	0,6
Tasa de crecimiento (%)	5,5	-7,3	-7,8	14,8	5,1	-11,4
Cinco principales productos de exportación al nivel de 4 dígitos del SA (% del total):						
1605 Crustáceos, moluscos, etc., preparados o en conserva	21,3	18,4	18,7	23,1	23,4	23,8
1604 Preparaciones y conservas de pescado; caviar y sus sucedáneos	16,9	18,6	22,4	23,9	20,7	21,1
0304 Filetes y demás carne de pescado, frescos, refrigerados o congelados	20,6	21,3	18,0	14,8	18,2	16,7
0307 Moluscos vivos, frescos, refrigerados, congelados, salados o en salmuera	15,1	14,6	14,6	14,6	15,1	12,7
0303 Pescado congelado, excepto los filetes y demás carne de pescado de la partida 0304	13,2	14,1	12,8	11,1	10,1	11,4
Importaciones (en millones de USD)	14.371,2	18.001,9	14.916,1	17.255,5	22.560,6	22.622,1
% de las importaciones totales	0,7	0,9	0,7	0,6	0,8	0,9
Tasa de crecimiento (%)	34,2	25,3	-17,1	15,7	30,7	0,3
Cinco principales productos de importación al nivel de 4 dígitos del SA (% del total):						
0306 Crustáceos vivos, frescos, refrigerados, congelados, salados o en salmuera	30,4	39,1	39,6	40,4	42,4	42,3
0303 Pescado congelado, excepto los filetes y demás carne de pescado de la partida 0304	31,7	27,4	26,3	20,3	22,6	21,2
230120 ^a Harina, polvo y "pellets", de pescado o de crustáceos, moluscos, etc.	15,5	11,0	13,1	15,9	13,3	12,9
0307 Moluscos vivos, frescos, refrigerados, congelados, salados o en salmuera	8,7	8,7	7,9	10,3	8,1	8,7
0302 Pescado fresco o refrigerado, excepto los filetes y demás carne de pescado de la partida 0304	5,1	4,4	2,8	4,1	3,8	5,2

	2018	2019	2020	2021	2022	2023
0304 Filetes y demás carne de pescado, frescos, refrigerados o congelados	3,1	3,6	3,5	2,3	3,3	5,2

a Desglosado al nivel de 6 dígitos del SA ya que solo la subpartida de 6 dígitos 230120 de la partida 2301 es un producto de pescado.

Nota: Definición de la OMC de pescado y productos de pescado: Capítulo 3 del SA y algunos productos seleccionados (SA 03, 0508, 0511.91, 1504.10, 1504.20, 1603-1605, y 2301.20). La clasificación de los cinco principales productos pesqueros de exportación y de importación al nivel de 4 dígitos del SA corresponde al año 2023.

Fuente: Cálculos de la Secretaría de la OMC basados en cifras comerciales procedentes de la base de datos UN Comtrade.

4.1.3.2 Marco jurídico, institucional y normativo

4.44. El Ministerio de Agricultura y Asuntos Rurales (MARA) dirige la revisión de los proyectos de leyes y reglamentos relacionados con la pesca, elabora normas y reglamentos departamentales y orienta el desarrollo de la legislación pesquera. Los Gobiernos locales se encargan de los asuntos pesqueros en sus respectivas divisiones administrativas, con inclusión de la pesca marina en las zonas marítimas contiguas (a menos que el Consejo de Estado determine lo contrario).

4.45. Según las autoridades, hay 11 empresas de pesca de altura estatales.

4.46. La principal legislación por la que se rige el sector pesquero es la Ley de Pesca, de 2005, que no se ha modificado desde el anterior examen (la última modificación data de 2013). El Reglamento de Aplicación de la Ley de Pesca tampoco se ha modificado (la última modificación data de 2020).²⁸ Las Disposiciones sobre la Administración de las Licencias de Pesca (Decreto N° 1 del MARA, 2018²⁹) y determinados artículos de esas Disposiciones (modificados por última vez en 2022) se mantuvieron sin cambios.³⁰

4.47. En 2021, el MARA publicó el 14º Plan Quinquenal para el Desarrollo de la Pesca Nacional, en el que se especificaba que la producción nacional de pesca marítima se limitaría a 10 millones de toneladas para 2025. En 2021 y 2022, la producción nacional total de pesca marítima fue de 9,52 millones de toneladas y 9,51 millones de toneladas, respectivamente, y ninguna provincia superó el objetivo fijado para 2020. El Plan también tiene por objeto promover el desarrollo de alta calidad y la modernización del sector pesquero, y plantea 12 objetivos en cuatro esferas - el desarrollo del sector pesquero, la ecología, la innovación científica y tecnológica y la capacidad de gestión - con miras a 2035.

4.48. Con arreglo a la Ley de Pesca, los extranjeros y las embarcaciones pesqueras extranjeras que se dedican a la producción pesquera en aguas bajo la jurisdicción de China deben obtener la aprobación del MARA. Si las embarcaciones pertenecen a interlocutores comerciales de China que han firmado tratados o acuerdos pertinentes con este país, las cuestiones se tratan de conformidad con esos tratados.³¹ El régimen de inversión extranjera para la pesca no ha sido objeto de modificaciones. Las Medidas Administrativas Especiales relativas al Acceso de la Inversión Extranjera en las Zonas Francas Experimentales (Lista Negativa, edición de 2021) prohíben la inversión en la pesca de productos acuáticos en los mares y las aguas interiores bajo la jurisdicción de China. Las autoridades siguen previendo revisar la Ley de Pesca.

4.49. El MARA, en coordinación con el Ministerio de Transporte, el Ministerio de Relaciones Exteriores y otros departamentos competentes, está en proceso de adherirse al Acuerdo sobre Medidas del Estado Rector del Puerto.

²⁸ Reglamento de Aplicación de la Ley de Pesca (2020), modificado por el Decreto N° 726 del Consejo de Estado. Consultado en: http://www.gov.cn/zhengce/2020-12/25/content_5574001.htm.

²⁹ Decreto N° 1 de 2018 del MARA. Consultado en: http://www.yyj.moa.gov.cn/bjwj/201904/t20190419_6197470.htm.

³⁰ Decreto N° 5 de 2020 del MARA. Consultado en: http://www.moa.gov.cn/nybg/2020/202008/202010/t20201020_6354689.htm.

³¹ Ley de Pesca, artículo 8.

4.50. China es parte contratante en diversos convenios y tratados internacionales sobre la pesca, incluida la Comisión Internacional para la Conservación del Atún Atlántico (CICAA), la Comisión del Atún para el Océano Índico (IOTC), la Comisión de Pesca del Pacífico Occidental y Central (WCPFC), la Comisión Interamericana del Atún Tropical (CIAT), la Comisión de Pesca del Pacífico Norte (NPFC), la Organización Regional de Ordenación Pesquera del Pacífico Sur (SPRFMO), el Acuerdo de Pesca para el Océano Índico Meridional (SIOFA) y la Comisión para la Conservación de los Recursos Vivos Marinos Antárticos (CCAMLR).

4.51. En cuanto a los acuerdos bilaterales relacionados con la pesca, China ha firmado acuerdos como el Acuerdo de Pesca con la República de Corea, que entró en vigor en 2001; el Acuerdo de Pesca con el Japón, que entró en vigor en 2000; y el Protocolo de Cooperación en las Aguas Fronterizas de los Ríos Heilongjiang y Ussuri para la Protección, el Ajuste y la Mejora de los Recursos Pesqueros, que entró en vigor en 1994.

4.52. China presentó su aceptación del Protocolo del Acuerdo sobre Subvenciones a la Pesca a la OMC el 27 de junio de 2023.

4.1.3.3 Ayuda del Gobierno al sector pesquero

4.53. La ayuda al sector la prestan tanto el Gobierno central como los Gobiernos locales y provinciales. La última notificación presentada por China a la OMC abarca el período 2021-2022 y contiene tres programas de incentivos o de apoyo aplicados a nivel del Gobierno central; estos se refieren a un fondo de subvenciones para el desarrollo del sector pesquero y al pago de transferencias para fines generales (cuadro A4. 1). De los programas relativos al sector pesquero adoptados por los Gobiernos locales durante el período 2021-2022, 22 también se notificaron a la OMC (cuadro A4. 2).

4.54. Desde 2015, China ha puesto fin a las subvenciones a la construcción de barcos. En 2021, el Gobierno eliminó las subvenciones a los combustibles. Ese mismo año, el Ministerio de Hacienda y el MARA publicaron el Aviso sobre la Aplicación de Políticas de Apoyo al Desarrollo de la Pesca para Promover el Desarrollo de Alta Calidad de la Pesca (Cai Nong [2021] N° 41), que propone optimizar la estructura del sector pesquero de conformidad con la tendencia general de las negociaciones internacionales sobre subvenciones a la pesca. El Aviso también tiene por objeto promover el desarrollo de alta calidad de la pesca, aplicar un nuevo conjunto de políticas para apoyar el desarrollo de la pesca durante el período abarcado por el 14º Plan Quinquenal, eliminar las subvenciones a los costos directos, modificar el método de subvención y centrarse en promover la aplicación de las principales políticas y proyectos introducidos y previstos por el país mediante fondos de subvenciones para el desarrollo de la pesca. Entre las principales medidas figuran las siguientes: i) apoyo a la construcción de zonas marinas de cría a nivel nacional; y apoyo a la construcción de equipos e instalaciones de acuicultura modernos; ii) construcción de instalaciones pesqueras públicas básicas³², incluida la eliminación de las subvenciones a los costos directos, el apoyo a los cambios en las modalidades de subvención y la prestación de ayuda específica a la aplicación de las principales políticas y proyectos introducidos y previstos por China en el marco de las subvenciones para el desarrollo de la pesca; iii) apoyo a la construcción de instalaciones pesqueras públicas básicas, como las zonas económicas de los puertos de pesca costera y las zonas de pesca de altura; iv) apoyo al desarrollo verde y circular de la pesca, como la transformación normalizada de los estanques de acuicultura continental concentrados y el tratamiento normalizado del agua de cola de la industria de la acuicultura, así como el suministro de sistemas inteligentes de vigilancia de la calidad del agua y de control ambiental; y v) apoyo al estudio y la conservación de los recursos pesqueros y la mejora de la capacidad de cumplimiento de las normas internacionales. Estas medidas entrañan, entre otras cosas, la concesión de subvenciones para la conservación de los recursos pesqueros a los buques de pesca de altura que cumplan la normativa sobre la conservación de los recursos pesqueros con sujeción a un control estricto de la intensidad de la subvención. Los pescadores de altura destinan estas subvenciones principalmente a la reducción de su número de

³² Esto incluye la prestación de apoyo para la mejora y la transformación de las embarcaciones de pesca de altura y de pesca en aguas distantes, así como de las instalaciones y equipos, como sistemas anticontaminantes y contra incendios, dispositivos de salvamento y sistemas de navegación, y las instalaciones destinadas a la producción y la vivienda. Se prestará apoyo a la construcción de instalaciones y equipos de cría en aguas profundas y aguas distantes, como las jaulas de red para aguas profundas y los equipos inteligentes de cría de peces en gran escala, así como la construcción de instalaciones y equipos de elaboración primaria y almacenamiento refrigerado y conservación de los productos acuáticos.

buques y la transición hacia la producción; el desarrollo verde de la acuicultura; el equipamiento, funcionamiento y mantenimiento de los buques y muelles encargados de velar por la observancia de la legislación pesquera; la informatización del sector pesquero; el tratamiento y distribución de productos acuáticos; la modernización y reconstrucción de los buques de pesca de altura y de las instalaciones a bordo; y la conservación de los recursos pesqueros.

4.55. China aceptó formalmente el Protocolo del Acuerdo sobre Subvenciones a la Pesca depositando su instrumento de aceptación ante la OMC el 27 de junio de 2023. Según las autoridades, China ha tenido en cuenta la orientación general de las negociaciones sobre las subvenciones a la pesca al formular su actual política de subvenciones en esta esfera; respecto de una pequeña cantidad de subvenciones a la pesca en aguas distantes que no cumplen las disposiciones de los artículos 4.1 o 5.1 del Acuerdo sobre Subvenciones a la Pesca, China acatará el Acuerdo y eliminará las subvenciones pertinentes una vez que entre en vigor.

4.56. La participación de los pescadores en los seguros de pesca es voluntaria; los seguros de pesca se centran en servicios de asistencia mutua.

4.57. Según las autoridades, desde 2021, el Gobierno Central ha prestado apoyo al desarrollo de la pesca mediante el pago de transferencias pertinentes: i) se ha prestado apoyo para el establecimiento de zonas marinas de cría experimentales a nivel nacional con el fin de promover la conservación y mejora de los recursos pesqueros y mejorar el medio ambiente en las zonas marítimas; ii) se ha ampliado la ayuda para la construcción de zonas económicas en los puertos de pesca costera a nivel nacional en el marco de proyectos piloto para promover la pesca de alta calidad y eficiente, las zonas de pesca rentables que ofrezcan condiciones de vida adecuadas, y la prosperidad de los pescadores; iii) se ha otorgado ayuda para proyectos piloto de desarrollo verde y circular en el sector de la pesca, en el marco de los cuales se alienta a las provincias a que tomen los condados como unidades piloto, promuevan la renovación normalizada de los estanques de acuicultura continental y velen por el tratamiento normalizado del agua de cola de la industria de la acuicultura; iv) se ha prestado apoyo al desarrollo de equipos e instalaciones de pesca modernos con el objetivo de promover la modernización de las instalaciones y el equipo de pesca y mejorar la capacidad de producción de productos pesqueros mediante la renovación y mejora de las embarcaciones pesqueras y el equipo a bordo para reducir el consumo de energía y las emisiones contaminantes, mejorar la seguridad de las embarcaciones pesqueras y aumentar su nivel de automatización, inteligencia y modernización; y v) se han realizado esfuerzos para mejorar la capacidad de cumplimiento de las normas internacionales mediante la prestación de apoyo a las empresas de pesca en aguas distantes que cumplen los convenios internacionales destinados a conservar los recursos pesqueros internacionales, orientando a las embarcaciones de pesca en aguas distantes para que participen en la pesca responsable y en la conservación de los recursos pesqueros marinos internacionales.

4.1.3.4 Medidas de conservación de la pesca

4.58. China sigue desempeñando un papel importante en el segmento de la pesca en aguas distantes. Según ha indicado la FAO, en 2020 China notificó unos 2,3 millones de toneladas de su "pesca en aguas distantes".³³ Según las autoridades, el número se mantuvo al mismo nivel en 2021 y 2022.

4.59. Según las autoridades, China ha venido aplicando una política de "tolerancia cero" contra la pesca INDNR desde 2021, llevando a cabo investigaciones en relación con las embarcaciones de pesca sospechosas de infringir la normativa según lo denunciado por las organizaciones o embajadas pertinentes, y ha impuesto sanciones a las empresas y embarcaciones de pesca en aguas distantes identificadas como infractoras. Desde 2021, China ha cancelado el certificado de calificación de una empresa autorizada a pescar en aguas distantes y ha suspendido los certificados de calificación de otras cuatro. Se ha sancionado a más de 70 embarcaciones pesqueras identificadas como infractoras con penas por un valor total de más de CNY 80 millones.

³³ FAO (2022), *El estado mundial de la pesca y la acuicultura 2022*. Consultado en: <https://openknowledge.fao.org/items/92319005-6232-450f-8c75-4d4fcf24720d>.

4.2 Minería y energía

4.2.1 Minería

4.60. La industria minera sigue siendo un importante motor del crecimiento económico. Al proporcionar materias primas, el sector ha contribuido de manera importante al desarrollo de la infraestructura del país y su industrialización. No obstante, las actividades mineras pueden tener efectos perjudiciales en el medio ambiente. Según las autoridades, en el marco de las iniciativas destinadas a promover el uso de prácticas mineras inocuas para el medio ambiente, China se ha centrado en elaborar directrices normalizadas y en establecer prescripciones estrictas respecto de los métodos y tecnologías utilizados para la extracción y la prevención de la contaminación.

4.61. A finales de 2021, se habían descubierto en China 173 tipos de recursos minerales, que incluían minerales energéticos, minerales metálicos y minerales no metálicos (cuadro 4.13).³⁴ El país ocupa una posición destacada en la producción de varios metales y minerales importantes. Por ejemplo, domina la producción mundial de tierras raras (alrededor del 60%)³⁵, que son cruciales para muchas aplicaciones de alta tecnología, como las tecnologías electrónicas y las relacionadas con energías renovables. También es uno de los principales productores de cobre, cobalto, litio, grafito, magnesio, manganeso, estaño, volframio (tungsteno) y cinc, que se utilizan de manera significativa en varias ramas de producción fundamentales.

Cuadro 4.13 Principales minerales de China, 2021

Nº	Minerales	Unidad	Reservas
Minerales energéticos			
1	Carbón	Millones de toneladas	207.890
2	Petróleo	Millones de toneladas	3.690
3	Gas natural	Billones de m ³	6,33927
4	Metano de yacimientos carboníferos	Millones de m ³	365.970
5	Gas de esquisto	Millones de m ³	544.060
Minerales metálicos			
1	Mineral de hierro	Millones de toneladas	16.120
2	Mineral de manganeso	Millones de toneladas	281,69
3	Cromita	Millones de toneladas	3,09
4	Vanadio	Millones de toneladas de V ₂ O ₅	7,87
5	Titanio	Millones de toneladas de TiO ₂	223,83
6	Cobre	Millones de toneladas de metal	34,95
7	Plomo	Millones de toneladas de metal	20,41
8	Cinc	Millones de toneladas de metal	44,23
9	Bauxita	Millones de toneladas de mineral	711,14
10	Níquel	Millones de toneladas de metal	4,22
11	Cobalto	Millones de toneladas de metal	0,14
12	Volframio (tungsteno)	Millones de toneladas de WO ₃	2,95
13	Estaño	Millones de toneladas de metal	1,13
14	Molibdeno	Millones de toneladas de metal	5,85
15	Antimonio	Millones de toneladas de metal	0,64
16	Oro	Toneladas de metal	2.964,37
17	Plata	Toneladas de metal	71.783,66
18	Metales del grupo del platino	Toneladas de metal	87,69
19	Estroncio	Millones de toneladas de celestita	24,64
20	De litio	Millones de toneladas de Li ₂ O	4,05
Minerales no metálicos			
1	Magnesita	Millones de toneladas de mineral	579,91
2	Espato flúor	Millones de toneladas de minerales	67,25
3	Arcilla refractaria	Millones de toneladas de mineral	284,89
4	Pirita	Millones de toneladas de mineral	1.318,71
5	Fosforita	Millones de toneladas de mineral	3.760
6	Potasa	Millones de toneladas de KCl	284,25
7	Boro	Millones de toneladas de B ₂ O ₃	11,19
8	Sal sódica	Millones de toneladas de NaCl	20.630

³⁴ Ministry of Natural Resources, *China Mineral Resources 2022*. Consultado en: https://www.mnr.gov.cn/sj/sjfw/kc_19263/zgkcybg/202209/P020230417517901712211.pdf.

³⁵ Agencia Internacional de la Energía, *Ensuring Supply Reliability and Resiliency*. Consultado en: <https://www.iea.org/reports/introducing-the-critical-minerals-policy-tracker/ensuring-supply-reliability-and-resiliency>.

Nº	Minerales	Unidad	Reservas
9	Mirabilita	Millones de Na ₂ SO ₄	37.800
10	Barita	Millones de toneladas de mineral	91,55
11	Piedra caliza para cemento	Millones de toneladas de mineral	42.110
12	Roca silícea para la fabricación de vidrio	Millones de toneladas de mineral	1.650
13	Yeso natural	Millones de toneladas de mineral	2.130
14	Caolín	Millones de toneladas de mineral	752,40
15	Bentonita	Millones de toneladas de mineral	332,72
16	Diatomita	Millones de toneladas de mineral	170,62
17	Chapado de granito	Millones de m ³	1.700
18	Chapado de mármol	Millones de m ³	530
19	Diamantes	Kilogramos de minerales	183,19
20	Grafito cristalino	Millones de toneladas de minerales	78,26
21	Amianto (asbesto)	Millones de toneladas de minerales	17,90
22	Talco	Millones de toneladas de mineral	71,75
23	Wollastonita	Millones de toneladas de mineral	64,39

Nota: Los datos relativos a las reservas de petróleo y gas (petróleo, gas natural, metano de yacimientos carboníferos y gas de esquisto) representan las reservas técnicamente accesibles comprobadas restantes según la Clasificación de Recursos y Reservas de Petróleo (GB/T 19492-2020) y los relativos a otros minerales representan el total de reservas comprobadas y reservas probables con arreglo a la Clasificación de Recursos Minerales y Reservas Minerales (GB/T 17766-2020).

Fuente: Ministerio de Recursos Naturales, *China Mineral Report*, 2022.

4.62. Entre 2018 y 2023, el comercio de productos minerales de China experimentó una tendencia al alza, aunque en 2020 se registró una disminución tanto de las importaciones como de las exportaciones. Las exportaciones de productos minerales representaron entre un 2,1% y un 1,4% de las exportaciones totales (cuadro A1. 3). Las importaciones de minerales representan una proporción mucho más importante de las importaciones totales (más del 25% en promedio) y también han presentado una tendencia al alza desde 2018, con excepción de la disminución registrada en 2020 (22,6%), y siguieron aumentando en 2021 y los años siguientes (cuadro A1. 4). Entre los productos minerales importados en grandes cantidades figuran el petróleo crudo, el mineral de hierro, el mineral de manganeso y el mineral de cobre. El plomo, el cinc, el volframio (tungsteno), el estaño, el antimonio, las tierras raras, el magnesita, el espato flúor, la barita y el grafito figuran entre los principales minerales exportados (cuadro 4.14).

Cuadro 4.14 Comercio de determinados minerales, 2018-2022

		2018	2019	2020	2021	2022
Importaciones						
Minerales de antimonio y sus concentrados	Millones de USD	212,3	139,9	118,2	82,5	124,4
	Toneladas	89.300,2	62.584,2	43.152,4	26.153,3	29.093,3
Sulfato de bario natural (baritina)	Millones de USD	2,0	9,5	8,8	4,1	9,0
	Toneladas	15.092,0	118.186,1	87.340,0	34.951,7	79.793,0
Minerales de cobalto y sus concentrados	Millones de USD	604,8	183,2	111,8	92,7	140,2
	Toneladas	136.098,3	90.890,7	53.697,8	19.080,6	26.272,3
Espato flúor	Millones de USD	95,1	125,9	125,8	110,4	56,9
	Toneladas	..	..	..	..	..
Grafito natural	Millones de USD	54,6	99,9	17,5	38,8	120,5
	Toneladas	108.379,5	196.970,8	25.689,2	59.847,3	170.595,3
Helio y litio	Millones de USD	407,9	300,5	344,3	721,9	6.911,7
	Toneladas	..	29.332,2	50.116,0	81.050,1	136.125,9
Magnesio en bruto	Millones de USD	0,5	0,6	0,8	0,8	3,1
	Toneladas	..	..	..	..	525,4
Minerales de manganeso y sus concentrados	Millones de USD	5.811,2	6.356,3	4.884,3	4.901,9	5.752,6
	Toneladas	27.603.573,8	..	..	29.949.573,9	29.889.123,2
Paladio, en bruto o en polvo	Millones de USD	539,6	942,1	2.830,6	1.448,1	1.601,3
	Toneladas	..	..	41,1	19,8	23,7
Metales de las tierras raras	Millones de USD	1,2	2	6	21,2	3,1
	Toneladas	7,8	28,4	73	210,3	23
Minerales de estaño y sus concentrados	Millones de USD	738,6	660,9	554,7	1.319,4	2.040,2
	Toneladas	221.830,5	178.170,7	158.197,6	184.199,6	243.629,1

		2018	2019	2020	2021	2022
Minerales de volframio (tungsteno) y sus concentrados	Millones de USD	45,5	17,3	14,5	60,1	65,9
	Toneladas	6.658,0	..	3.024,2	5.802,7	5.901,0
Minerales de cinc y sus concentrados	Millones de USD	3.226,2	2.501	2.589,1	3.981,1	4.771,9
	Toneladas	2.963.835,1	..	3.824.519,1	..	4.127.948,3
Exportaciones						
Minerales de antimonio y sus concentrados	Millones de USD	6,3	5	5,7	1,8	5,7
	Toneladas	2.057,3	2.193,7	2.804,6	548	1.934
Sulfato de bario natural (baritina)	Millones de USD	158,7	141,6	88,2	139,5	133,1
	Toneladas	1.209.553	1.126.145,1	541.293,6	922.677,3	733.036,9
Minerales de cobalto y sus concentrados	Millones de USD	0,000	0,011	0,024	0,000	0,001
	Toneladas	0,0	0,1	0,1	0,0	0,3
Espato flúor	Millones de USD	138,5	134,6	64,5	87,6	212,3
	Toneladas	404.045,2	374.127,7	175.860,5	209.445,9	477.851,4
Grafito natural	Millones de USD	348,3	326,1	327,8	314,8	385,2
	Toneladas	339.713,6	288.885,2	237.567,4	272.648,6	244.757,6
Helio y litio	Millones de USD	172	170,8	75,6	134,5	796
	Toneladas	11.135	12.934,1	7.489,4	7.843	10.443,1
Magnesio en bruto	Millones de USD	798,1	890,8	758,8	1.482,6	2.259,5
	Toneladas	320.704,4	353.254,4	310.693,1	361.141,9	410.037,9
Minerales de manganeso y sus concentrados	Millones de USD	12,3	10,1	9,2	6,9	6,8
	Toneladas	51.094,2	52.035,7	38.128,1	15.201,7	16.107,3
Paladio, en bruto o en polvo	Millones de USD	7,4	28,5	172,3	0,1	9,9
	Toneladas	0,2	0,6	2,1	0,0	0,2
Metales de las tierras raras	Millones de USD	151,2	116	80,8	155,6	393,2
	Toneladas	7.385,2	6.850	6.192,7	9.443,8	9.139,3
Minerales de estaño y sus concentrados	Millones de USD	0,6	0,2	0,0	0,0	0,9
	Toneladas	61,2	26,8	0,0	0,0	75,4
Minerales de volframio (tungsteno) y sus concentrados	Millones de USD	2,1	0,4	0,0	0,0	0,2
	Toneladas	183,6	43,5	0,0	0,0	19,0
Minerales de cinc y sus concentrados	Millones de USD	0,2	0,1	4,6	0,2	0,0
	Toneladas	379,9	40,1	8.256,9	322,2	0,2

.. No disponible.

Fuente: Cálculos de la Secretaría de la OMC a partir de la base de datos UN Comtrade.

4.63. Las medidas que adoptan las autoridades respecto del sector se ajustan a lo previsto en el Plan Nacional de Recursos Minerales (2016-2020). En el Plan se define la visión estratégica de China para la prospección, utilización y protección de los recursos minerales durante el período 2016-2020.³⁶ Su propósito era obrar como documento de referencia para las reformas que emprendiera China con miras a lograr un desarrollo económico ordenado de la industria minera. El Plan apunta a i) promover la prospección de minerales respecto de los cuales se cuenta con una disponibilidad limitada; ii) reglamentar la cantidad de minerales con ventajas tradicionales; iii) reducir la producción de minerales que registran un exceso de capacidad; y iv) garantizar el suministro de minerales en las industrias emergentes estratégicas. En el Plan no se enumeran los minerales clasificados en función de su disponibilidad limitada, sus ventajas tradicionales o el exceso de capacidad, y las autoridades no han publicado listas a estos efectos.

³⁶ Agencia Internacional de la Energía, *National Plan for Mineral Resources (2016-2020)*. Consultado en: <https://www.iea.org/policies/15519-national-plan-for-mineral-resources-2016-2020>.

4.64. Aunque el Plan se refiere a determinados minerales energéticos³⁷, minerales ferrosos³⁸ y minerales no ferrosos³⁹ como minerales estratégicos, también hace hincapié en la importancia de las tierras raras y promueve un estricto control estatal de su explotación, teniendo en cuenta los niveles de explotación y consumo de este tipo de minerales y las nuevas reservas. Las fuentes oficiales indican que en 2020 China producía 146.600 toneladas de minerales de tierras raras. En el marco del Plan, China también atribuye gran importancia a la diversificación de sus fuentes de suministro de minerales, en particular mediante un aprovechamiento de los recursos naturales de las entidades que participan en la Iniciativa "Cinturón y Ruta".

4.65. Durante el período objeto de examen no se introdujeron cambios sustanciales en el marco jurídico e institucional del sector. La Ley de Recursos Minerales de 1986 (modificada por última vez en 2009) y su reglamento de aplicación⁴⁰ siguen siendo los principales instrumentos legislativos por los que se rige el sector de la minería. En los últimos años las autoridades han iniciado un proceso para modificar la Ley con miras a racionalizar aún más las actividades mineras. La economía y la sociedad de China se siguen desarrollando, y las autoridades consideran que han surgido nuevos desafíos y oportunidades en el sector de los recursos minerales. En consecuencia, la actual Ley de Recursos Minerales ya no alcanza para responder a las nuevas necesidades que se van planteando, y se ha de revisarla para regular mejor la prospección y extracción de minerales, mejorar la restauración ecológica de las zonas mineras y promover iniciativas nacionales de prospección y extracción de recursos minerales.

4.66. El Ministerio de Recursos Naturales es el organismo gubernamental encargado de administrar la industria minera. El Ministerio de Ecología y Medio Ambiente (encargado de la protección del medio ambiente) y el MOFCOM (responsable de regular las importaciones y exportaciones de productos minerales) también desempeñan funciones importantes en el sector.

4.67. El 31 de diciembre de 2021, el MOFCOM y la Administración General de Aduanas publicaron el Catálogo de Productos Básicos sujetos a la Administración de Licencias de Exportación correspondiente a 2022. El Catálogo se renovó en 2023, sin cambios importantes. Por lo que se refiere a los recursos minerales, en el Catálogo se prevé que deberán solicitar una licencia de exportación los exportadores de queroseno, petróleo bruto, petróleo refinado (excluidos los aceites de engrase, las grasas y los aceites de base lubricantes), arena natural (incluida la arena normal), bauxita, fosfato mineral, arena de magnesio, talco (en polvo); fluorita (espato flúor), tierras raras, estaño y sus productos y volframio (tungsteno) y sus productos (sección 3.2).

4.68. Los exportadores de cerio y determinadas aleaciones de cerio (de partículas de tamaño inferior a 500 micrones), volframio (tungsteno) y aleaciones de volframio (tungsteno) (de partículas de tamaño inferior a 500 micrones), circonio y berilio deben solicitar una licencia de exportación de productos y tecnologías de doble uso.

4.69. Además, en virtud del Anuncio sobre la aplicación de un control de las exportaciones de determinados artículos relacionados con el galio y el germanio, desde el 3 de julio de 2023 los exportadores deben solicitar al MOFCOM un permiso de exportación para determinados artículos de doble uso (militar o civil) si desean exportar productos relacionados con el galio y el germanio.

4.70. En general, los individuos o empresas del extranjero pueden poseer derechos de extracción en China. Sin embargo, de conformidad con las Medidas Administrativas Especiales relativas al Acceso de la Inversión Extranjera (Lista Negativa) (edición 2021), los inversores extranjeros no pueden invertir, de manera directa o indirecta, en la prospección o explotación de volframio (tungsteno), tierras raras y minerales radiactivos. Las Medidas Administrativas Especiales relativas al Acceso de la Inversión Extranjera en el Puerto Franco de Hainan (Lista Negativa para las zonas

³⁷ Petróleo, gas, gas de esquisto, carbón, metano de yacimientos carboníferos y uranio.

³⁸ Hierro, cromo, cobre, aluminio, oro, níquel, volframio (tungsteno), estaño, molibdeno, antimonio, cobalto, litio, tierras raras y circonio.

³⁹ Fósforo, potasa, grafito cristalino y fluorita.

⁴⁰ Reglamento de Aplicación de la Ley de Recursos Minerales (Decreto Nº 152 del Consejo de Estado, de 1994); Reglamento sobre el Registro para Explorar Recursos Mineros mediante el Sistema de Bloques (Decreto Nº 240 del Consejo de Estado, de 1998, modificado el 29 de julio de 2014); Procedimiento para la Administración del Registro de las Actividades de Extracción de Recursos Minerales (Decreto Nº 241 del Consejo de Estado, de 1998, modificado el 29 de julio de 2014); y Medidas relativas a la Administración de la Transferencia de Derechos de Prospección de Minerales y Derechos Mineros (Decreto Nº 242 del Consejo de Estado, de 1998, modificado el 29 de julio de 2014).

francas experimentales) (edición de 2020) suprimieron las restricciones a la inversión extranjera y nacional en las actividades de prospección y extracción de tierras raras, minerales radiactivos y volframio (tungsteno).

4.71. De conformidad con el Catálogo de Sectores en los que se Incentiva la Inversión Extranjera (edición de 2022), China alienta la inversión extranjera en la prospección, el desarrollo y la extracción de petróleo y gas natural (incluido el gas de esquisto y el metano de yacimientos carboníferos); el desarrollo y el uso de nuevas tecnologías para mejorar la tasa de utilización de residuos de la extracción minera y el uso integral de tecnologías de restauración ecológica en zonas mineras; y la prospección, extracción y preparación de minerales preciosos (como potasa y cromita) (sección 2.4.3).

4.72. En 2023, el promedio de los aranceles aplicados a los productos minerales distintos del petróleo no había variado de manera significativa y se situaba en el 6% (6,1% en 2021). Los tipos NMF aplicados oscilaban entre el 0% y el 21% (cuadro A3. 1). Los productos no metálicos estaban sujetos a los tipos arancelarios más altos.

4.2.2 Energía

4.2.2.1 Panorama general y cesta energética

4.73. China es uno de los principales productores y consumidores de energía del mundo.⁴¹ La producción y el consumo de energía han seguido creciendo de manera constante en los últimos años (cuadro 4.15). En 2023, la producción total de energía primaria ascendió a 4.830 millones de toneladas equivalentes en carbón y la tasa de autosuficiencia energética se situó en el 84,4%.

Cuadro 4.15 Producción y consumo de energía de China, 2018-2023

	2018	2019	2020	2021	2022	2023
Producción (miles de millones de toneladas de equivalente en carbón)	3,79	3,97	4,07	4,27	4,64	4,83
Consumo	4,64	4,86	4,98	5,26	5,41	5,72

Fuente: Ministry of Natural Resources, *China Mineral Resources Report* (varias ediciones).

4.74. Durante el período objeto de examen, para hacer frente al déficit energético del país, se incrementaron las importaciones de petróleo y gas, que en 2023 representaron aproximadamente el 20% de las importaciones totales de mercancías (cuadro A1. 4).

4.75. Según la Agencia Internacional de la Energía (IEA), en 2021, la producción interna de petróleo representó el 27,5% del suministro total de petróleo crudo de China.⁴² La diferencia se importa principalmente del Reino de la Arabia Saudita, la Federación de Rusia y el Iraq (cuadro 4.16). En marzo de 2022, se adoptó el 14º Plan Quinquenal para un Sistema Energético Moderno, que prevé, entre otras cosas, mantener una producción petrolera constante al nivel de 200 millones de toneladas al año registrado en 2021.

Cuadro 4.16 Principales interlocutores comerciales de China en las importaciones de petróleo crudo, 2018-2022

(En miles de toneladas)

	2018	2019	2020	2021	2022
Mundo	461.885,5	505.676,1	542.006,7	512.964,9	508.276,0
Arabia Saudita, Reino de la	71.491,6	83.329,6	84.928,6	87.567,6	87.488,5
Federación de Rusia	56.734,3	77.642,4	83.444,5	79.642,1	86.248,1
Iraq	45.050,7	51.798,0	60.114,0	54.079,4	55.486,7
Emiratos Árabes Unidos	12.196,3	15.279,6	31.155,3	31.937,5	42.770,9
Omán	32.901,8	33.866,4	37.877,7	44.815,4	39.370,1
Malasia	8.881,5	12.033,6	12.463,0	18.534,8	35.675,9
Kuwait, Estado de	23.212,2	22.688,8	27.497,5	30.163,4	33.283,3
Angola	47.379,1	47.342,0	41.772,4	39.154,9	30.087,9
Brasil	31.625,2	40.161,4	42.233,9	30.301,5	24.928,6

⁴¹ IEA (2016), *China's Engagement in Global Energy Governance*. Consultado en: <https://www.iea.org/reports/partner-country-series-chinas-engagement-in-global-energy-governance>.

⁴² IEA, *China: Oil*. Consultado en: <https://www.iea.org/countries/china/oil>.

	2018	2019	2020	2021	2022
Colombia	10.768,9	13.113,2	12.380,3	9.461,8	8.653,1
Estados Unidos	12.280,7	6.348,7	19.756,3	11.472,7	7.890,7
Qatar	1.347,7	858,3	6.199,1	7.850,1	7.705,4
Congo	12.579,6	11.957,8	9.244,0	8.928,0	7.092,6
Noruega	895,1	1.018,2	12.716,0	13.189,9	5.975,2
Kazajstán	2.287,4	2.742,9	3.644,6	4.492,7	5.889,1
Canadá	1.218,5	2.150,2	3.222,2	3.898,7	4.005,0
Libia	8.568,4	9.401,0	1.696,8	6.137,7	3.743,0
Gabón	3.625,5	6.934,0	5.853,1	2.850,0	3.168,9
Reino Unido	7.723,4	12.543,6	5.896,4	7.966,8	2.233,6
Ecuador	1.871,7	2.050,9	4.712,0	4.243,5	2.156,8

Nota: La clasificación de los 20 principales interlocutores de importación corresponde al año 2022.

Fuente: Recopilación realizada por la Secretaría de la OMC a partir de información de la base de datos UN Comtrade.

4.76. En 2020, China anunció sus Contribuciones Determinadas a Nivel Nacional (CDN) actualizadas, en las que se comprometía a alcanzar el punto máximo de sus emisiones de dióxido de carbono antes de 2030 y lograr la neutralidad en emisiones de carbono antes de 2060. Además, China tiene previsto reducir sus emisiones de dióxido de carbono por unidad del PIB en más de un 65% con respecto al nivel de 2005, aumentar la proporción de combustibles no fósiles en el consumo de energía primaria hasta alrededor del 25% para 2030 y elevar su capacidad instalada total de energía eólica y solar a más de 1.200 millones de kW para 2030. En este contexto, en 2021, China publicó dos documentos de política, "Logros, Nuevos Objetivos y Nuevas Medidas de China para las Contribuciones Determinadas a Nivel Nacional" y "Estrategia a Largo Plazo de China para un Desarrollo con Bajas Emisiones de Gases de Efecto Invernadero para Mediados de Siglo"⁴³, que representan el plan del país para cumplir el Acuerdo de París.

4.77. Aunque el consumo de energía sigue dependiendo principalmente del carbón, China tiene previsto apartarse de esta fuente. El país es un importador neto de carbón y en 2021 sus importaciones representaron el 7,7% del suministro total de carbón. En consonancia con los objetivos enunciados tanto en las CDN como en el 14º Plan Quinquenal para el Desarrollo de Energías Renovables (2021-2025)⁴⁴, está previsto que el carbón deje su actual posición dominante en el sistema energético para pasar a desempeñar una función suplementaria. Se espera que esta transición dé lugar a una disminución del consumo de carbón en 2026-2030. En el Plan no se exige el abandono del carbón, y las autoridades reconocen la importancia de este para salvaguardar la seguridad energética de China, especialmente para atender las necesidades energéticas básicas en momentos de menor disponibilidad de energía.⁴⁵ La importancia relativa del consumo de carbón ha ido disminuyendo en los últimos años. Las autoridades indican que se ha reducido, y en 2022 representó el 56,2% del consumo total de energía.

4.78. En los últimos años, China ha seguido mejorando su cesta energética favoreciendo las fuentes de energía no fósiles, como la energía hidroeléctrica, la nuclear, la eólica y la fotovoltaica. Las partes correspondientes a estas fuentes de energía aumentaron notablemente entre 2018 y 2022 (gráfico 4.1). En marzo de 2022, se adoptó el 14º Plan Quinquenal para un Sistema Energético Moderno. Su objetivo es aumentar en alrededor de un 20% la participación de la energía no fósil en el consumo total de energía para el período 2021-2025. En el Plan también se estableció el objetivo de reducir las emisiones de carbono por unidad del PIB en un 18% y el consumo de energía por unidad de PIB en un 13,5%. Se han adoptado diversas medidas concretas para hacer frente a las cuestiones relacionadas con la intensidad de carbono y energética, en particular el refuerzo de la aplicación de las leyes y reglamentos existentes, como la Ley de Conservación de Energía. En marzo de 2024, China también había publicado 364 normas nacionales de conservación de energía, destinadas a reforzar la supervisión de la conservación de energía, el etiquetado sobre eficiencia

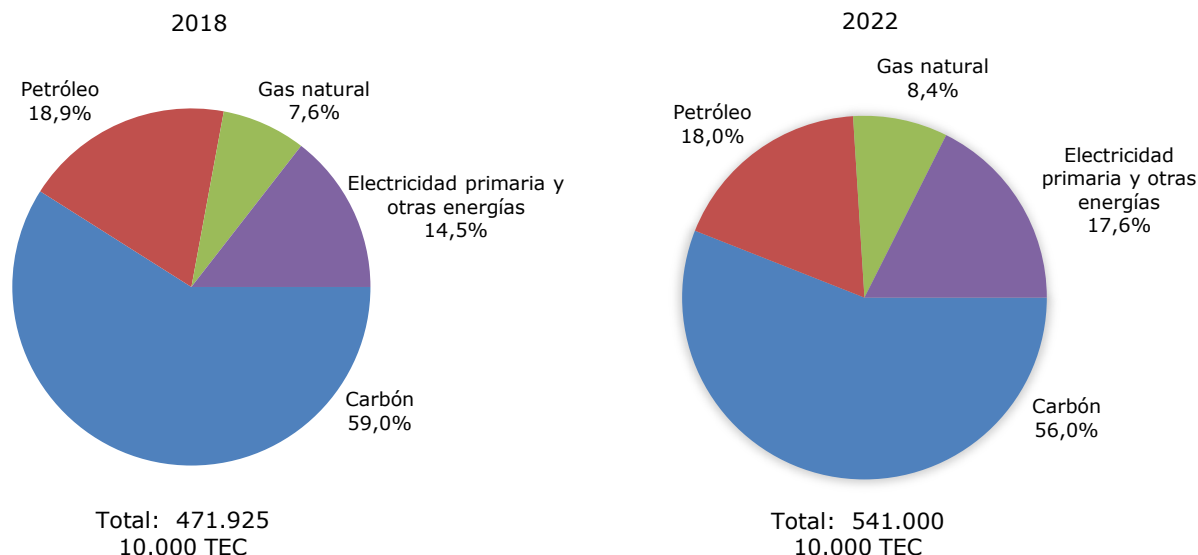
⁴³ CMNUCC, *China's Achievements, New Goals and New Measures for Nationally Determined Contributions* (traducción no oficial). Consultado en: <https://unfccc.int/sites/default/files/NDC/2022-06/China%E2%80%99s%20Achievements%2C%20New%20Goals%20and%20New%20Measures%20for%20Nationally%20Determined%20Contributions.pdf>.

⁴⁴ El 14º Plan Quinquenal para el Desarrollo de Energías Renovables (2021-2025) es uno de los principales documentos de política del sector energético. Se publicó en junio de 2022.

⁴⁵ IEA (2023), *Electricity Market Report 2023*. Consultado en: <https://iea.blob.core.windows.net/assets/255e9c8a-da84-4681-8c1f-458ca1a3d9ca/ElectricityMarketReport2023.pdf>.

energética y la gestión de la conservación de energía de las principales unidades consumidoras de energía. Las autoridades señalan que, entre 2019 y 2022, la intensidad de carbono de China se redujo un 4,1%, 1,0%, 3,8% y 0,8%, respectivamente, con respecto al año anterior; en 2023 no varió. Durante el mismo período, el consumo energético de China por cada CNY 10.000 del PIB ascendió a 0,55, 0,49, 0,48 y 0,48 toneladas equivalentes en carbón por CNY 10.000, respectivamente.

Gráfico 4.1 Consumo total de energía y su desglose, 2018 y 2022



TCE: Toneladas equivalentes en carbón.

Fuente: National Bureau of Statistics of China, National Data. Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

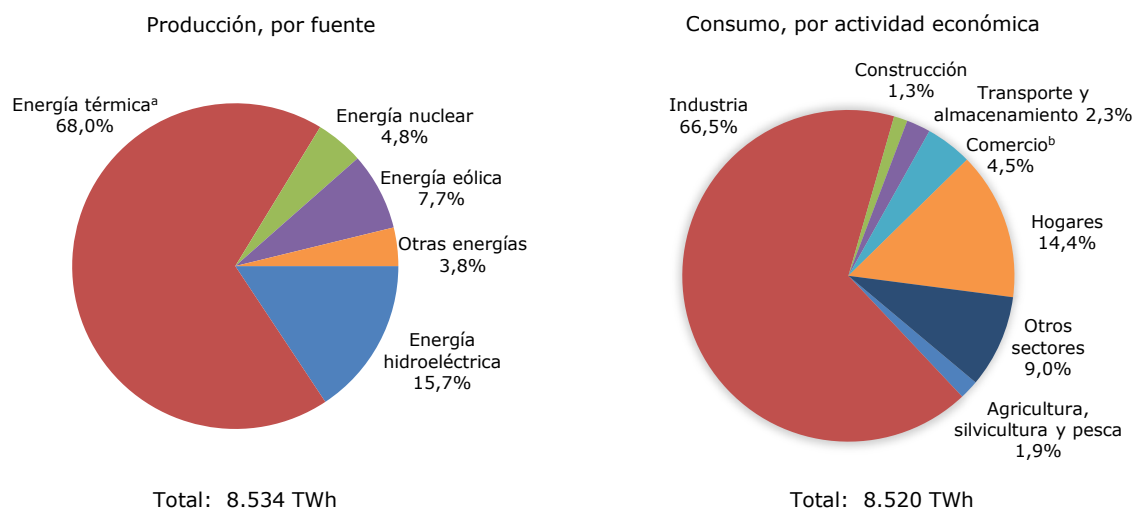
4.79. Con arreglo al Catálogo de Sectores con Incentivos a la IED, existen políticas preferenciales para los inversores extranjeros que invierten en determinadas tecnologías de energías limpias, incluidos el reciclado y la elaboración de palas de turbinas eólicas y módulos fotovoltaicos descartados, la construcción y explotación de determinados proyectos de generación de energía a partir de carbón limpio, y la mejora con bajas emisiones de carbono de materias primas petroquímicas y químicas.

4.80. El marco institucional del sector energético de China apenas ha cambiado. La Comisión Nacional de Energía (NEC) es el organismo de coordinación y consulta. La Administración Nacional de la Energía (NEA), dependiente de la NDRC, se encarga de formular y aplicar estrategias, planes y políticas de desarrollo de la energía; formular recomendaciones sobre las reformas institucionales en el sector de la energía; y desempeñar funciones ejecutivas como organismo de reglamentación y como oficina general de la NEC.

4.2.2.2 Electricidad

4.81. La Ley de Electricidad de 1995 (modificada por última vez en 2018) sigue siendo el principal instrumento legislativo por el que se rige el sector de la energía eléctrica de China. En el sector de la energía renovable, la Ley de Energía Renovable tiene por objeto promover el desarrollo y la utilización de energías renovables y establece un marco jurídico para las políticas preferenciales conexas de China. La capacidad de generación de electricidad de China siguió creciendo de manera constante durante el período objeto de examen. Según las autoridades, a finales de 2022, la capacidad instalada total era de 2.564,05 GW, frente a 2.376,92 GW en 2021. Ese mismo año, la energía eólica y la energía solar aportaron 365,44 GW y 392,61 GW, respectivamente.

4.82. La energía térmica, que en 2021 representó el 68% de la producción total de electricidad (71,1% en 2018), sigue dominando el sistema eléctrico de China; las fuentes renovables representaron alrededor del 32% en 2021 (29% en 2018). El sector industrial es el mayor consumidor de electricidad (gráfico 4.2).

Gráfico 4.2 Estructura de la producción y el consumo de electricidad, 2021

a Por energía térmica se entiende la electricidad generada mediante carbón, petróleo, gas, calor residual, incineración de residuos, y biomasa.

b Por comercio se entiende el comercio al por mayor y al por menor, y los servicios de hoteles y suministro de comidas.

Fuente: National Bureau of Statistics, National Data. Consultado en: <https://data.stats.gov.cn/english/easyquery.htm?cn=C01>.

4.83. El sector de la electricidad de China es la mayor fuente de emisiones de carbono, lo cual lo convierte en un factor decisivo de los esfuerzos de las autoridades para hacer frente al cambio climático.⁴⁶

4.84. El 14º Plan Quinquenal para el Desarrollo de Energías Renovables (2021-2025) prevé acelerar la adopción de energías renovables por China estableciendo el objetivo, entre otros, de lograr una participación del 33% de electricidad renovable en el consumo. También tiene por objeto conseguir que las energías renovables constituyan el 50% del consumo adicional de electricidad entre 2021 y 2025. No obstante, China mantiene restricciones al suministro de energía nuclear. De hecho, con arreglo a la Lista Negativa Nacional relativa a la Inversión Extranjera, los extranjeros solo pueden invertir en la construcción y explotación de centrales nucleares mediante una asociación con una parte china en la que esta tendrá la participación mayoritaria.

4.85. China aplica un conjunto de mecanismos que apoyan la inversión en energías limpias (sección 3.3.1). Las subvenciones a las tarifas reguladas, que permiten a los productores de energías renovables recibir un precio superior al del mercado eléctrico (con las centrales de carbón como referencia), han sido el principal instrumento de política utilizado en el último decenio.

4.86. El programa de tarifas reguladas de China funciona con un modelo basado en el costo. La NDRC, organismo regulador de los precios de la energía, establece distintas tarifas reguladas para diferentes proyectos de energías renovables que se ajustan a sus costos de producción. En los últimos años, la NDRC ha ido reduciendo gradualmente las tasas de subvención para tener en cuenta los avances en la tecnología de producción y la disminución de los costos de producción del sector.

4.87. El importe de la ayuda equivale a la diferencia entre las tarifas reguladas de las energías renovables y los precios de referencia de las centrales de carbón, y su pago se efectúa con cargo al Fondo para el Desarrollo de la Energía Renovable, que se financia con los ingresos derivados del recargo de las tarifas de energía renovable. Sin embargo, debido al crecimiento desenfrenado del número de proyectos de energía renovable, varias fuentes han indicado una acumulación de retrasos en los pagos. Así pues, parece que varios de los proyectos admisibles no han recibido la ayuda

⁴⁶ IEA (2020), *China's Net-Zero Ambitions: The Next Five-Year Plan Will Be Critical for an Accelerated Energy Transition*. Consultado en: <https://www.iea.org/commentaries/china-s-net-zero-ambitions-the-next-five-year-plan-will-be-critical-for-an-accelerated-energy-transition>.

durante varios años o han sufrido retrasos en los pagos.⁴⁷ Las autoridades señalan que la NDRC, el MOF y la NEA están trabajando intensamente con los departamentos pertinentes para subsanar los atrasos en las subvenciones a las energías renovables.

4.88. En 2021, las autoridades determinaron que las tarifas reguladas de las energías fotovoltaica y eólica fundamentalmente habían alcanzado los niveles necesarios para eliminar progresivamente las subvenciones y lograr la paridad con respecto a la energía térmica. Por consiguiente, los nuevos proyectos dejaron de financiarse y se aplicó una política de paridad que ajusta las tarifas reguladas a las de la energía térmica, ya que se considera que los costos de producción de ambas tecnologías se han igualado.⁴⁸ Las autoridades provinciales competentes en materia de precios establecen categorías específicas, como las de los proyectos de energía eólica marina y de energía solar de concentración, y aquellos que cumplen las condiciones requeridas pueden mantener tarifas reguladas.

4.89. Con arreglo a la ley, el Fondo para el Desarrollo de la Energía Renovable se empleará principalmente para apoyar las siguientes actividades de desarrollo y utilización de energías renovables: i) investigación científica y tecnológica, formulación de normas y proyectos de demostración para el desarrollo y la utilización de energías renovables; ii) proyectos de utilización de energías renovables para uso doméstico en zonas rurales y de pastoreo; iii) construcción de sistemas de energías renovables independientes en zonas remotas e islas; iv) exploración y evaluación de recursos y creación de un sistema de información conexo sobre energías renovables; y v) promoción de la producción localizada de energías renovables.⁴⁹ China ha mantenido la mayor capacidad instalada del mundo de energía eólica, solar e hidroeléctrica, y el papel de su amplia base manufacturera de energía eólica y solar ha sido fundamental para la viabilidad económica de estas tecnologías.

4.90. Las ayudas a las tarifas reguladas se están sustituyendo por una gama de políticas y de mecanismos orientados al mercado que aprovechan el juego de la oferta y la demanda para fomentar el crecimiento del mercado de la energía verde. Estos mecanismos tienen por objeto reducir la carga fiscal de las subvenciones a las tarifas reguladas y el incentivo del exceso de inversiones en las energías renovables.

4.91. En septiembre de 2021, China aplicó también su sistema nacional experimental de comercio de energía verde, con arreglo al cual se expiden certificados de electricidad verde únicamente para la energía eólica y la energía solar.⁵⁰ Los generadores de energía eólica y solar que no reciben subvenciones del Gobierno tienen prioridad en la venta de su energía en el mercado de la energía verde. El 3 de agosto de 2023, la NDRC, el MOF y la NEA publicaron un aviso sobre la ampliación del alcance de los certificados de electricidad verde para su uso como prueba a efectos de la prima ambiental de la electricidad generada mediante energía renovable.⁵¹ Actualmente, esos certificados pueden ser objeto de comercio en la Bolsa de la Electricidad de Beijing y la Bolsa de la Electricidad de Guangzhou. En su mayor parte, son solicitados por empresas con requisitos de consumo de energía verde (cuotas en forma de proporción de su consumo energético total).

4.92. En julio de 2021, China puso oficialmente en funcionamiento su mercado nacional de carbono, que abarca unas 2.162 centrales de energía térmica. Anteriormente, el Reglamento del Comercio de Emisiones de Carbono (aplicación provisional) y el Plan de Aplicación para la Determinación y Distribución de Contingentes Nacionales de Comercio de Emisiones de Carbono para 2019-2020 (Sector de Generación de Electricidad) contenían una lista de las principales unidades de emisión del sector de generación de electricidad incluidas en la gestión de los contingentes, así como los requisitos específicos para la asignación y observancia de los contingentes. Los contingentes de

⁴⁷ Energy Iceberg (2020), "China's Renewable Power Price and Subsidy: 'New' Design in 2020?" Consultado en: <https://energyiceberg.com/china-renewable-power-price/>.

⁴⁸ NDRC, Notice on Matters Related to China's Feed-in Tariff Policy for New Energy in 2021. Consultado en: https://www.ndrc.gov.cn/xwdt/tzqg/202106/t20210611_1283089.html?code=&state=123.

⁴⁹ State Council, *The Interim Measures for the Administration of the Collection and Use of the Renewable Energy Development Fund*. Consultado en: https://www.gov.cn/gongbao/content/2012/content_2131981.htm.

⁵⁰ NDRC (2021), "The Green Power Trading Plan Is Poised to Be Introduced - The Interpretation of the 'Green Power Trading Pilot Work Plan'", 28 de septiembre de 2021. Consultado en: https://www.ndrc.gov.cn/fqgz/fqzy/xmtjd/202109/t20210928_1298058.html?code=&state=123.

⁵¹ NDRC, Notification to Promote the Consumption of Electricity from Renewable Sources. Consultado en: https://gbdy.ndrc.gov.cn/gbdyczjd/202308/t20230803_1359095.html.

emisión se asignan de manera gratuita, teniendo en cuenta la producción histórica de la entidad y el tipo y origen de energía generada. Según las autoridades, en 2022, en el caso de las empresas participantes en el mercado nacional de emisiones de carbono, la intensidad de carbono por unidad de generación de energía térmica disminuyó un 2% con respecto a 2018.

4.93. Según las autoridades, el 18 de marzo de 2024, el volumen de comercio acumulado de contingentes de emisiones de carbono ascendió a 449 millones de toneladas y el volumen total de negocio se cifró en CNY 25.512 millones.

4.94. Está previsto que las industrias del hierro y el acero, los metales no ferrosos, el cemento, el vidrio plano, la cerámica, el papel, la construcción y el refinado de petróleo sean las próximas industrias intensivas en carbono que se incorporen al sistema nacional de comercio de carbono.⁵²

4.95. En 2022, China aprobó 106 gigavatios de nuevos proyectos de centrales de carbón y reactivó los proyectos suspendidos.⁵³

4.3 Manufacturas

4.3.1 Principales características y evolución reciente

4.96. En los últimos decenios, China se ha convertido en un importante centro manufacturero a nivel mundial. En la actualidad, la producción bruta de manufacturas de China es superior a la de los nueve siguientes mayores fabricantes en conjunto.⁵⁴ El sector manufacturero es el segundo principal sector económico del país, después de los servicios. Durante el período objeto de examen aportó entre un 26% y un 28% al PIB, representó alrededor del 28% del empleo total⁵⁵ y recibió aproximadamente el 25% de la inversión extranjera directa (IED) total. La inversión privada en el sector manufacturero de China ha sido tradicionalmente un motor importante del crecimiento económico.

4.97. Las autoridades consideran que los resultados de China en el sector manufacturero pueden deberse a su creciente integración en las cadenas de valor mundiales, impulsada por factores como la liberalización del comercio y las inversiones, la abundancia y la productividad de la mano de obra, el vasto mercado interno, la alta calidad de la infraestructura y la innovación. Sin embargo, la sostenibilidad a largo plazo del sector podría verse comprometida por los problemas ambientales, la disminución del crecimiento de la productividad, el aumento de los costos de mano de obra y el exceso de capacidad.

4.98. El comercio de productos manufacturados de China se ha mantenido resiliente frente a las perturbaciones recientes (cuadro 4.17). A pesar de la pandemia de COVID-19, las exportaciones de esos productos registraron una tendencia al alza. Las exportaciones de componentes de productos manufacturados han aumentado, debido también a la creciente demanda mundial de aparatos que posibilitan el teletrabajo, mientras que las de textiles han disminuido. Las importaciones de productos manufacturados se redujeron ligeramente en 2019 y 2020, pero experimentaron un acusado incremento en 2021, para luego descender en 2022 y 2023. Las exportaciones de productos manufacturados consisten principalmente en maquinaria y equipo de transporte, automóviles, productos químicos y productos conexos, textiles y prendas de vestir, hierro y acero. En 2023, los productos manufacturados representaron el 95,1% de las exportaciones de China (porcentaje ligeramente inferior al 95,4% registrado en 2019) y el 57,5% de sus importaciones (frente al 66,5% en 2019).

⁵² NDRC, Notice on the Issuance of the "Implementation Guide for Energy Conservation and Carbon Reduction Transformation and Upgrading in Key Areas of High Energy-Consuming Industries (edición de 2022)". Consultado en: https://www.ndrc.gov.cn/xwdt/tzqg/202202/t20220211_1315447.html.

⁵³ Centre for Research on Energy and Clean Air, *China Permits Two New Coal Power Plants per Week in 2022*. Consultado en: <https://energyandcleanair.org/publication/china-permits-two-new-coal-power-plants-per-week-in-2022/>.

⁵⁴ R. Baldwin (2024), "China Is the World's Sole Manufacturing Superpower: A Line Sketch of the Rise", 17 de enero de 2024, VoxEU. Consultado en: <https://cepr.org/voxeu/columns/china-worlds-sole-manufacturing-superpower-line-sketch-rise>.

⁵⁵ Según las autoridades, el sector secundario representa aproximadamente entre el 28% y el 29% del empleo total.

Cuadro 4.17 Comercio de manufacturas, 2018-2023

(En miles de millones de USD, salvo que se indique otra cosa)

	2018	2019	2020	2021	2022	2023
Exportaciones de manufacturas (CUCI Rev. 3)	2.352,0	2.360,0	2.475,2	3.223,9	3.424,0	3.215,9
% de las exportaciones totales	94,6	94,4	95,5	95,8	95,3	95,1
Productos químicos y productos conexos	167,5	161,8	169,2	264,3	313,3	260,0
Productos medicinales y farmacéuticos	17,4	17,3	22,1	48,7	35,1	22,3
Hierro y acero	62,6	55,1	46,5	84,5	100,9	88,7
Metales no ferrosos	27,5	26,3	23,8	37,4	45,3	36,9
Maquinaria	1.092,0	1.085,6	1.150,0	1.446,7	1.508,6	1.409,3
Máquinas de oficina y máquinas de procesamiento automático de datos	219,2	199,7	217,4	259,3	242,1	194,8
Equipo de transporte	116,1	109,9	108,3	171,6	196,2	238,2
Importaciones de manufacturas (CUCI Rev. 3)	1.434,0	1.343,5	1.378,5	1.710,5	1.626,3	1.471,4
% de las importaciones totales	67,1	64,7	67,1	63,6	59,9	57,5
Productos químicos y productos conexos	223,7	218,8	213,3	264,0	266,4	239,0
Productos medicinales y farmacéuticos	29,6	35,7	37,0	44,4	47,6	51,4
Hierro y acero	24,2	25,4	39,1	45,6	45,5	38,4
Metales no ferrosos	55,9	48,6	66,2	87,1	84,4	72,4
Maquinaria	724,7	689,3	742,3	902,3	848,3	747,8
Máquinas de oficina y máquinas de procesamiento automático de datos	57,2	56,7	59,4	73,9	62,7	55,1
Equipo de transporte	114,8	97,2	86,3	103,6	93,8	82,9

Fuente: Administración General de Aduanas de la República Popular China (GACC).

4.99. El promedio de los aranceles NMF aplicados en el sector manufacturero fue del 6,8% en 2023, frente al 7% en 2021 y el 9,5% en 2017. Debido a la amplia red de acuerdos comerciales preferenciales de China, el comercio de productos manufacturados con numerosas economías se beneficia de aranceles mucho más bajos.

4.100. El sector manufacturero de China está en general abierto a la inversión extranjera. Durante el período objeto de examen se suprimieron diversas restricciones a la IED en la producción de vehículos y satélites (sección 2.4). En marzo de 2024, China anunció la supresión de todas las restricciones a la inversión extranjera que quedaban en el sector manufacturero.⁵⁶ El número de sectores en los que se incentiva la IED ha aumentado con el tiempo, como se observa en las actualizaciones recientes del Catálogo de Sectores con Incentivos a la IED. Esto puede ser reflejo del interés de China en sus cadenas de producción en esferas como las de los semiconductores y el sector de las energías limpias. Según las autoridades, no existen disposiciones que obliguen a las empresas extranjeras a transferir tecnología en el sector manufacturero.

4.101. El principal organismo encargado de la formulación de políticas relativas al sector manufacturero es el Ministerio de Industria y Tecnología de la Información (MIIT), que determina la planificación y las políticas industriales de China y supervisa el sector. La Comisión Nacional de Desarrollo y Reforma (NDRC) se ocupa de coordinar el desarrollo del sector industrial y de elaborar estrategias de modernización industrial. Entre los objetivos de política de China para el sector manufacturero figura el desarrollo de las actividades de mayor valor añadido y basadas en el conocimiento a través de la innovación, pero también desempeñan un papel importante las consideraciones ambientales, como la reducción del consumo de energía y de la contaminación.

4.102. La iniciativa "Made in China 2025" (o China Manufacturing 2025), puesta en marcha en 2015, sigue siendo la principal iniciativa estratégica nacional para promover la modernización del sector manufacturero.⁵⁷ Su finalidad es ayudar a China i) a convertirse en una de las sólidas potencias

⁵⁶ Gobierno de China. Consultado en: https://www.gov.cn/yaowen/liebiao/202403/content_6939153.htm.

⁵⁷ Según las autoridades, Made in China 2025 es una iniciativa estratégica en materia de desarrollo industrial de naturaleza similar a la de otras iniciativas estratégicas publicadas por algunos Miembros desarrollados.

manufactureras para 2025; ii) a alcanzar el nivel medio de las potencias manufactureras mundiales para 2035; y iii) a situarse en la vanguardia de los líderes mundiales en la industria manufacturera para 2050. En el marco de la iniciativa se han identificado industrias estratégicas, entre ellas las siguientes: equipo aeroespacial; biotecnología; tecnología de la información; sistemas de fabricación inteligentes; ingeniería marítima; equipo ferroviario avanzado; vehículos eléctricos; equipo eléctrico; nuevos materiales; biomedicina; maquinaria y equipo agrícolas; productos farmacéuticos; y robótica. Las autoridades han indicado que no se dispone de datos sobre la cuantía de la financiación pública, en su caso, destinada a apoyar a la industria en el marco de esas iniciativas, ni de estudios de impacto relativos a la iniciativa "Made in China 2025".

4.103. En el marco del 14º Plan Quinquenal, China ha publicado desde 2021 diversos planes relacionados con el desarrollo industrial, como el Plan de Desarrollo de Sistemas de Fabricación Inteligentes, el Plan de Desarrollo de la Industria Robótica y el Plan de Desarrollo de la Industria de Vehículos Propulsados por Energías Alternativas. El objetivo general de los Planes es promover el desarrollo de la industria manufacturera o de un sector específico. En los Planes se proponían varios objetivos de desarrollo específicos; por ejemplo, el Plan de Desarrollo de Sistemas de Fabricación Inteligentes tiene por objeto lograr la digitalización y la creación de redes de cooperación en el 70% de las empresas manufactureras por encima de un determinado tamaño designado, y fomentar el establecimiento de más de 150 proveedores profesionales de soluciones de fabricación inteligentes.

4.104. Otras medidas adoptadas durante el período objeto de examen incluyen las siguientes: Aviso sobre Diversas Políticas para Promover el Crecimiento Constante de la Economía Industrial⁵⁸; Plan de Aplicación para la Revitalización de la Actividad Económica Industrial y la Promoción del Desarrollo Industrial de Alta Calidad⁵⁹; Dictámenes de Ejecución del Programa Piloto de Desarrollo de la Innovación en el Sector Manufacturero⁶⁰; Plan de Aplicación para la Promoción de la Renovación del Equipo en el Sector Industrial⁶¹; Aviso sobre la Ejecución del Proyecto Piloto de la Nueva Transformación Tecnológica del Sector Manufacturero⁶²; Dictámenes de Ejecución sobre la Promoción de la Innovación y el Desarrollo Industriales en el Futuro⁶³; y Diversos Reglamentos sobre la Producción y Gestión de Aeronaves Civiles no Tripuladas.⁶⁴

4.105. Los fondos gubernamentales de orientación desempeñan un papel fundamental en la consecución de los objetivos de la política industrial de China (sección 3.3.1). Varios de esos fondos se centran específicamente en el sector manufacturero. Algunos de ellos están relacionados con la iniciativa "Made in China 2025" (cuadro 3.14); según las autoridades, se trata de fondos de inversión orientados al mercado y no reciben subvenciones ni tienen funciones de política industrial. Otros fondos gubernamentales de orientación que apoyan a las empresas de propiedad estatal, las pymes, la innovación o el desarrollo regional también tienen importantes consecuencias para el sector manufacturero.

4.106. El sector manufacturero de China es un importante receptor de donaciones, financiación para investigación y concesiones fiscales (sección 3.3.1). Las notificaciones de subvenciones presentadas por China en 2021 y 2023 se refieren a numerosas medidas de política destinadas a apoyar al sector manufacturero y el desarrollo tecnológico en general.⁶⁵ Según la base de datos CSMAR, en 2022 las subvenciones concedidas a empresas chinas del sector manufacturero

⁵⁸ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2022-02/18/content_5674530.htm.

⁵⁹ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/2021-12/14/content_5660752.htm.

⁶⁰ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/202401/content_6927680.htm.

⁶¹ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/202404/content_6944252.htm.

⁶² MIIT. Consultado en: https://www.miit.gov.cn/jgsj/qhs/wjfb/art/2024/art_e729e42187d64d61b82f067ebc9fca30.html.

⁶³ Gobierno de China. Consultado en: https://www.gov.cn/zhengce/zhengceku/202401/content_6929021.htm.

⁶⁴ MIIT. Consultado en: https://www.miit.gov.cn/gyhxxhb/jgsj/cyzcyfgs/bmgz/jdcjxl/art/2024/art_60819d411ad149d58ac3b0a03fd05fcb.html.

⁶⁵ Documentos [G/SCM/N/372/CHN](#) y [G/SCM/N/401/CHN](#) de la OMC, de 27 de agosto de 2021 y 20 de julio de 2023, respectivamente.

ascendieron a CNY 160.000 millones (sección 3.3.1). En la mayoría de los subsectores del sector manufacturero abundan las empresas de propiedad estatal.

4.107. Conforme a la reglamentación vigente, los productos remanufacturados (productos mecánicos y eléctricos) se consideran productos usados y están sujetos a las disposiciones relativas a las restricciones o prohibiciones a la importación de mercancías usadas. En julio de 2023, el Consejo de Estado de China publicó el Aviso sobre Diversas Medidas relativas a la Promoción de la Apertura Institucional de las Zonas Francas Experimentales y los Puertos Francos Calificados para su Armonización con las Normas Internacionales de Alto Nivel, con miras a promover el programa piloto sobre las importaciones de productos remanufacturados derivados fundamentales en algunas zonas francas.

4.3.2 Subsectores seleccionados

4.3.2.1 Automóviles, aeronaves, y sus partes y componentes

4.108. China es el mayor mercado mundial de automóviles, tanto en términos de demanda como de producción. En 2023, la producción local de vehículos fue por primera vez superior a 30 millones de unidades, frente a 25,3 millones en 2020.⁶⁶ Las exportaciones de vehículos automóviles ascendieron a más de USD 44.000 millones en 2022, frente a menos de USD 10.000 millones en 2020 (cuadro 4.18).

4.109. El MIIT supervisa cuestiones tales como las licencias de producción, las normas sobre la eficiencia del consumo de combustibles y la reglamentación sobre emisiones. De conformidad con la Política Comercial sobre el Sector del Automóvil publicada en 2005, la importación de vehículos usados y sus partes y componentes está prohibida. Las empresas de propiedad estatal desempeñan una importante función en el sector del automóvil.

4.110. Una de las prioridades de la política industrial del país es la producción de automóviles propulsados por energías alternativas. China tiene actualmente uno de los mercados de vehículos eléctricos de más rápido crecimiento del mundo.⁶⁷ Las exportaciones de vehículos eléctricos han aumentado considerablemente en los últimos años, y en 2022 superaron la cifra de USD 20.000 millones, mientras que el nivel de las importaciones se mantuvo constante entre 2017 y 2022 (cuadro 4.18). En noviembre de 2023, la producción mensual de vehículos eléctricos de China excedió por primera vez de 1 millón de unidades.

Cuadro 4.18 Comercio de vehículos automóviles, 2017-2022

(En millones de USD)

	2017	2018	2019	2020	2021	2022
Exportaciones	7.176,9	8.627,7	8.633,0	9.927,7	24.389,1	44.687,9
Vehículos eléctricos únicamente	110,0	129,8	438,1	1.578,9	8.596,3	20.088,9
Importaciones	49.946,1	49.596,4	47.056,8	44.924,0	52.852,7	52.273,9
Vehículos eléctricos únicamente	1.468,9	1.198,5	2.466,8	949,6	797,1	1.445,0

Fuente: Información recopilada por la Secretaría de la OMC a partir de información de la base de datos UN Comtrade.

4.111. En el contexto del presente examen no se ha facilitado información sobre las subvenciones a la producción de vehículos eléctricos más allá de la contenida en las notificaciones de subvenciones de China. Las autoridades han indicado que las políticas aplicadas a nivel subcentral para fomentar la compra de vehículos eléctricos no se utilizan directamente para subvencionar a las empresas, y que este tipo de política no es específico y no está sujeto a prescripciones en materia de notificación.

4.112. La industria aeronáutica de China es todavía relativamente joven. En mayo de 2023 comenzó a realizar vuelos comerciales una aeronave de fuselaje estrecho, con capacidad para unos 160 pasajeros, construida por la empresa de propiedad estatal COMAC. Actualmente, esa aeronave solo

⁶⁶ China Association of Automobile Manufacturers. Consultado en: <http://en.caam.org.cn/Index/lists/catid/69.html>.

⁶⁷ Agencia Internacional de la Energía, *Trends in Electric Cars*. Consultado en: <https://www.iea.org/reports/global-ev-outlook-2024/trends-in-electric-cars>.

está certificada por China. En la notificación de subvenciones presentada por China en 2023 se indica que existe un tipo preferencial del IVA para grandes aeronaves de pasajeros y aeronaves de transporte regional nuevas, así como políticas relativas al impuesto de propiedad de la vivienda y al impuesto sobre el uso de terreno urbano para las empresas dedicadas al diseño y fabricación de grandes aeronaves de pasajeros y sus motores.⁶⁸

4.3.2.2 Maquinaria, equipo, electrónica e industrias conexas

4.113. Las exportaciones de maquinaria de China ascendieron a más de USD 1,4 billones en 2023, frente a menos de USD 1,1 billones en 2019. Las importaciones se situaron en unos USD 750.000 millones en 2023, frente a USD 690.000 millones en 2019.

4.114. Las autoridades han indicado que la política industrial del subsector de la maquinaria tiene por objeto fomentar el desarrollo a través de la innovación; promover la transformación para lograr un sector inteligente, ecológico y orientado a los servicios; promover la optimización de las estructuras industriales; mejorar la calidad de los productos; aumentar las tasas de utilización de los recursos y la energía; y reducir las emisiones contaminantes.

4.115. En 2023, el MIIT y otros organismos gubernamentales adoptaron un plan para el desarrollo de una industria robótica cuyo objetivo es convertir a China en un centro mundial de excelencia en innovación en tecnología robótica, fabricación avanzada y aplicaciones integradas para 2025. En 2021, el Ministerio de Industria y Tecnología de la Información, junto con otros órganos gubernamentales, formuló el 14º Plan Quinquenal relativo al Plan de Desarrollo de la Industria Robótica. En el Plan se proponía convertir a China para 2025 en una fuente mundial de innovación en tecnología robótica, en un clúster de fabricación de productos de alta gama y en un lugar propicio para crear aplicaciones integradas.

4.116. Las autoridades consideran que el sector de los circuitos integrados es un sector estratégico que favorece el desarrollo y la seguridad nacionales. En la iniciativa "Made in China 2025" se insistía en la atención prestada por China a la tecnología de la información de nueva generación, en particular a los semiconductores.

4.117. China depende en gran medida de las importaciones de circuitos integrados de alta gama. La importancia de la demanda de semiconductores es un reflejo de la especialización del país en el montaje de productos electrónicos, ya que la mayoría de las microplaquetas semiconductoras (chips) no están destinadas a su consumo efectivo en China, sino que se reexportan a otros países en forma de equipo electrónico (por ejemplo, teléfonos, televisores y tabletas). Durante el período objeto de examen, importantes interlocutores comerciales impusieron controles a la exportación de determinados semiconductores y productos conexos a China.

4.118. El Fondo Nacional de Inversiones para el Sector de los Circuitos Integrados y los fondos conexos a nivel provincial y municipal se encargan de inyectar capital en el sector de los semiconductores de China (cuadro 3.14). Se aplica un régimen fiscal especial a las empresas que producen semiconductores específicos.⁶⁹ Esas medidas no se han notificado a la OMC. En agosto de 2020, el Consejo de Estado publicó el Aviso sobre Diversas Políticas para Promover el Desarrollo de Alta Calidad del Sector de los Circuitos Integrados y el Sector de los Programas Informáticos en la Nueva Era (Guo Fa [2020] Nº 8), en las que se prevé la prestación de apoyo al sector de los semiconductores en términos de finanzas y tributación, inversión y financiación, investigación y desarrollo, importación y exportación, y talento.

4.3.2.3 Hierro, acero y construcción naval

4.119. Según las autoridades, en 2022 la capacidad de producción de acero en bruto de China era de 1.102 millones de toneladas, y la producción de acero en bruto ascendió a 1.018 millones de

⁶⁸ Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

⁶⁹ China ofrece exenciones totales del impuesto sobre la renta de las sociedades a las empresas que produzcan circuitos integrados con un nodo de 28 nanómetros o menos durante un período de 10 años. Las empresas admisibles que producen circuitos integrados con un nodo de 65 nanómetros o menos pueden beneficiarse de una exención fiscal total durante cinco años, seguida de una reducción del 50% de los tipos impositivos en los cinco años siguientes. Consultado en: <https://www.chinatax.gov.cn/eng/c101269/c5160133/content.html>.

toneladas; en 2023, la producción de acero en bruto de las empresas privadas productoras de acero representó alrededor del 60% del total nacional, mientras que la de las empresas de propiedad estatal representó en torno al 40%, y la de las 10 principales empresas productoras de acero representó el 41% de la producción nacional de acero en bruto. El sector cuenta con varios grandes grupos estatales que son propiedad de las autoridades locales, los Gobiernos provinciales y el Gobierno central mediante participación en el capital.⁷⁰

4.120. El Gobierno es consciente del exceso de capacidad en el sector del acero. Los esfuerzos por eliminar el exceso de capacidad de producción se siguen rigiendo por los Dictámenes sobre la Reducción del Exceso de Capacidad en el Sector del Acero para Impulsar el Desarrollo mediante la Solución de Dificultades (Guo Fa [2016] Nº 66), que prohíben la creación de nueva capacidad de producción de acero. En abril de 2021 se publicaron las Medidas de Aplicación para la Sustitución de la Capacidad en la Industria Siderúrgica (Gong Xin Bu Yuan [2021] Nº 46) con miras a seguir reduciendo el exceso de capacidad de producción de hierro y acero. El objetivo de una de las medidas incluidas en la última notificación de subvenciones de China es reducir el exceso de capacidad.⁷¹ En enero de 2022, el MIIT, conjuntamente con la NDRC y el Ministerio de Ecología y Medio Ambiente, publicó las Orientaciones sobre la Promoción del Desarrollo de Alta Calidad del Sector Siderúrgico, que tienen por objeto, entre otros, limitar estrictamente la instalación de nueva capacidad de producción de hierro y acero.

4.121. Otras políticas de apoyo al desarrollo de la industria siderúrgica incluyen las Medidas de Aplicación para la Sustitución de la Capacidad en la Industria Siderúrgica (Gong Xin Bu Yuan [2021] Nº 46) y las Orientaciones sobre la Promoción del Desarrollo de Alta Calidad del Sector Siderúrgico (Gong Xin Bu Yuan [2022] Nº 6).

4.122. En el marco de la iniciativa "Made in China 2025", la construcción naval se considera uno de los 10 sectores prioritarios. En los últimos años, el nivel del diseño y la construcción de buques ha mejorado rápidamente, y el sector de la construcción naval civil de China se ha caracterizado por una tendencia a la construcción de más tipos de buques "de alta gama", como grandes trasatlánticos y buques de transporte de gas natural licuado (GNL).

4.123. La última notificación de subvenciones de China no contiene cifras específicas sobre las subvenciones asignadas al sector de la construcción naval. Sin embargo, se indica que las empresas navieras pueden beneficiarse de la amortización acelerada de los activos fijos.⁷²

4.124. En agosto de 2021 se completó la fusión de las dos principales empresas públicas de construcción naval del país —China State Shipbuilding Corp. (CSSC) y China Shipbuilding Industry Co. (CSIC)—, de la que surgió la mayor empresa de construcción naval del mundo.

4.4 Servicios

4.4.1 Servicios de telecomunicaciones

4.4.1.1 Panorama general

4.125. China es uno de los mercados de telecomunicaciones de mayor tamaño del mundo, como prueba su número de abonados a los servicios de telefonía (recuadro 4.2). En 2023, la transmisión de información, los programas informáticos y la tecnología de la información representaron el 4,4% del PIB, frente a un 3,1% en 2019 (sección 1.1).

4.126. Según se desprende de los datos oficiales, el valor añadido del sector de las telecomunicaciones de China aumentó un 5,1% en 2022 gracias al notable crecimiento de nuevos sectores de actividad y al rápido desarrollo de nuevas infraestructuras. Durante el mismo período, los ingresos generados por las empresas del sector superaron los 1,58 billones de CNY, lo que equivale a un incremento del 8% con respecto al año anterior. Los ingresos combinados de los

⁷⁰ Según las autoridades, las empresas privadas productoras de acero representan más del 60% de la producción de acero en bruto.

⁷¹ Fondo Especial de Incentivos y Subvenciones para la Reestructuración de Empresas Industriales en la Región Autónoma de Guangxi Zhuang; en 2021, su presupuesto notificado fue de CNY 161 millones. Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

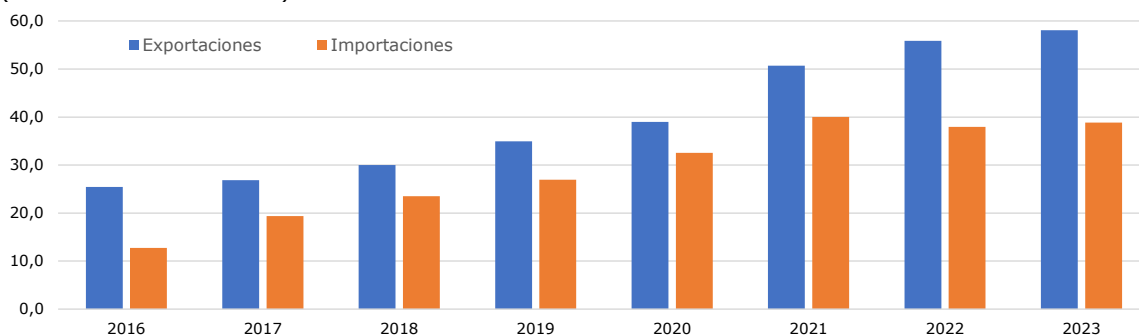
⁷² Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

nuevos sectores de actividad, como los centros de datos de Internet, la computación en la nube y la Internet de las cosas, aumentaron un 32,4%. Durante el mismo período, la inversión en el sector de las telecomunicaciones también registró un crecimiento importante (del 3,3% en términos interanuales) hasta alcanzar CNY 419.300 millones en 2022.⁷³

4.127. El comercio de servicios de telecomunicaciones ha seguido creciendo en los últimos años (gráfico 4.3), a pesar de que las importaciones disminuyeron considerablemente entre 2021 y 2022 debido a las repercusiones de la pandemia COVID-19 y las restricciones asociadas a ella. Según las autoridades, la innovación permanente en el campo digital y el aumento de la demanda de servicios digitales se han convertido en importantes fuerzas impulsoras del comercio de servicios de telecomunicaciones de China. Las autoridades han señalado asimismo que las empresas chinas que participan en la externalización de tecnologías de la información a nivel internacional han registrado un crecimiento interanual del 7,9% en 2023, con un valor total de USD 60.570 millones. En 2023, los tres principales mercados destinatarios de la externalización de las tecnologías de la información fueron los Estados Unidos; Hong Kong, China; y la Unión Europea.

Gráfico 4.3 Comercio en los sectores de las telecomunicaciones y los servicios de informática e información, 2016-2022

(Miles de millones de USD)



Fuente: Administración Estatal de Divisas. Consultado en: <http://www.safe.gov.cn/>.

4.128. Los principales operadores que prestan servicios de telecomunicaciones fijos y móviles son tres empresas públicas (China Telecom, China mobile y China Unicom). La participación del Estado en estas tres empresas de telecomunicaciones ha disminuido entre 2020 y 2022.⁷⁴ En 2020, China Broadnet, otra empresa pública, se convirtió en la única empresa autorizada por el Gobierno para prestar servicios móviles, fijos, de banda ancha y de televisión por cable en China. En 2022, el operador se sumó a sus tres homólogos y comenzó a ofrecer servicios 5G. China ha seguido registrando un rápido crecimiento de sus redes 5G. Según las autoridades, en 2023 había más de 2,73 millones de estaciones de base 5G (frente a 400.000 en 2020, como se indicó en el examen anterior). Solo en 2022 se construyeron cerca de 887.000 estaciones de base 5G. En 2022 había 561 millones de usuarios de redes móviles 5G, lo que equivale a un tercio de los usuarios de los servicios de telefonía móvil de China.⁷⁵

4.129. La explotación de nuevos sectores de actividad en el campo de las telecomunicaciones, como los centros de datos de Internet, la computación en la nube o la Internet de las cosas, corre fundamentalmente a cargo de empresas privadas.

4.130. Según las autoridades, las tarifas de telecomunicaciones están determinadas por el mercado y son las empresas de telecomunicaciones quienes las fijan. Los precios de los servicios de

⁷³ State Council (2023), "China's Telecom Industry Reports Steady Expansion in 2022", 19 de enero. Consultado en:

https://english.www.gov.cn/archive/statistics/202301/19/content_WS63c93615c6d0a757729e5e02.html.

⁷⁴ La proporción de acciones de propiedad estatal de China Telecom, China Mobile y China Unicom era del 82,85%, el 72,72% y el 52,10%, respectivamente.

⁷⁵ State Council (2023), "China's Telecom Industry Reports Steady Expansion in 2022", 19 de enero. Consultado en:

https://english.www.gov.cn/archive/statistics/202301/19/content_WS63c93615c6d0a757729e5e02.html.

telecomunicaciones, en porcentaje del ingreso nacional bruto (INB) per cápita, son significativamente inferiores a los precios medio de Asia y del resto del mundo (cuadro 4.19).

Recuadro 4.2 Indicadores seleccionados del sector de las telecomunicaciones, 2022

Datos económicos

Número total de abonados a líneas telefónicas: 1,776 billones (en 2020)

Tasas de penetración (2022):

Total de abonados a servicios de telefonía (por cada 100 habitantes): 131,95%

Abonados a servicios de telefonía móvil (% del total de abonados a servicios de telefonía): 90,4%

Usuarios de Internet (por cada 100 habitantes): 75,6%

Abonados a servicios de Internet de banda ancha (por cada 100 habitantes): 41,8%

Principales operadores:

Número de empresas que prestan servicios de telecomunicaciones de valor añadido: 147.000 empresas (abril de 2023).

Nombres y cuotas de mercado de los principales proveedores de servicios de telecomunicaciones (fijos y móviles) (2022): China Telecom (28%), China Mobile (52%) y China Unicom (20%).

Nombres y cuotas de mercado de los principales proveedores de servicios de Internet de banda ancha (2022): China Telecom (37,5%), China Mobile (43,5%) y China Unicom (19%).

Participación extranjera en el capital de las empresas de telecomunicaciones:

En abril de 2023, un total de 1.426 empresas extranjeras habían invertido en empresas de telecomunicaciones chinas.

Propiedad estatal:

En 2022, la proporción de acciones de propiedad estatal de China Telecom, China Mobile, China Unicom y China Broadnet era del 75,15%, el 70,42%, el 51,7% y el 100,00%, respectivamente.

Fuente: Información facilitada por las autoridades.

Cuadro 4.19 Precios de las telecomunicaciones como porcentaje del INB per cápita, 2022

	China	Asia y el Pacífico	Mundo
Precios de los servicios móviles de voz	0,45	1,1	1,0
Precios de los servicios móviles de voz y de datos	0,99	2,2	2,3
Precios de los servicios de líneas fijas de banda ancha (5 GB)	0,45	2,6	2,6

Fuente: UIT, *ICT Price Baskets (IPB) 2022*. Consultado en: <https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/IPB.aspx>.

4.4.1.2 Marco de políticas y reglamentario

4.131. Según las autoridades, los objetivos de China en el sector de las telecomunicaciones no han variado durante el período objeto de examen. Uno de ellos es orientar y facilitar un desarrollo sólido y de calidad del sector mediante una asignación de recursos más eficaz y la mejora de la accesibilidad y asequibilidad de los servicios de comunicaciones. Entre las medidas desplegadas para mejorar la competencia y la eficacia, las autoridades mantienen programa de portabilidad de números que permite a los usuarios de telefonía móvil cambiar de proveedor sin perder su actual número de teléfono.

4.132. Según las autoridades, la implantación en todo el país del servicio de portabilidad numérica finalizó a finales de 2019. A finales de febrero de 2024 habían recurrido a este servicio unos 100 millones de abonados.

4.133. El marco institucional y jurídico no ha experimentado grandes cambios. El MIIT sigue siendo el organismo encargado de la reglamentación del sector. Supervisa la concesión de licencias, establece las normas sectoriales y administra las tarifas de acceso. En el plano provincial y local, esta responsabilidad corresponde a los departamentos administrativos encargados de los servicios de telecomunicaciones. El Reglamento de Telecomunicaciones de 2000 (modificado por última vez en 2016) sigue siendo el principal fundamento jurídico en el que se basa el sector. Se complementa con un amplio conjunto de reglamentos de aplicación que abarcan muy diversas cuestiones, entre ellas la concesión de licencias, la recaudación de derechos, la interconectividad y la participación extranjera. El proceso de concesión de licencias se basa en el Catálogo de Servicios de Telecomunicaciones de 2015 (que no ha sido modificado durante el período examinado). Este

documento distingue entre los servicios de telecomunicaciones básicos y los servicios de telecomunicaciones de valor añadido. Los titulares de licencias solo están autorizados a realizar las actividades que se especifican en sus licencias respectivas.

4.134. La participación extranjera en el sector de las telecomunicaciones sigue estando sujeta a algunas restricciones. Estas restricciones se enuncian en los compromisos de apertura de los mercados suscritos en el Protocolo de adhesión de China a la OMC, en la Lista Negativa Nacional y en la Lista Negativa para las Zonas Francas Experimentales (sección 2.4.1). Según se especifica en estos compromisos, la participación extranjera en los servicios de telecomunicaciones de valor añadido (salvo en el caso del comercio electrónico, las comunicaciones nacionales entre múltiples partes, el almacenamiento y retransmisión y los centros de llamadas) no debe superar el 50%. Con arreglo al Reglamento de Telecomunicaciones, la participación o acciones del Estado en las empresas dedicadas a la prestación de servicios de telecomunicaciones básicas no debe ser inferior al 51%. En el caso de las inversiones en servicios de redes privadas virtuales (VPN) nacionales, la participación extranjera no puede superar el 50%. Al igual que en el examen anterior, los servicios en la nube no están abiertos a la inversión extranjera.

4.135. Las autoridades han indicado que, en 2022, China publicó la Decisión sobre la Modificación y Derogación de determinados Reglamentos Administrativos y revisó las Disposiciones sobre la Administración de las Empresas de Telecomunicaciones con Financiación Extranjera. La reforma ha suprimido las prescripciones que obligaban a los posibles inversores extranjeros a demostrar unos resultados sólidos y experiencia operativa en empresas de telecomunicaciones. También ha establecido una base jurídica que permite a las autoridades flexibilizar o eliminar en determinados casos las restricciones relativas al porcentaje de participación extranjera en el sector de las telecomunicaciones, y ha reducido de 90 a 60 días el plazo de tramitación de las solicitudes de autorización para los servicios de telecomunicaciones de valor añadido.

4.136. Según las autoridades, en abril de 2023 un total de 1.426 empresas extranjeras habían invertido en empresas de telecomunicaciones chinas (recuadro 4.2). Esta cifra representa un incremento notable con respecto a finales de 2020, fecha en la que 395 empresas de capital extranjero habían penetrado en el mercado de telecomunicaciones de China.

4.137. El MIIT sigue alentando la construcción conjunta y el uso compartido de las infraestructuras de telecomunicaciones a fin de limitar el desarrollo de instalaciones de telecomunicaciones superfluas. Por ejemplo, en mayo de 2023, el MIIT y otros 14 departamentos publicaron conjuntamente los Dictámenes de Ejecución relativos a la Intensificación de la Construcción Conjunta y el Uso Compartido de Infraestructuras de Telecomunicaciones y a la Promoción de un Desarrollo de Calidad de las Redes de "Doble Gigabit" (Gong Xin Bu Lian Tong Xin [2023] Nº 59). Los Dictámenes de Ejecución definen diversas tareas que deben llevarse a cabo para, entre otras cosas, construir y compartir las infraestructuras de telecomunicaciones, y promover la construcción de redes de "doble gigabit", en particular mediante el apoyo a la construcción conjunta y el uso compartido a las redes de acceso 5G.⁷⁶ Según las autoridades, desde la introducción de la política de uso compartido de las instalaciones de telecomunicaciones, la tasa de uso compartido de las torres de nueva construcción ha pasado de un 14,3% en 2014 a un 83% en 2023. Esto significa que se han construido conjuntamente y se están compartiendo más de 2,51 millones de estaciones de base 5G. Las autoridades han señalado asimismo que este incremento se ha traducido en un importante aumento de la eficacia y ha supuesto la eliminación de 980.000 torres potenciales, un ahorro superior a CNY 176.000 millones y una reducción de las emisiones de carbono de 26 millones de toneladas.

4.4.1.3 Evolución de la economía digital

4.138. Según la Academia China de Tecnologías de la Información y las Comunicaciones (CAICT), entre 2016 y 2022 la economía digital china ha más que duplicado su tamaño, pasando de

⁷⁶ Dictámenes de Ejecución relativos a la Intensificación de la Construcción Conjunta y el Uso Compartido de Infraestructuras de Telecomunicaciones y a la Promoción de un Desarrollo de Calidad de las Redes de "Doble Gigabit", publicados conjuntamente por el Consejo de Estado, el Ministerio de Industria y Tecnología de la Información y otros 14 departamentos. Consultado en: https://www.gov.cn/lianbo/bumen/202305/content_6876197.htm.

CNY 22,6 billones a más de CNY 50 billones (más del 41% del PIB).⁷⁷ Las infraestructuras de telecomunicaciones avanzadas, incluido el creciente número de estaciones de base 5G y la cadena industrial de macrodatos, han contribuido de manera crucial al crecimiento de la economía digital en el país.

4.139. Las grandes inversiones en I+D han contribuido a la transformación digital de China. En el Índice Mundial de Innovación de 2023 elaborado por la OMPI, China ocupaba el puesto 12º de las 132 economías incluidas. En cuanto al gasto realizado en I+D, China ocupaba el segundo puesto en la clasificación mundial.⁷⁸ Además, entre los principales centros de innovación científica y tecnológica del mundo, el de Shenzhen-Hong Kong, China-Guangzhou ocupaba el segundo lugar y el de Beijing el cuarto lugar.⁷⁹ China es uno de los países con mayor número de titulares de patentes de invención en el ámbito digital. A finales de 2023, los tres principales sectores que contribuían al crecimiento de las patentes de invención en China eran los métodos de gestión de la tecnología informática, la tecnología informática y los programas de comunicaciones básicos. Además, según se desprende de la información oficial del Consejo de Estado, a finales de 2022 había en China 1,6 millones de patentes de invención en los sectores esenciales de la economía digital, de las cuales cerca del 80% correspondían a entidades chinas.⁸⁰

4.140. La rápida digitalización de la economía china debería impulsar la productividad, sobre todo en el sector financiero, donde las herramientas de la inteligencia artificial (IA) pueden, por ejemplo, reducir las asimetrías de información y permitir así a las empresas y los particulares adoptar mejores decisiones financieras y reducir potencialmente sus costos.⁸¹

4.141. Según las autoridades, el auge de la economía digital en China ha creado importantes oportunidades de empleo en el sector de los servicios. En el sector del comercio electrónico, por ejemplo, han surgido numerosas pymes gracias a las grandes plataformas tecnológicas chinas. También ha aumentado el empleo en el sector de las TIC.

4.142. Por otro lado, en los últimos años la creciente automatización en el sector manufacturero se ha visto acompañado de la pérdida de puestos de trabajo. No obstante, parece que la incidencia neta de la digitalización sobre el empleo es positiva.⁸²

4.143. Con el fin de desarrollar la economía digital china en un entorno competitivo, las autoridades han adoptado recientemente medidas para regular la competencia en el mercado de los sectores económicos en que operan esas plataformas. Por ejemplo, en 2021, la antigua Comisión Antimonopolio del Consejo de Estado publicó las Directrices de la Comisión Antimonopolio del Consejo de Estado sobre la Lucha contra el Monopolio en la Esfera de la Economía de las Plataformas de Internet. China ha diseñado diversas políticas y estrategias para fomentar el crecimiento sostenible de la economía digital. Las autoridades han señalado que, en los últimos años, el país ha puesto en marcha su estrategia nacional sobre la economía digital y los macrodatos, ha acelerado la mejora de las infraestructuras digitales, ha promovido nuevas formas y modelos empresariales y ha maximizado el potencial de los elementos de datos, con objeto de fomentar "la industrialización digital y la digitalización industrial".

4.144. Se han puesto en marcha varias estrategias para facilitar el crecimiento de la industria digital y potenciar un desarrollo de calidad de la economía digital. Entre ellas, cabe citar el 14º Plan Quinquenal de Desarrollo de la Economía Digital⁸³, el Plan General para la Construcción de una China

⁷⁷ CAICT (2022), *White Paper on Global Digital Economy*. Consultado en: http://www.caict.ac.cn/english/research/whitepapers/202303/t20230316_416850.html.

⁷⁸ OMPI (2023), *Global Innovation Index 2023*. Consultado en: <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-en-main-report-global-innovation-index-2023-16th-edition.pdf>.

⁷⁹ OMPI (2023), *Global Innovation Index 2023*.

⁸⁰ Información basada en las estadísticas de la Administración Nacional de la Propiedad Intelectual de China (CNIPA).

⁸¹ FMI (2019), *China's Digital Economy: Opportunities and Risks*, IMF Working Paper WP/19/16. Consultado en: <https://www.imf.org/en/Publications/WP/Issues/2019/01/17/Chinas-Digital-Economy-Opportunities-and-Risks-46459>.

⁸² IMF Working Paper WP/19/16, página 10.

⁸³ Consejo de Estado, Aviso del Consejo de Estado sobre la Publicación y Distribución del 14º Plan Quinquenal de Desarrollo de la Economía Digital. Consultado en: https://www.gov.cn/zhengce/content/2022-01/12/content_5667817.htm.

Digital⁸⁴, el 14º Plan Quinquenal de Desarrollo de la Industria de los Macrodatos⁸⁵ y el 14º Plan Quinquenal de Desarrollo de la Informatización y la Integración Industrial.⁸⁶

4.145. Otro de los objetivos de los actuales esfuerzos de China por mejorar su política digital es reforzar el marco reglamentario de la economía digital. Un ejemplo es la adopción del Dictamen relativo al Desarrollo de un Sistema de Datos Básicos⁸⁷, cuya finalidad es optimizar la utilización de los elementos de datos. Para aumentar el grado de alfabetización digital en la sociedad e impulsar el crecimiento socioeconómico digital, varios ministerios y comisiones han colaborado para adoptar directivas como los Elementos Esenciales para Mejorar la Alfabetización y las Competencias Digitales, de 2023, y los Elementos Esenciales para el Desarrollo de Aldeas Digitales, también de 2023.

4.4.1.4 Evolución en el ámbito de la ciberseguridad

4.146. Los problemas de seguridad que plantea la transformación digital de la economía china siguen siendo motivo de preocupación. Las autoridades han señalado que China ha presentado la Iniciativa Mundial para la Gobernanza de la IA a fin de promover un enfoque equilibrado del desarrollo y la seguridad en el ámbito de la IA. También han expresado su disposición a intensificar los intercambios y el diálogo mundial para reforzar la gobernanza mundial de la IA.

4.147. A medida que el ritmo de la digitalización continúa cobrando impulso y mejorando la eficiencia en diversas ramas de producción, surgen también una serie de nuevos riesgos cibernéticos de rápida evolución. Las autoridades han adoptado recientemente un conjunto de medidas en materia de ciberseguridad que incluyen políticas, leyes, reglamentos y directrices para mitigar esos riesgos. Por ejemplo, en 2021, la Administración del Ciberespacio de China (CAC) elaboró el Reglamento de Protección de la Seguridad de las Infraestructuras Críticas de Información para i) proteger las infraestructuras de información claves (relacionadas, entre otras cosas, con los servicios financieros y los servicios públicos) contra ataques, intrusiones, interferencias e intentos de destrucción, ii) preservar la seguridad de las infraestructuras críticas de información y iii) garantizar la ciberseguridad.

4.148. Como se indicó en el examen anterior, China ha promulgado la Ley de Ciberseguridad, la Ley de Seguridad de los Datos y la Ley de Protección de la Información Personal, el Reglamento de Protección de la Seguridad de las Infraestructuras Críticas de Información, las Medidas para el Examen de la Ciberseguridad, el Aviso sobre Diversas Disposiciones relativas a la Administración de la Seguridad de los Datos relativos a los Automóviles (versión de prueba) y las Medidas relativas a la Evaluación de la Seguridad de la Transferencia de Datos de Salida. Según las autoridades, estas disposiciones sirven de base para evaluar la ciberseguridad, gestionar la seguridad de los datos, proteger la información personal y evaluar la seguridad de las transferencias transfronterizas de datos a fin de preservar la seguridad del ciberespacio de China.

4.149. Las normas de China sobre las transferencias transfronterizas de datos, enunciadas en la Ley de Ciberseguridad, disponen que la información personal y los datos importantes recopilados y generados por los operadores de infraestructuras críticas de información en el marco de las actividades que llevan a cabo en China deben someterse a una evaluación de la seguridad siempre que sea necesario comunicar esos datos fuera del país por razones comerciales.⁸⁸ La Ley de Seguridad de los Datos y las Medidas relativas a la Evaluación de la Seguridad de los Datos

⁸⁴ Comité Central del Partido Comunista de China y Consejo de Estado, Plan General para la Construcción de una China Digital. Consultado en: https://www.gov.cn/zhengce/2023-02/27/content_5743484.htm.

⁸⁵ MIIT, Aviso del Ministerio de Industria y Tecnología de la Información sobre la Publicación y Distribución del "14º Plan Quinquenal" de Desarrollo de la Industria de los Macrodatos. Consultado en: https://www.gov.cn/zhengce/zhengceku/2021-11/30/content_5655089.htm.

⁸⁶ MIIT, Aviso del Ministerio de Industria y Tecnología de la Información sobre la Publicación y Distribución del "14º Plan Quinquenal" de Desarrollo de la Informatización y la Integración Industrial. Consultado en: https://www.gov.cn/zhengce/zhengceku/2021-12/01/content_5655208.htm.

⁸⁷ Consejo de Estado, Dictamen del Comité Central del Partido Comunista de China y el Consejo de Estado relativo al Desarrollo de un Sistema de Datos Básicos para Mejorar la Utilización de los Elementos de Datos. Consultado en: https://www.gov.cn/zhengce/2022-12/19/content_5732695.htm?eqid=fa4ca900000012d100000004647899c9.

⁸⁸ Según las autoridades, la expresión "datos importantes" hace referencia a aquellos datos que son importantes desde la perspectiva nacional.

Exportados disponen asimismo que las empresas encargadas del tratamiento de datos que comunican datos importantes al extranjero, los operadores de infraestructuras críticas de información y las empresas encargadas del tratamiento de datos que gestionan información que concierne a un elevado número de personas deben evaluar la seguridad siempre que faciliten información personal fuera de China.

4.150. La Ley de Protección de la Información Personal establece procedimientos específicos para las empresas dedicadas a la transferencia transfronteriza de datos. En concreto, dispone que, cuando una empresa que se ocupa del tratamiento de información personal debe enviar datos fuera de China por razones legítimas de carácter comercial o de otro tipo, puede hacerlo empleando diferentes métodos. Estos métodos consisten, entre otros, en llevar a cabo una evaluación de la seguridad de la transferencia de datos, obtener un certificado relativo a la protección de la información personal, o firmar un contrato normalizado sobre la transferencia con el destinatario situado fuera de China. Además, en el supuesto de que un tratado o acuerdo internacional en el que China sea parte prevea condiciones para la transferencia de información personal fuera de China, deben respetarse esas condiciones. Al parecer, las prescripciones de China sobre la transferencia transfronteriza de datos han suscitado preocupación en algunas empresas extranjeras que operan en China, debido a los posibles costos de cumplimiento y a la incertidumbre.⁸⁹

4.151. En agosto de 2023, el Consejo de Estado instó a establecer "canales verdes" para que las empresas extranjeras que cumplieran los requisitos previstos pudieran exportar datos, así como programas piloto para crear una lista de los datos que pueden transferirse libremente a través de las fronteras en zonas designadas, como Beijing, Tianjin y Shanghai.⁹⁰ El 22 de marzo de 2024, la CAC promulgó y comenzó a aplicar el Reglamento de Promoción y Regulación de los Flujos Transfronterizos de Datos. El Reglamento, entre otras cosas, flexibiliza las condiciones aplicables a los flujos transfronterizos de datos y reduce el alcance de la evaluación de la seguridad de los datos de salida. Se han adoptado exenciones de la obligación de informar sobre las evaluaciones de la seguridad para las siguientes actividades de transferencia de datos: comercio y actividades internacionales (por ejemplo, compras transfronterizas, remesas transfronterizas, reservas de billetes de avión y hoteleras, y solicitudes de visado); información personal recopilada y gestionada en el extranjero sin que se hayan añadido datos personales nacionales o datos importantes en el curso del tratamiento; casos en los que es necesario facilitar información personal al extranjero para concluir y ejecutar contratos entre particulares; gestión transfronteriza de recursos humanos; situaciones de emergencia; e intercambio de volúmenes de datos limitados (para determinadas empresas que procesen información referente a menos de 100.000 personas).

4.152. Además, el Reglamento establece un sistema de lista negativa en las zonas francas experimentales que permite a las empresas de estas zonas que se ocupan del tratamiento de datos comunicar al extranjero datos que no figuren en la lista negativa, sin necesidad de respetar determinadas prescripciones en materia de declaración y certificación.

4.153. Hay varias medidas legislativas y tecnologías de Internet que restringen el acceso a un gran número de sitios web que difunden información o documentación contrarias a la legislación china. Además, está prohibido o limitado utilizar redes privadas virtuales (VPN) para navegar por Internet.⁹¹ Aunque las autoridades han señalado que la finalidad de estas medidas es permitir que los ciudadanos y las organizaciones accedan legalmente a Internet, se ha observado que las medidas podrían en algunos casos resultar perjudiciales para la libre circulación de la información y la productividad laboral (sección 2.4.1).

4.154. Durante el período objeto de examen se adoptaron varias medidas con repercusiones en el sector tecnológico a fin de seguir regulando los servicios de Internet y garantizar la seguridad del ciberespacio. Por ejemplo, el 31 de diciembre de 2021, la CAC, el MIIT, el Ministerio de Seguridad Pública y la Administración Estatal de Reglamentación del Mercado (SAMR) publicaron las Disposiciones relativas a la Administración de las Recomendaciones generadas por Algoritmos para

⁸⁹ Véase, por ejemplo, Cámara de Comercio de la Unión Europea en China (2023), *Flash Survey: The Impact of China's Data Regulations on European Business*. Consultado en: <https://www.europeanchamber.com.cn/en/flash-survey-on-impact-of-china-s-data-regulations>.

⁹⁰ Consejo de Estado, Dictamen sobre la Intensificación de los Esfuerzos para atraer Inversiones Extranjeras. Consultado en: https://www.gov.cn/zhengce/content/202308/content_6898048.htm.

⁹¹ Véase, por ejemplo, la Circular relativa al Saneamiento y Reglamentación del Mercado de Servicios de Acceso a Internet.

los Servicios de Información en Internet, que entraron en vigor el 1 de marzo de 2022. Estas Disposiciones tienen por objeto, entre otras cosas, reforzar la transparencia del funcionamiento de los algoritmos y dar a los usuarios una mayor control sobre los datos que utilizan las empresas para alimentar esos algoritmos.

4.155. El 27 de junio de 2022, la CAC anunció las Disposiciones relativas a la Administración de la Información sobre las Cuentas de los Usuarios de Internet. Las Disposiciones, que entraron en vigor el 1 de agosto de 2022, tienen por finalidad mejorar la administración de la información sobre las cuentas de los usuarios de Internet para, entre otras cosas, promover el buen desarrollo de los servicios de información en Internet.

4.156. El 25 de noviembre de 2022, la CAC, el MIIT y el MSP anunciaron conjuntamente las Disposiciones relativas a la Administración de la IA Generativa en los Servicios de Información en Internet, que entraron en vigor el 10 de enero de 2023. Estas Disposiciones establecen obligaciones amplias para los proveedores de servicios de IA generativa y apoyo técnico en materia de seguridad de los datos, protección de la información personal, transparencia, gestión del contenido, etiquetado y seguridad técnica.

4.4.2 Servicios financieros

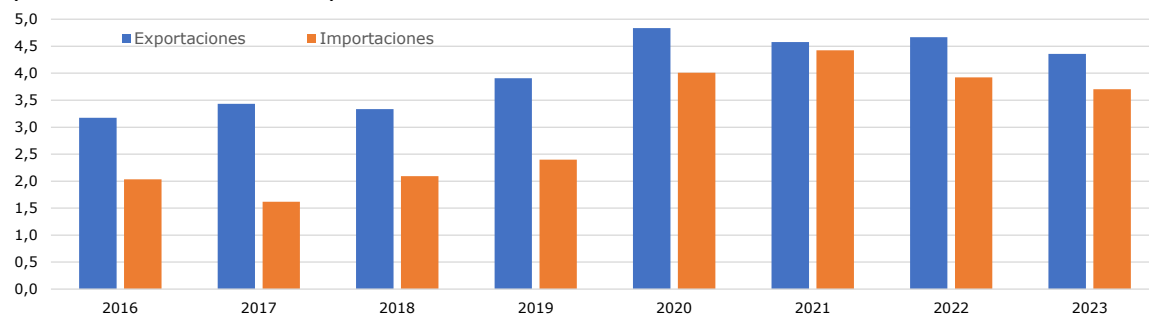
4.4.2.1 Resultados sectoriales y objetivos de política

4.4.2.1.1 Resultados sectoriales

4.157. En 2022, los servicios financieros representaban el 8,0% del PIB (frente al 7,9% en 2021) y daban empleo a 7,4 millones de personas (un descenso con respecto a los 8,59 millones de 2020 y los 8,19 millones de 2021). En los últimos años, el comercio de servicios financieros de China ha experimentado un crecimiento notable (gráfico 4.4). El aumento de las importaciones fue particularmente perceptible hasta 2021. Esta tendencia pone de relieve que China ha seguido abriendo su sector de servicios financieros, por ejemplo permitiendo que empresas con participación de capital extranjero presten servicios de calificación crediticia, gestión de activos, administración de fondos de pensiones y corretaje, y eliminando los límites a la participación extranjera en sociedades de valores, empresas de futuros y sociedades de gestión de fondos.⁹² Durante el período objeto de examen, China siguió siendo un exportador neto de servicios financieros.

Gráfico 4.4 Comercio de servicios financieros, 2016-2023

(En miles de millones de USD)



Fuente: Administración Estatal de Divisas. Consultada en: <http://www.safe.gov.cn/>.

4.158. La financiación social⁹³ alcanzó un total de CNY 32 billones en 2022, frente a CNY 31,3 billones en 2021. Sin embargo, la tasa de crecimiento fue inferior a la tendencia debido a los efectos económicos de la pandemia de COVID-19. La proporción de préstamos bancarios en el crédito total a la economía disminuyó del 64,2% al 63,7% en el mismo período. A principios de 2023 se produjo una fuerte reactivación de los nuevos préstamos bancarios a raíz de las medidas gubernamentales de apoyo a la economía. Las autoridades han señalado que, a finales de 2023, el

⁹² Documento [WT/TPR/S/415/Rev.1](#) de la OMC, de 9 de marzo de 2022.

⁹³ Medida del crédito total a la economía que incluye préstamos bancarios, bonos corporativos, préstamos encomendados y préstamos fiduciarios.

saldo de los préstamos en moneda nacional y en divisas era de CNY 242,24 billones, lo que supone un incremento interanual del 10,1%.

4.159. La estructura del sector financiero sigue estando marcada por un fuerte predominio de los bancos con respecto a otros tipos de instituciones financieras (Cuadro 4.20). Los datos facilitados por las autoridades indican que el sector bancario sigue estando muy concentrado. A finales del tercer trimestre de 2023 (el período más reciente sobre el que se disponía de datos), los activos de las instituciones bancarias de China en el país y en el extranjero alcanzaban CNY 409,8 billones, lo que representa un aumento interanual del 9,5%.⁹⁴ De esos activos, CNY 173,3 billones correspondían a los principales bancos comerciales (los seis grandes bancos de propiedad estatal), una cuantía equivalente al 40,8% del total.⁹⁵ Los activos de los bancos comerciales por acciones ascendían a CNY 69,6 billones y representaban el 17% de los activos totales de las instituciones financieras en China. Los activos del sector bancario chino aumentaron durante el período objeto de examen en respuesta al reiterado llamamiento de los organismos de reglamentación en favor de un mayor apoyo al crédito a las empresas.⁹⁶

Cuadro 4.20 Activos de las instituciones financieras en China, 2020-2023

(En billones de CNY)

Período	Activos totales de las instituciones financieras	De los cuales: instituciones bancarias	De los cuales: instituciones de seguros
T1 de 2020	332,94	302,39	21,72
T2 de 2020	340,43	309,41	21,98
T3 de 2020	347,32	315,18	22,44
T4 de 2020	353,19	319,74	23,3
T1 de 2021	364,62	329,58	24,26
T2 de 2021	371,26	336	23,99
T3 de 2021	375,68	339,36	24,32
T4 de 2021	381,95	344,76	24,89
T1 de 2022	396,39	357,90	25,67
T2 de 2022	407,42	367,68	26,64
T3 de 2022	413,46	373,88	26,71
T4 de 2022	419,64	379,39	27,15
T1 de 2023	439,33	397,25	28,37
T2 de 2023	449,21	406,25	29,2
T3 de 2023	452,82	409,77	29,59

Nota: Los activos totales, los pasivos totales y el patrimonio de las instituciones financieras son la suma de los correspondientes indicadores de las instituciones bancarias, las sociedades de valores y las instituciones de seguros. Las instituciones bancarias son las entidades jurídicas (incluidas las sucursales en el extranjero), con exclusión del PBOC. Las instituciones de seguros son los grupos de seguros (holdings), las compañías de seguros y las sociedades de gestión de activos de seguros.

Fuente: Información facilitada por las autoridades.

4.160. La evolución del sector bancario se caracterizó por importantes riesgos para la estabilidad financiera, derivados de una desaceleración del crecimiento económico, vulnerabilidades en los balances de algunos Gobiernos locales y tensiones en el mercado inmobiliario (aunque a escala limitada, según las autoridades).⁹⁷ La calidad de los activos de los bancos comerciales se mantuvo bastante estable en el tercer trimestre de 2023. En comparación con el mismo período de 2022, las cifras oficiales muestran una disminución de 0,01 puntos porcentuales en la proporción de préstamos dudosos, que se situó en el 1,61%. Sin embargo, en términos absolutos, el saldo pendiente de préstamos dudosos de los bancos comerciales era de CNY 3,2 billones, lo que supone un aumento de CNY 24.400 millones.

⁹⁴ National Financial Regulatory Administration (NFRA), *Supervisory Statistics of the Banking and Insurance Sectors – 2023 Q3*. Consultado en: <https://www.cbirc.gov.cn/en/view/pages/ItemDetail.html?docId=1142474>.

⁹⁵ El Banco Postal de Ahorros de China, el Banco Industrial y Comercial de China, el Banco Agrícola de China, el Banco de China, el Banco de la Construcción de China y el Banco de Comunicaciones siguen siendo los grandes bancos estatales de China, los más importantes del sistema financiero nacional.

⁹⁶ PBOC, Declaración oficial. Consultada en: <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/5033430/index.html>.

⁹⁷ Las autoridades señalan que el 80% del saldo de CNY 53 billones de préstamos inmobiliarios corresponde a préstamos personales para vivienda, cuya repercusión en el sector bancario es limitada.

4.161. A finales de 2023, el saldo de préstamos dudosos de las instituciones financieras del sector bancario era de CNY 3,95 billones, lo que representa un incremento interanual del 3,9%, muy por debajo de la tasa de crecimiento de diversos préstamos. La proporción de préstamos dudosos se situó en el 1,62%, es decir, una disminución interanual del 0,1%. En esa misma fecha, el coeficiente de capital de los bancos comerciales de China era del 15% y el coeficiente de aprovisionamiento del 205%. Las autoridades consideraron que el sector bancario presentaba un nivel de resultados satisfactorio y que los riesgos financieros eran en general controlables. Señalan que se dispone de recursos y condiciones adecuados para hacer frente a los riesgos, como los más de CNY 50 billones de capital y provisiones de los sectores de la banca y los seguros de China, el fondo de garantía de estabilidad financiera del país y diversos fondos de garantía sectoriales.

4.162. El incremento de los préstamos dudosos en todos los bancos estatales parece deberse principalmente al sector de la construcción/inmobiliario.⁹⁸ En 2023 disminuyó el total de préstamos del sector bancario al sector inmobiliario (suma de préstamos hipotecarios y préstamos a promotores inmobiliarios). En cambio, los bancos siguieron aumentando los préstamos a proyectos verdes, incluidas las energías renovables, en respuesta a la iniciativa de neutralidad en emisiones de carbono, considerada de prioridad nacional (cuadro 4.21).

Cuadro 4.21 Datos sobre préstamos bancarios al sector inmobiliario y préstamos verdes, 2021-2023

(En billones de CNY)

Año	Préstamos al sector inmobiliario	Préstamos a promotores inmobiliarios	Préstamos personales para vivienda	Préstamos verdes
2021	52,17	12,01	38,32	15,9
2022	53,16	12,69	38,8	22,03
2023	52,63	12,88	38,17	30,08

Fuente: Información facilitada por las autoridades.

4.163. En cuanto al sector de los seguros, en el tercer trimestre de 2023 los activos acumulados de las compañías de seguros alcanzaron CNY 29,6 billones, lo que supone un aumento de CNY 2,4 billones y del 9% desde el comienzo del año. Entre 2020 y 2023, el porcentaje anual de activos totales correspondiente al conjunto de las cinco principales compañías de seguros fue del 47,5%, el 49,2%, el 49,1% y el 49,5%, respectivamente.⁹⁹

4.164. A finales del tercer trimestre de 2023, el coeficiente de solvencia global del sector de los seguros era del 194% y el coeficiente de solvencia básico del 126%.

4.165. En el sector de las pensiones, las autoridades han indicado que en el primer trimestre de 2023 el total de las primas de seguros de pensiones privados ascendía a CNY 5.080 millones y había 429.000 pólizas emitidas (frente a 339.000 en 2022 por valor de CNY 3.840 millones).

4.166. El mercado de valores de China es el segundo más importante del mundo. Según las autoridades, a finales de julio de 2023 cotizaban en las bolsas chinas (Shanghái, Beijing y Shenzhen) 5.251 empresas (frente a 4.697 en 2021 y 5.079 en 2022) y la capitalización bursátil total era de unos CNY 85 billones (CNY 92 billones en 2021 y CNY 79 billones en 2022).

4.4.2.1.2 Objetivos de política

4.167. La finalidad esbozada en el 14º Plan Quinquenal de Desarrollo Económico y Social y en los Objetivos a Largo Plazo es establecer un sistema financiero fuerte que se caracterice por una alta competitividad e inclusividad y tenga solidez suficiente para apoyar la economía real.

⁹⁸ China Banking News (2023), "China's Big Six State-owned Banks Unscathed by Real Estate Debt Woes According to 2022 Results", 3 de abril de 2023, consultado en: <https://www.chinabankingnews.com/2023/04/03/chinas-big-six-state-owned-banks-unscathed-by-real-estate-debt-woes-according-to-2022-results/>; y Nikkei Asia (2023), "China's Top Banks Report Rising Bad Loans as Property Woes Spread", 31 de agosto de 2023, consultado en: <https://asia.nikkei.com/Business/Markets/China-debt-crunch/China-s-top-banks-report-rising-bad-loans-as-property-woes-spread>.

⁹⁹ China Life Insurance Company Ltd; Ping An Life Insurance Company of China; China Pacific Life Insurance Co. Ltd; Taikang Life Insurance Co. Ltd; y New China Life Insurance Co. Ltd.

4.168. En octubre de 2023 se celebró en China la última conferencia central sobre cuestiones financieras. Esta reunión de alto nivel proporcionó orientaciones para configurar la trayectoria del sector a largo plazo.¹⁰⁰ En esa conferencia, el Gobierno hizo hincapié en su determinación de fomentar la estabilidad y el desarrollo económicos y financieros con "características chinas" distintivas. Otra de las grandes prioridades es el imperativo de atraer más instituciones financieras extranjeras y capital a largo plazo para las operaciones e inversiones en China. El Gobierno también destacó la importancia de mantener una supervisión centralizada del sector financiero, como queda plasmado en la reciente reestructuración del marco de supervisión de la nación (sección 4.4.2.2).

4.169. Según las autoridades, China está decidida a aplicar una serie de medidas para mitigar y abordar con eficacia los riesgos financieros. Esas medidas se centran principalmente en la gestión de los riesgos asociados a la deuda de los Gobiernos locales, el fomento de las instituciones financieras pequeñas y medianas, la lucha contra las actividades financieras ilegales, y el mantenimiento del tipo de cambio del CNY básicamente estable en un nivel razonable y equilibrado gracias a la mejora de la gestión macroprudencial de los flujos transfronterizos de capital. Una prioridad fundamental es mejorar la gestión macroprudencial en el ámbito de la financiación inmobiliaria.

4.170. En consonancia con su visión estratégica, las autoridades se proponen optimizar la estructura financiera de la economía china. Esto implica potenciar el papel central del mercado de capitales, promover el sistema de oferta pública inicial basado en el registro, fomentar la diversificación de la financiación mediante fondos propios, elevar los criterios de calidad de las empresas cotizadas, desarrollar los bancos e instituciones de inversión más importantes y promover un desarrollo de alta calidad del mercado de bonos.

4.171. En cuanto a la participación del Estado en el sector financiero, las autoridades han manifestado su intención de perfeccionar el posicionamiento institucional de las grandes entidades financieras estatales, lo que conlleva potenciar su función al servicio de la economía real y como piedra angular de la estabilidad financiera. Al mismo tiempo, las autoridades se proponen reforzar el papel esencial del sector de los seguros como amortiguador y estabilizador frente a perturbaciones económicas.

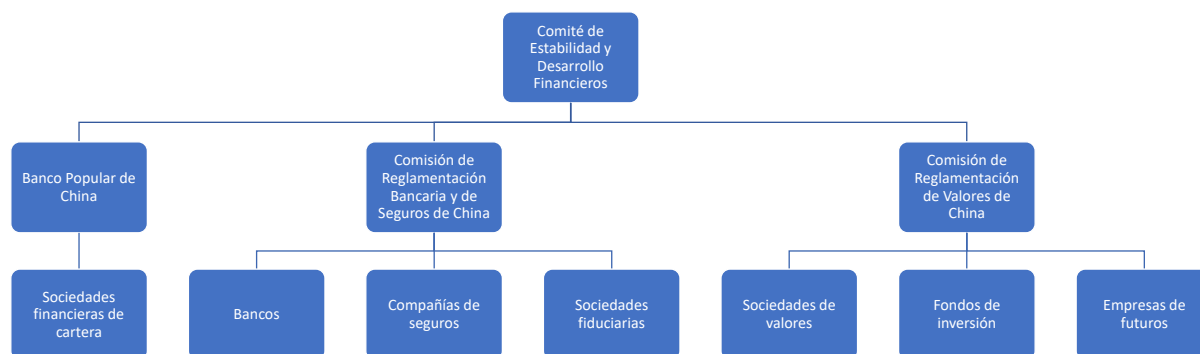
4.4.2.2 Reforma del marco de supervisión financiera

4.172. La rápida evolución del sector financiero de China ha estado marcada recientemente por la aparición de nuevos tipos de riesgos, en particular el sistema bancario paralelo. Durante el período objeto de examen, las autoridades respondieron reforzando las respectivas funciones de supervisión de los organismos de reglamentación para aumentar su eficacia, entre otras medidas.

4.173. La reforma de la estructura de supervisión financiera llevada a cabo en 2019 tenía por objeto aumentar la coordinación entre los organismos de reglamentación para contener los crecientes riesgos inherentes al sistema bancario paralelo. Esa reforma consolidó la supervisión reglamentaria de la banca y los seguros en el marco de la Comisión de Reglamentación Bancaria y de Seguros de China (CBIRC). También facultó al PBOC para desempeñar un papel más importante en la supervisión del sector financiero.¹⁰¹ El sistema de reglamentación financiera de China comprendía en total cuatro órganos principales: el Comité de Estabilidad y Desarrollo Financieros (FSDC), encargado de coordinar la supervisión financiera; el PBOC; la CBIRC; y la Comisión de Reglamentación de Valores de China (CSRC) (gráfico 4.5).

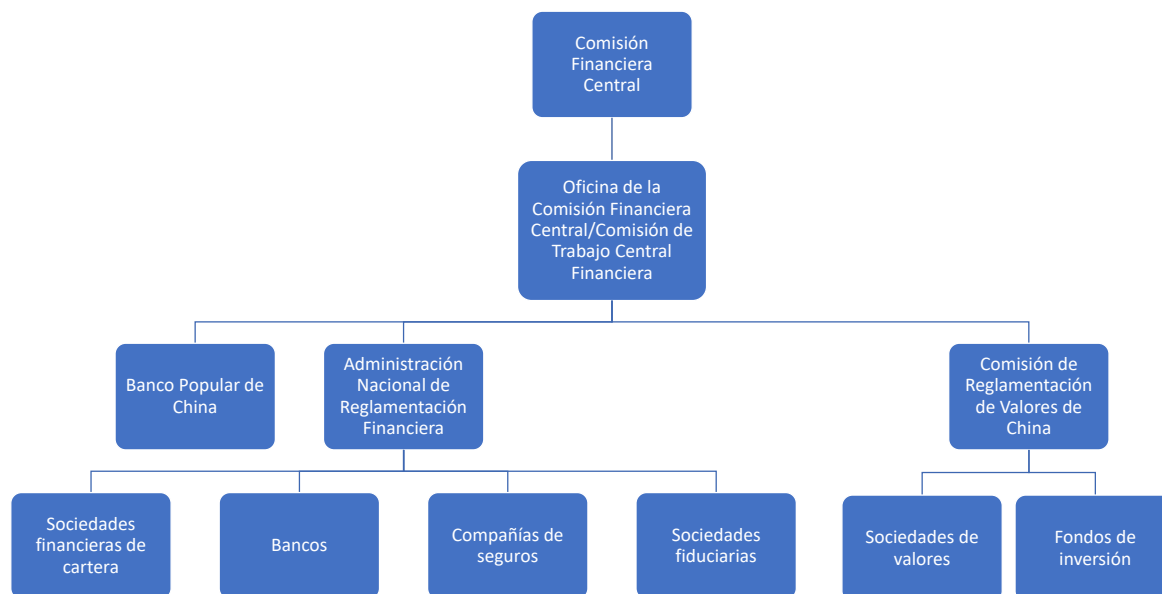
¹⁰⁰ State Council (2023), "Central Financial Work Conference Is Held", 2 de noviembre de 2023. Consultado en: https://english.www.gov.cn/news/202311/02/content_WS65430bb8c6d0868f4e8e0e33.html.

¹⁰¹ Documento WT/TPR/S/415 de la OMC, de 20 de octubre de 2021.

Gráfico 4.5 Antiguo marco de supervisión financiera de China

Fuente: Información facilitada por las autoridades.

4.174. El 7 de marzo de 2023 se anunció una nueva reforma que consolida esas instituciones en "un comité, un banco, una administración y una comisión" (gráfico 4.6). Bajo la supervisión directa del Comité Central del Partido Comunista de China, la recién creada Comisión Financiera Central (CFC) asume ahora las funciones que antes desempeñaba el antiguo FSDC¹⁰², por lo que pasa a ser la principal entidad encargada de la adopción de decisiones y la coordinación en materia financiera. Asimismo, está previsto crear una Comisión de Trabajo Central Financiera.

Gráfico 4.6 Marco actual de supervisión financiera de China

Fuente: Información facilitada por las autoridades.

4.175. En el nuevo marco, la Administración Nacional de Regulación Financiera (NFRA) ha sustituido a la CBIRC y asume ahora una gama más amplia de responsabilidades, incluida la supervisión de las sociedades financieras de cartera, que antes era competencia del PBOC. Además, se ha encomendado al NFRA el mandato de reglamentar la protección de los consumidores e inversores en el sector financiero.

4.176. El papel del PBOC en la política monetaria y la supervisión macroprudencial se ha reorientado y ya no tiene autoridad sobre las sociedades financieras de cartera. La función de la CSRC como organismo de reglamentación del mercado de capitales se ha reforzado al añadir a sus competencias la supervisión de la emisión de bonos de empresas, que antes era responsabilidad de la NDRC. Esta consolidación establece un marco reglamentario unificado para la emisión de bonos de empresas y corporativos bajo los auspicios de la CSRC. La reforma refleja la intención de las autoridades de

¹⁰² El FSDC actuaba bajo la supervisión del Consejo de Estado.

ampliar el mercado de financiación directa de las empresas, y los bonos de empresas y corporativos son los instrumentos financieros que el Gobierno desea reforzar.

4.177. Aunque, por un lado, la reforma puede mejorar la coordinación entre los órganos de supervisión para gestionar mejor los riesgos financieros, por otro puede resentirse la eficacia de la estructura de supervisión financiera como consecuencia de una mayor presencia del Estado en el sistema financiero. De hecho, el sistema financiero de China está dominado por unas pocas grandes instituciones de propiedad estatal (sección 4.4.2.1.1) y las principales actividades financieras del país se encuentran ahora bajo la supervisión directa del Partido. Este aspecto choca con las funciones habituales de la reglamentación financiera y también tiende a fomentar la aparición de problemas de riesgo moral, que llevan a las entidades financieras públicas a asumir riesgos financieros excesivos. No obstante, las autoridades señalan que China está decidida a fomentar la innovación financiera y el desarrollo del sector en un entorno orientado al mercado y regido por un marco jurídico sólido.

4.4.2.3 Otros cambios en la reglamentación

4.4.2.3.1 Evolución del sector bancario

4.178. Durante el período objeto de examen se adoptaron algunas medidas para seguir promoviendo la participación extranjera en el sector bancario de China. Por ejemplo, el 2 de septiembre de 2022, la CBIRC publicó la Decisión sobre la Modificación de Determinadas Normas para la Concesión de Licencias Administrativas. Esa Decisión levanta las restricciones sobre la proporción de participación de los bancos extranjeros que invierten en bancos comerciales chinos. En ella también se prevé un plazo de aprobación de cuatro meses para el establecimiento en China de sucursales de bancos financiados con capital extranjero.

4.179. Se aplican diversas prescripciones para regular la participación extranjera en el sector financiero de China. Por ejemplo, una entidad extranjera que invierta en un banco comercial chino deberá ser una institución financiera extranjera, y una entidad extranjera que invierta en un banco rural de pequeño o mediano tamaño deberá ser un banco extranjero. En el caso de un banco de propiedad exclusivamente extranjera, los accionistas extranjeros deberán ser instituciones financieras, cuyo accionista único o mayoritario también deberá ser un banco comercial; en el caso de un banco conjunto chino-extranjero, los accionistas extranjeros deberán ser instituciones financieras, cuyo accionista único o mayoritario deberá ser un banco comercial.

4.180. En cuanto a la reglamentación cautelar, el 1 de noviembre de 2023, la NFRA revisó las Normas sobre la Gestión del Capital de los Bancos Comerciales, con el fin de fortalecer el enfoque de gestión del riesgo de los bancos y mejorar su capacidad para prestar un mayor apoyo a la economía interna.¹⁰³ Las Normas revisadas entraron en vigor en enero de 2024 y se aplican a todos los bancos comerciales.

4.181. Las normas establecen un sistema de supervisión del capital diferenciado, con prescripciones en materia de capital más estrictas para los grandes bancos (en términos de volumen de activos y proporción de actividades en el extranjero). Por medio del enfoque de supervisión por niveles, las autoridades se proponen alcanzar un equilibrio entre la mejora de la resiliencia de la deuda del sector bancario y la limitación del costo del cumplimiento de la reglamentación en los bancos pequeños para que puedan prestar un mejor servicio a la economía real.

4.182. Las autoridades consideran que las normas para los grandes bancos (aquellos con activos totales por valor de CNY 500.000 millones o más, o con créditos y deudas en el extranjero que superen los CNY 30.000 millones, o bancos comerciales de Nivel 1) están muy armonizadas con el marco regulatorio de Basilea III, a excepción de unas ponderaciones por riesgo más rigurosas para determinados activos. Esa especificación estaba concebida para aumentar la sensibilidad al riesgo en las prácticas de gestión del capital de los bancos y poder comparar sus coeficientes de capital y su divulgación pública a escala mundial.

4.183. Las normas en materia de capital para los bancos comerciales de Nivel 2 (aquellos con activos totales por valor de CNY 10.000 millones o más, o con créditos y deudas en el extranjero

¹⁰³ Consultado en: <https://www.cbirc.gov.cn/cn/view/pages/rulesDetail.html?docId=1134197>.

inferiores a CNY 30.000 millones) se han simplificado, si bien conservan en lo esencial las prescripciones existentes. Los bancos más pequeños (con menos de CNY 10.000 millones y sin créditos en el extranjero, o bancos comerciales de Nivel 3) están sujetos a las normas sobre capital y divulgación más simplificadas, con miras a facilitar las actividades de financiación de las microempresas y pequeñas empresas.

4.184. Las nuevas normas también exigen que los bancos comerciales evalúen y clasifiquen el riesgo de crédito con mayor rapidez y prudencia y den prioridad a la capacidad de los deudores para cumplir sus obligaciones sobre los valores de las garantías subyacentes (cuadro 4.22).

Cuadro 4.22 Criterios de clasificación de los riesgos en cinco categorías

Categoría	Directrices para la clasificación
Normal	Se prevé que el prestatario podrá reembolsar sus obligaciones según las condiciones existentes.
En vigilancia especial	i) Impago en el capital o los intereses pagaderos (se excluyen los descubiertos operativos o técnicos en un plazo de siete días); o ii) Cambio de finalidad de los fondos sin el acuerdo previo de los bancos; o iii) Reembolso mediante renegociación o refinanciación (salvo en el caso de los bonos y los préstamos a microempresas y pequeñas empresas admisibles); o iv) Si un deudor no minorista tiene exposición a un crédito improductivo en el banco en cuestión o en otros bancos
Subestándar	i) Impago en el capital o los intereses pagaderos durante más de 90 días; o ii) Deterioro real de los activos financieros; o iii) Rebajas significativas de la calificación de la deuda externa, que conlleva un deterioro material de la capacidad de reembolso del prestatario; o iv) Si un prestatario tiene impagados más del 20% de sus pasivos totales en todos los bancos durante más de 90 días
Dudoso	i) Impago en el capital o los intereses pagaderos durante más de 270 días; o ii) El prestatario decide no efectuar el reembolso; o iii) Deterioro real de los activos financieros, con pérdidas previstas superiores al 50% del valor nominal del instrumento
Fallido	i) Impago en el capital o los intereses pagaderos durante más de 360 días; o ii) El prestatario está en quiebra/en fase de liquidación; o iii) Deterioro real de los activos financieros, con pérdidas previstas superiores al 90% del valor nominal del instrumento

Nota: Las categorías Subestándar, Dudoso y Fallido se refieren a activos improductivos.

Los cambios más destacados en comparación con las normas existentes figuran en negrita.

Fuente: Fitch Ratings (2023), "China's New Rules on Bank Asset Classification to Reduce Inconsistency", 14 de febrero de 2023, consultado en: <https://www.fitchratings.com/research/banks/chinas-new-rules-on-bank-asset-classification-to-reduce-inconsistency-14-02-2023>; y China Banking and Insurance Regulatory Commission y People's Bank of China (2023), *Rules on Risk Classification of Financial Assets of Commercial Banks*, consultado en: <http://www.pbc.gov.cn/en/3688253/3689009/4180845/4835368/2023033016333840569.pdf>.

4.185. En lo que respecta a las medidas para prevenir y resolver los principales riesgos financieros, la CBIRC publicó en junio de 2021 las Medidas Provisionales relativas a la Aplicación de los Planes de Reestructuración y Resolución para las Instituciones Bancarias y de Seguros. Con arreglo a esas Medidas, los bancos comerciales y las compañías de seguros con determinadas cantidades de activos están obligados a elaborar sus propios planes de reestructuración y resolución para hacer frente a los riesgos de manera oportuna en caso de que se presenten situaciones de riesgo importante.¹⁰⁴

4.186. Según las autoridades, se está preparando un Proyecto de Ley de Estabilidad Financiera y modificaciones de la Ley de Bancos Comerciales y de la Ley de Reglamentación Bancaria para establecer y mejorar los mecanismos de eliminación ordenada de los riesgos financieros. La finalidad del Proyecto de Ley es, entre otras cosas, crear un fondo de garantía de estabilidad financiera que proporcione financiación de emergencia a los bancos débiles, con miras a preservar la estabilidad financiera del país.

¹⁰⁴ Instituciones financieras de depósito, sociedades de gestión de activos financieros y empresas de arrendamiento financiero con activos por valor de CNY 300.000 millones o más; y compañías de seguros con activos por valor de CNY 200.000 millones o más.

4.187. Se adoptaron algunas medidas para seguir consolidando la resiliencia de los bancos de importancia sistémica de China, entre ellas planes de reestructuración y resolución y normas para garantizar que esos bancos tengan suficiente capacidad para absorber pérdidas y reestructurar el capital en caso de entrar en fase de resolución.¹⁰⁵ El 22 de septiembre de 2023, las autoridades publicaron la versión más reciente de la lista de bancos de importancia sistémica del país, en la que figuran 19 bancos, según las Medidas relativas a la Evaluación de los Bancos de Importancia Sistémica.¹⁰⁶

4.4.2.3.2 Evolución del sector de los seguros

4.188. Durante el período objeto de examen, China adoptó algunas medidas con el fin de dotar de mayor claridad a las condiciones para la participación extranjera en el sector de los seguros. A ese respecto, en marzo de 2021 se modificaron las Normas Detalladas de Aplicación del Reglamento de la República Popular China sobre la Administración de las Compañías de Seguros con Financiación Extranjera. La nueva modificación elimina las disposiciones que restringen la proporción de acciones extranjeras en las compañías de seguros.

4.189. Además, China aclara que, con arreglo a las Medidas relativas a la Administración de la Participación de las Instituciones Financieras Extranjeras en el Capital de las Compañías de Seguros, de 2018, las instituciones financieras que no sean compañías de seguros o grupos de compañías de seguros no serán los accionistas principales de las compañías de seguros extranjeras ni los únicos accionistas extranjeros de las compañías de seguros extranjeras.

4.190. Se aplicaron varias medidas más para aumentar la eficiencia del sector de los seguros. En particular, se introdujeron reformas en el sistema de seguros de automóviles, a fin de incorporar los vehículos eléctricos a todos los efectos. Asimismo, se elaboraron las Medidas de Reglamentación de las Actividades de Seguros de Accidentes, que se publicaron el 13 de octubre de 2021, como orientación para un mayor desarrollo de dichas actividades.

4.191. En diciembre de 2021 se publicó el Aviso sobre Normalización y Promoción del Desarrollo de Actividades Comerciales de Financiación de Pensiones, al que le siguió el Aviso sobre Cuestiones relativas a las Actividades de Pensiones Privadas Realizadas por Compañías de Seguros, de noviembre de 2022. Con esas medidas se trata de mejorar el sistema de seguros de pensiones de varios pilares por medio del desarrollo de las actividades comerciales de financiación de pensiones y las actividades de pensiones personales, y de dar respuesta a las diferentes necesidades de la población. El objetivo es abordar la prevalencia de elevados niveles de ahorro preventivo y el escaso consumo en la economía china.

4.192. El escaso consumo, especialmente entre la población rural, es uno de los principales riesgos para el crecimiento sostenible de la economía china. Si bien hay diversos factores que restringen las pautas de consumo de los residentes en zonas rurales, existe la opinión de que la falta de una red de seguridad social eficiente ha propiciado el aumento del ahorro preventivo.¹⁰⁷ En la misma línea, la literatura económica indica que una mayor expansión y el fortalecimiento del seguro de salud, en especial la cobertura de problemas de salud específicos (enfermedades graves) en las zonas rurales, promueven significativamente el consumo diario de los residentes en dichas zonas.¹⁰⁸ A ese respecto, durante el período objeto de examen, la NFRA procedió a la reforma estructural de la oferta de seguros de salud, con la aplicación de políticas en materia de seguros de salud que ofrecen ventajas fiscales a fin de promover la innovación en los productos de seguros de salud.

¹⁰⁵ Reglamento sobre la Supervisión Adicional de Bancos de Importancia Sistémica (aplicación provisional) y Reglamento sobre la Gestión de la Capacidad Total de Absorción de Pérdidas de los Bancos de Importancia Sistémica.

¹⁰⁶ China Minsheng Bank, China Everbright Bank, PingAn Bank, Huaxia Bank, Bank of Ningbo, China Guangfa Bank, Bank of Jiangsu, Bank of Shanghai, Bank of Beijing, China Citic Bank, Postal Savings Bank of China, Shanghai Pudong Development Bank, Bank of Communications, China Merchants Bank, Industrial Bank, Industrial and Commercial Bank of China, Bank of China, China Construction Bank y Agricultural Bank of China.

¹⁰⁷ M. Chamon y E. Prasad (2010), "Why Are Saving Rates of Urban Households in China Rising?", *American Economic Journal: Macroeconomics*, Vol. 2, No. 1.

¹⁰⁸ Véase, por ejemplo, W. Zhao (2019), "Does Health Insurance Promote People's Consumption? New Evidence from China", *China Economic Review*, volumen 53, páginas 65-86.

4.193. En cuanto a la reglamentación cautelar, el organismo de reglamentación revisó y publicó en 2021 el Proyecto de Reglamento sobre la Gestión de la Solvencia de las Compañías de Seguros, en el que se indica que las compañías de seguros que cumplen los tres indicadores siguientes también cumplen las normas de solvencia: el coeficiente de solvencia básico no debe ser inferior al 50%; el coeficiente de solvencia global no debe ser inferior al 100%; y la calificación integral de riesgos, que mide el riesgo global de solvencia de las compañías de seguros (incluidos los riesgos capitalizados y no capitalizados), no debe ser inferior a la Clase B.

4.4.2.3.3 Evolución de los fondos de pensiones

4.194. Las iniciativas para establecer un sistema de pensiones eficaz en China pueden ser una forma creíble de optimizar el ahorro preventivo, impulsar el consumo y estimular el crecimiento económico.¹⁰⁹ Concretamente, en la literatura económica, Zheng *et al.* (2021) examinaron un amplio conjunto de datos sobre el período 2011-2018 y llegaron a la conclusión de que la participación en las pensiones y las expectativas a ese respecto podían impulsar el consumo interno.¹¹⁰ En abril de 2022, China puso oficialmente en marcha, con carácter experimental, su régimen de pensiones privadas (el tercer pilar del sistema de pensiones). Dicho régimen tiene por objeto complementar la pensión básica junto con las pensiones vitalicias de empresas (laborales). Varios bancos, fondos de gestión de patrimonios y compañías de seguros han recibido autorización oficial para participar en el sistema de pensiones privadas en 36 ciudades de China.¹¹¹

4.195. En el período objeto de examen se publicaron reglamentos para aclarar los tipos de productos que pueden ofrecerse, y las normas y prescripciones a ese respecto.¹¹² En noviembre de 2022 se adoptó un conjunto de incentivos fiscales para impulsar el desarrollo del nuevo sistema. Se trata de deducciones antes de impuestos de hasta CNY 12.000 de los ingresos imposables anuales de los participantes en regímenes de pensiones privadas y una reducción de la carga fiscal sobre las prestaciones por jubilación de entre el 7,5% y el 3% (en el momento del retiro). Además, los rendimientos generados por las inversiones realizadas en el marco de cuentas de pensiones están exentos del impuesto sobre la renta de las personas físicas.

4.4.2.3.4 Evolución del sector de los valores

4.4.2.3.4.1 Mercados de valores

4.196. En el sector de los valores, las autoridades tratan fundamentalmente de seguir desarrollando un mercado de capitales bien regulado, transparente, abierto, dinámico y resiliente que pueda apoyar los objetivos generales de desarrollo de China.

4.197. Entre las medidas adoptadas durante el período objeto de examen figura la puesta en marcha de la Bolsa de Beijing (BSE) el 15 de noviembre de 2021. Desde su creación, la BSE se ha erigido en una importante plataforma para que China impulse su reforma de los mercados de capitales, a fin de atender las necesidades financieras y el crecimiento de las pymes innovadoras. En torno a 200 empresas cotizan en la BSE, que también facilita las actividades de préstamo de valores y creación de mercado. Los inversores extranjeros pueden participar en la negociación de acciones cotizadas en la BSE mediante programas como los relativos a los inversores institucionales

¹⁰⁹ Organización Internacional del Trabajo (2022), *ILO Review of the Multi-tier Pension System in China*. Consultado en: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-beijing/documents/briefingnote/wcms_877519.pdf.

¹¹⁰ W. Zheng *et al.* (2023), "The Impact of Expected Pensions on Consumption: Evidence from China", *Journal of Pension Economics & Finance*, volumen 22, Nº 1.

¹¹¹ En la Circular de la CBIRC sobre la Adopción de Medidas Provisionales relativas a la Administración de las Actividades de Pensiones Personales de los Bancos Comerciales y las Empresas de Gestión de Patrimonios y la Circular de la CBIRC sobre Cuestiones relativas a la Puesta en Marcha de Actividades de Pensiones Personales por las Compañías de Seguros se especifican las condiciones que deben cumplir las instituciones que participan en el sistema de pensiones privadas.

¹¹² El 4 de noviembre de 2022 se publicaron las Medidas relativas a la Puesta en Marcha de las Pensiones Personales y las Medidas Provisionales relativas a la Gestión de la Inversión de las Pensiones Personales en los Fondos de Inversión en Valores de Oferta Pública.

extranjeros calificados QFII o los inversores institucionales extranjeros calificados en yuan (RQFII).¹¹³

4.198. Las autoridades siguen facilitando la participación extranjera en los mercados de capitales de China. Como se indicó en el anterior examen, en 2020 se eliminaron las restricciones a las inversiones en acciones de empresas chinas de valores, fondos o futuros por parte de los inversores extranjeros. Las autoridades señalan que se adoptaron medidas durante el actual período objeto de examen para garantizar la plena aplicación de esas medidas de liberalización. Por ejemplo, a finales de agosto de 2023, 24 empresas de valores, fondos o futuros de propiedad extranjera en parte o en su totalidad podían operar en los mercados de capitales de China; tres filiales de bancos extranjeros radicadas en China estaban autorizadas a realizar actividades de custodia de fondos; y 35 gestores de fondos de inversión de capital privados, que eran propiedad de inversores extranjeros en su totalidad o empresas conjuntas chino-extranjeras, estaban inscritas en la Asociación de Gestión de Activos de China.

4.199. Las autoridades indican que la gama de productos específicos de futuros y opciones siguió ampliándose, con 24 productos de futuros, entre ellos el petróleo crudo, el ácido tereftálico purificado y el hierro, abiertos a los inversores extranjeros. El 4 de enero de 2023 se permitió a los bancos extranjeros participar en el mercado de futuros sobre el Tesoro de China, y 46 productos de futuros y opciones, entre ellos futuros de productos básicos, opciones de productos básicos, futuros sobre índices bursátiles y opciones sobre índices bursátiles, estaban abiertos a los inversores titulares de licencias QFII y RQFII.

4.200. Entre otras medidas adoptadas por China para desarrollar su sector de los valores figuran las destinadas a facilitar las inversiones y la financiación transfronterizas de las empresas chinas. En particular, se mejoró el funcionamiento del mecanismo de conexión bursátil entre Shanghai, Shenzhen y Hong Kong, el canal de inversión transfronterizo. También se amplió la gama de productos internacionales a disposición de los inversores chinos.

4.4.2.3.4.2 Mercados de bonos

4.201. Durante el período objeto de examen, China adoptó una serie de medidas para promover la participación extranjera en los mercados interbancarios y los mercados bursátiles de bonos. Por ejemplo, en mayo de 2022, el PBOC, la CSRC y la SAFE publicaron conjuntamente el Anuncio sobre Cuestiones relativas a una Mayor Facilitación de las Inversiones en el Mercado de Bonos Chino por Inversores Institucionales Extranjeros, que establece un marco unificado para la apertura de los mercados de bonos, y unifica y mejora las prescripciones de política pertinentes para la inversión en los mercados de bonos de China por parte de los inversores extranjeros.

4.202. En la misma línea, en enero de 2024, el PBOC y la Autoridad Monetaria de Hong Kong (HKMA) incluyeron los bonos del programa de conexión "Bond Connect" entre las garantías admisibles en el marco del acuerdo de liquidez del yuan de la HKMA con el fin de promover las actividades de recompra de bonos por instituciones extranjeras a través del acceso directo al mercado y al programa "Bond Connect".¹¹⁴ A finales de enero de 2024, habían entrado en los mercados de bonos de China un total de 1.129 inversores extranjeros, con un total de CNY 3,9 billones en bonos.

4.203. Las autoridades indican que la participación extranjera en el mercado de bonos ha seguido mejorando en los últimos años. Ocho bancos extranjeros actúan en la actualidad como agentes de liquidación en el mercado de bonos interbancario de China. Además, desde 2021, el número de instituciones financieras extranjeras que actúan como agencias de cotización para "Bond Connect" se ha elevado a 15, tras sumarse cuatro instituciones nuevas. Se han adoptado medidas concretas para racionalizar los procesos de inversión de las instituciones extranjeras. En noviembre de 2021, por ejemplo, el Ministerio de Hacienda y la Administración Estatal de Impuestos publicaron el Anuncio sobre la Prórroga del Plazo de las Políticas de Exención del Impuesto sobre la Renta de las

¹¹³ Los programas QFII y RQFII son el sistema de certificación que permite a los inversores extranjeros profesionales autorizados que cumplen determinadas condiciones invertir directamente en una gama de productos financieros en el mercado de capitales de China.

¹¹⁴ "Bond Connect" es un programa de acceso mutuo a los mercados, que promueve las oportunidades comerciales para los inversores chinos y extranjeros. Establece una conexión entre las instituciones de infraestructura financiera de China y Hong Kong, China.

Sociedades y del Impuesto sobre el Valor Añadido para las Instituciones Extranjeras que Invierten en el Mercado Interno de Bonos. Ese anuncio prorroga hasta finales de 2025 la política de China por la cual las instituciones extranjeras que invierten en los mercados de bonos de China quedan exentas temporalmente del impuesto sobre la renta de las sociedades y del impuesto sobre el valor añadido que se aplican a los ingresos procedentes de los intereses obtenidos con las obligaciones.

4.4.2.3.5 Evolución en el ámbito de la tecnología financiera

4.204. En China, el desarrollo de tecnología financiera se halla en una fase avanzada. Además de aprovechar la tecnología de internet, el sector financiero está integrando cada vez en mayor medida tecnologías emergentes como los macrodatos, la computación en la nube, la inteligencia artificial y la cadena de bloques. Esas tecnologías siguen remodelando la innovación de los productos y servicios financieros.

4.205. En 2022, el PBOC publicó el segundo Plan de Desarrollo de la Tecnología Financiera, que abarca el período 2022-2025.¹¹⁵ El plan tiene por objeto seguir desarrollando el sector de la tecnología financiera de China e impulsar la transformación digital de las finanzas para 2025. En el plan figuran recomendaciones para el fomento de la tecnología financiera y se describe el concepto general, los objetivos de desarrollo, las tareas esenciales y los medios para garantizar la puesta en marcha con éxito de la transformación digital en el sector.¹¹⁶

4.206. Como se señaló en el examen anterior, no existe un único reglamento general por el que se rijan las actividades de tecnología financiera. En cuanto al marco de supervisión de la tecnología financiera, las empresas pertinentes están sujetas a la supervisión de las autoridades financieras tradicionales, según las características de los servicios prestados. En el Plan de Desarrollo de la Tecnología Financiera para 2022-2025, la mejora de la supervisión reglamentaria del sector de la tecnología financiera se considera una de las tareas más importantes.

4.207. El Plan también tiene como finalidad la protección de la privacidad y los datos. Asimismo, prevé la integración de la tecnología financiera y la financiación verde, y propone la creación de centros y sistemas de datos verdes basados en tecnologías avanzadas. A ese respecto, las autoridades introdujeron el plan de acción trienal (2024-2026) para los "elementos de datos X", destinado a alentar a las instituciones financieras a incrementar al máximo el uso de herramientas de tecnología financiera. Además, en 2023, el PBOC publicó las Directrices para la Creación de Capacidad en los Centros de Datos Financieros, una norma industrial que establece prescripciones para la adopción de nuevas tecnologías y promueve las prácticas respetuosas con el medio ambiente. Esa iniciativa alienta a las instituciones financieras a impulsar la construcción y la gestión de centros de datos verdes e inteligentes.

4.208. En un estudio reciente se indica que, con la adopción de soluciones de tecnología financiera por parte de los bancos, se fomenta la innovación financiera y se logra un modelo empresarial mejorado gracias a la reducción de los gastos de explotación de los bancos.¹¹⁷ Al mismo tiempo, el crecimiento no regulado del sector puede plantear riesgos significativos, como la incertidumbre en materia de reglamentación, las transacciones ilícitas y la posibilidad de abuso de los monopolios de datos. Además, la gran exposición de las actividades de tecnología financiera a las amenazas contra la ciberseguridad puede plantear importantes riesgos sistémicos para la estabilidad financiera.¹¹⁸

4.209. En ese contexto, la esfera de la tecnología financiera estuvo marcada por una serie de medidas reglamentarias destinadas a ofrecer mayor protección al sector. En 2020, China comenzó a vigilar de cerca al sector financiero en internet, y suspendió la oferta pública inicial de Ant Group. Además, en 2021, China puso en marcha medidas antimonopolio en el sector tecnológico y reforzó la supervisión de la recopilación de datos y la protección de la privacidad en el sector de la tecnología

¹¹⁵ El primer plan, el Plan de Desarrollo de la Tecnología Financiera para 2019-2021, se publicó en 2019.

¹¹⁶ State Council (2022), *The People's Bank of China issued the "Fintech Development Plan (2022-2025)"*. Consultado en: https://www.gov.cn/xinwen/2022-01/05/content_5666525.htm.

¹¹⁷ Y. Yang Wang et al. (2021), "Can Fintech Improve the Efficiency of Commercial Banks? An Analysis based on Big Data", *Research in International Business and Finance*, volumen 55, edición C.

¹¹⁸ S. Cevik (2023), "The Dark Side of the Moon?: Fintech and Financial Stability", IMF Working Paper, volumen 2023, Nº 253. Consultado en: <https://www.elibrary.imf.org/view/journals/001/2023/253/article-A001-en.xml>.

financiera. Los principales agentes (como Ant Group, Tencent y Didi) fueron objeto de investigaciones y, en consecuencia, fueron sometidos a una vigilancia reglamentaria más rigurosa.

4.210. Las autoridades indican que, en julio de 2023, los organismos de reglamentación financiera de China publicaron un anuncio conjunto en el que declaraban que se habían logrado progresos sustanciales para solucionar problemas importantes en las operaciones financieras que se realizaban en las plataformas de las empresas del sector.

4.211. Las actividades relacionadas con las criptomonedas se consideran actividades financieras ilícitas en China. Esa prohibición abarca los servicios que las bolsas de criptomonedas extranjeras ofrecen a los ciudadanos chinos a través de plataformas en línea. Las autoridades sostienen que la minería de criptomonedas tiene un elevado consumo de energía y una huella de carbono considerable, pero solo aporta una contribución mínima a la economía real. Además, señalan que las criptomonedas se han explotado con fines ilícitos, como el blanqueo de dinero, planteando grandes riesgos para la lucha contra el blanqueo de dinero y contra la financiación del terrorismo, así como para la integridad financiera en general. En septiembre de 2021, la NDRC, junto con otras 10 entidades gubernamentales, publicó un aviso sobre las actividades de minería de criptomonedas. Posteriormente, el PBOC, junto con otros nueve organismos públicos, publicó un aviso con el fin de anticipar y gestionar los riesgos asociados al comercio de criptomonedas y la especulación en ese ámbito.

4.4.2.3.6 Financiación verde

4.212. En los últimos años, varias iniciativas de política han convertido a China en el segundo sistema de financiación verde más importante del mundo, en el que predominan los préstamos verdes concedidos por los bancos.¹¹⁹ El respaldo político, el apoyo del PBOC, el establecimiento de taxonomías verdes y la aplicación de diversos incentivos han contribuido colectivamente al logro de este avance. Según las autoridades, a finales de 2022, China había emitido bonos verdes por un valor total de USD 352.400 millones, de los cuales USD 65.500 millones habían sido emitidos por instituciones financieras bancarias. El FMI indica que los préstamos verdes de los bancos se utilizan principalmente para financiar la infraestructura y la energía limpia (71%), mientras que el ahorro de energía y la protección del medio ambiente absorben el 14%. En el contexto de un marco de política favorable, el FMI señala también que el sector de la financiación verde tiende a generar mayores rendimientos de las inversiones en China.¹²⁰ Ese fenómeno se debe principalmente al aumento de la demanda de activos verdes, complementado por la percepción de los inversores de que esos activos presentan menos riesgos subyacentes.

4.213. El sector público de China, integrado principalmente por empresas de propiedad estatal, bancos estatales y otros grandes bancos de propiedad estatal, domina las actividades de financiación verde; la contribución del sector privado es marginal y sigue estando concentrada en el sector de la energía solar.¹²¹ Las autoridades señalan que la contribución de los fondos basados en el mercado de las instituciones financieras y otros sectores privados al desarrollo ecológico y con bajas emisiones de carbono también está aumentando gradualmente. El Banco Mundial considera que un panorama reglamentario más estable, unido a mejores oportunidades financieras y de acceso a los mercados, es esencial para que el sector privado pueda ofrecer soluciones basadas en el mercado. Ello permitiría reducir los costos y favorecer la innovación tecnológica, lo que en última instancia aliviaría el déficit de financiación de la acción climática.¹²²

4.214. En algunos casos, las normas de China sobre los bonos verdes tienden a desviarse de las normas internacionales comúnmente aceptadas. Las autoridades tratan de mejorar esas normas, lo que contribuirá, entre otras cosas, a garantizar que los beneficios se destinen a proyectos admisibles de adaptación al cambio climático y mitigación de sus efectos. En julio de 2022 se publicó un nuevo documento sobre los principios relativos a los bonos verdes de China. En él se exige que los emisores

¹¹⁹ FMI (2023), *People's Republic of China: Selected Issues*, IMF Country Report N° 23/81. Consultado en: <https://www.imf.org/en/Publications/CR/Issues/2023/02/09/Peoples-Republic-of-China-Selected-Issues-529473>.

¹²⁰ FMI (2023), IMF Country Report N° 23/81.

¹²¹ Climate Policy Initiative (2021), *The Potential for Scaling Climate Finance in China*. Consultado en: <https://www.climatepolicyinitiative.org/publication/the-potential-for-scaling-climate-finance-in-china/>.

¹²² Banco Mundial (2022), *China Country Climate and Development Report*. Consultado en: <https://openknowledge.worldbank.org/server/api/core/bitstreams/35ea9337-dfcf-5d60-9806-65913459d928/content>.

destinen el 100% de los beneficios a proyectos de protección del medio ambiente, frente al 70% exigido anteriormente.

4.215. Según las autoridades, China se propone alcanzar el punto máximo de emisiones de carbono y la neutralidad en emisiones de carbono, para lo cual se necesita una inversión importante, de una cuantía estimada de entre CNY 150 billones y CNY 300 billones.¹²³ Los fondos fiscales por sí solos no satisfacen esta exigencia, y se hace necesaria la participación de fondos basados en el mercado. Para incentivar a las instituciones financieras y los sectores privados a destinar más fondos a los sectores verdes y con bajas emisiones de carbono, China ha aplicado varias políticas, entre ellas instrumentos de política monetaria estructural y pruebas de resistencia relativas a los riesgos climáticos, a fin de orientar a las instituciones financieras para que gestionen con eficacia los riesgos financieros relacionados con el clima. China también está aplicando, con carácter experimental, diversas estrategias para la financiación verde en nueve ciudades de distintas provincias (cuadro 4.23), por medio de "zonas experimentales de financiación verde", que presentan contextos económicos y de desarrollo distintos. Esas iniciativas se están poniendo a prueba antes de ejecutarlas de manera más amplia. Se prevé que reducirán de manera significativa el consumo de energía industrial.

Cuadro 4.23 Zonas experimentales de financiación verde de China

Provincia/ región	Municipio	Prioridades
Guangdong	Guangzhou	– Innovación de productos y servicios financieros verdes – Tecnología financiera verde – Desarrollo del mercado de capitales de financiación verde y cooperación a ese respecto en el Área de la Gran Bahía
Zhejiang	Huzhou Quzhou	– Modernización y transformación de las ramas de producción tradicionales – Financiación verde para las mipymes
Guizhou	Nuevo distrito de Gui'an	– Optimización de los recursos ecológicos locales en el desarrollo de la financiación verde para impulsar un crecimiento económico limpio y sostenible – Reducción de la pobreza – Construcción de infraestructuras compartidas para los macrodatos
Jiangxi	Nuevo distrito de Ganjiang	– Optimización de los recursos ecológicos locales en el desarrollo de la financiación verde para impulsar el crecimiento económico – Modernización de las ramas de producción tradicionales
Xinjiang	Ciudad de Hami, prefectura de Changji, ciudad de Karamay	– Demostración de la función que se cumple en la iniciativa verde "Cinturón y Ruta" – Movilización de financiación verde para apoyar la modernización de la agricultura, la energía limpia y la fabricación de productos de alta gama relacionados con las energías renovables
Gansu	Nuevo distrito de Lanzhou	– Desarrollo de un sistema local de financiación verde – Promoción de los sectores de los vehículos eléctricos y los macrodatos
Chongqing	Chongqing	– Establecimiento de un sistema de servicios de inversión y financiación que pueda responder al desarrollo verde y con bajas emisiones de carbono de los sectores más importantes, como los de la energía, la construcción, el transporte, la manufactura, la agricultura y la silvicultura, y apoyo a la reducción constante de la intensidad de las emisiones de carbono en Chongqing

Fuente: Noticias en línea de Green Central Banking Online News y PBOC (2022), "Uncovering China's Green Finance Pilot Zones", 1 de junio de 2022. Consultado en: <https://greencentralbanking.com/2022/06/01/china-green-finance-pilot-zones-mengwei-sha/>.

¹²³ PBOC, *On Leveraging the Financial Market to Achieve the Goal of Carbon Peaking and Carbon Neutrality*. Consultado en: <http://www.pbc.gov.cn/en/3688006/3995557/4272607/index.html>.

4.4.3 Servicios de transporte

4.4.3.1 Transporte aéreo

4.216. El marco jurídico e institucional de los servicios de transporte aéreo se ha mantenido en gran medida inalterado durante el período objeto de examen. La Ley de Aviación Civil (modificada por última vez en 2021) sigue siendo la principal legislación que rige el sector de la aviación. La Administración de Aviación Civil de China (CAAC) es la autoridad nacional en materia de aviación. Supervisa la seguridad de las operaciones aéreas y de escala realizadas en el marco de la aviación civil. Esta función incluye tareas tales como la certificación, supervisión e inspección de los operadores de aviación civil, los productos de la industria aeronáutica y los servicios de mantenimiento. Además, se ocupa del registro de aeronaves nacionales, evalúa los resultados operativos y realiza exámenes para las aeronaves civiles. Asimismo, la CAAC desempeña un papel fundamental en la elaboración de planes estratégicos de desarrollo para el sector de la aviación civil y la gestión del tráfico aéreo, incluida la planificación del espacio aéreo y el establecimiento de rutas aéreas. En 2022, la CAAC concedió una aprobación a Commercial Aircraft Corp of China (COMAC), en la que indicaba que el avión C919, de fabricación nacional, había concluido con éxito todos los vuelos de prueba necesarios para obtener un certificado de aeronavegabilidad.

4.217. Según la IATA, antes del azote de la pandemia de COVID-19 en 2019, China representaba una parte importante de la demanda mundial de transporte aéreo de pasajeros. Daba cuenta del 9% de los viajes internacionales y del 25% de los viajes nacionales, que descendieron a aproximadamente el 1% durante la pandemia. Tras la reapertura producida en diciembre de 2022, China experimentó una sólida recuperación del tráfico de entrada de vuelos internacionales. Sin embargo, los resultados variaban según los distintos mercados. Entre enero y abril de 2023, la mayor parte de los 20 principales mercados internacionales de China, que contribuían al 90% de sus vuelos internacionales en 2019, registró un aumento sustancial de sus vuelos semanales a China.¹²⁴

4.218. Sobre la base de las cifras oficiales, a finales de 2022, había 254 aeropuertos en China, 60 de los cuales prestaban servicios de comidas a vuelos internacionales. Entre ellos, 18 aeropuertos tenían un movimiento anual de pasajeros superior a 10 millones, y representaban, en conjunto, el 52,8% de los centros de transporte aéreo de China. Los aeropuertos de Beijing, Shanghai y Guangzhou, las tres ciudades principales, aportaban el 15% del número total de pasajeros nacionales. Además, 51 aeropuertos manipulaban un volumen anual de carga y correo de más de 10.000 toneladas y abarcaban el 98,5% de todos los servicios aeroportuarios nacionales. Entre ellos, los aeropuertos de Beijing, Shanghai y Guangzhou daban cuenta del 43,4% del movimiento de carga y correo de la red aeroportuaria nacional.

4.219. El 14º Plan Quinquenal de Desarrollo de la Aviación Civil de China es la principal visión estratégica que orienta la labor de las autoridades del sector durante el período 2021-2025.¹²⁵ El objetivo de las autoridades es, entre otras cosas, fomentar el desarrollo de un sector de la aviación civil que lleve a cabo su actividad de conformidad con normas favorables para el medio ambiente y estén también orientadas a lograr un alto nivel de resultados. El 14º Plan Quinquenal Especializado para el Desarrollo Ecológico de la Aviación Civil, el Plan de Acción para una Aviación Civil Inteligente de Nueva Generación, el Plan de Acción para la Construcción de Aeropuertos Seguros, Verdes, Inteligentes y Humanitarios (2020-2035) y las Directrices para una Mayor Promoción del Desarrollo Verde de la Aviación Civil son ejemplos de los documentos de política de China destinados a garantizar el desarrollo sostenible de la aviación civil.¹²⁶ Concretamente, hay medidas en vigor para aumentar la adopción de tecnologías aeroportuarias verdes, promover sistemas de ahorro de energía de las líneas aéreas y favorecer el control de la contaminación producida por plásticos. Por ejemplo, en mayo de 2021, las autoridades adoptaron un Plan de Trabajo para el Control de la Contaminación por Plásticos en el Sector de la Aviación Civil (2021-2025), cuya finalidad es prohibir el uso de

¹²⁴ IATA (2023), Air Passenger Outlook: China Reopening. Consultado en: <https://www.iata.org/en/iata-repository/publications/economic-reports/air-passenger-outlook-china-reopening/>.

¹²⁵ CAAC, Circular de la Administración de Aviación Civil de China, la Comisión Nacional de Desarrollo y Reforma y el Ministerio de Transporte sobre la Publicación del 14º Plan Quinquenal de Desarrollo de la Aviación Civil. Consultada en: http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220107_210798.html.

¹²⁶ CAAC (2022), China Civil Aviation Green Development Policy and Action. Consultado en: <http://www.caac.gov.cn/English/News/TPXW/202305/P020230515369357225251.pdf>.

plásticos desechables y no degradables en los aeropuertos con un movimiento anual de 2 millones de pasajeros o más y en los servicios nacionales de pasajeros.¹²⁷

4.220. Las medidas de China relativas a la participación extranjera en el sector de la aviación no fueron objeto de cambios significativos durante el período examinado. El país mantiene restricciones a la inversión extranjera en la propiedad de los aeropuertos. De conformidad con las Medidas Administrativas Especiales relativas al Acceso a la Inversión Extranjera (Lista Negativa) (edición de 2021), la construcción y explotación de los aeropuertos civiles deben estar bajo el control de partes chinas.

4.221. La participación de los transportistas extranjeros en los servicios de aviación se rige por las Disposiciones sobre la Concesión de Licencias de Explotación de Rutas Aéreas a Empresas Extranjeras de Transporte Aéreo. De conformidad con las normas, cuando una compañía aérea extranjera solicita explotar una ruta de vuelo especificada que conecta un destino extranjero con un lugar de China, debe adherirse al acuerdo bilateral sobre transporte aéreo civil. También deben observarse las especificaciones técnicas descritas en las directrices de la CAAC. Por lo general, se prohíbe a las líneas aéreas extranjeras realizar vuelos regulares o no regulares entre dos lugares de China, salvo en circunstancias especiales, como las misiones de rescate y socorro, previa aprobación de la CAAC.

4.222. En octubre de 2022, China celebró un acuerdo bilateral de transporte aéreo con Guyana.

4.4.3.2 Transporte marítimo

4.223. El sector del transporte marítimo, incluidas las actividades portuarias, es fundamental para la estrategia de desarrollo económico impulsado por las exportaciones de China. Las autoridades señalan que China se propone forjar un sector de transporte marítimo de alta calidad para 2035, haciendo especial hincapié en sistemas de gobernanza modernos, ahorro de energía y procesos inteligentes, con el fin de seguir consolidando la competitividad del sector.

4.224. Las actividades de transporte marítimo han aumentado de manera sostenida en los últimos años. En 2022, el volumen de carga por vía acuática fue de 8.550 millones de toneladas (frente a 7.470 millones de toneladas en 2019, 7.620 millones de toneladas en 2020 y 8.240 millones de toneladas en 2021) y el volumen de la carga transportada fue de 11,56 billones de t/km (frente a 10,4 billones de t/km en 2019, 10,58 billones de t/km en 2020 y 12,10 billones de t/km en 2021). Las autoridades indican que, a finales de 2022, los 10 principales puertos en cuanto a movimiento de mercancías se encontraban en la ciudad de Ningbo-Zhoushan (1.260 millones de toneladas), Tangshan (769 millones de toneladas), Shanghai (728 millones de toneladas), Qingdao (658 millones de toneladas), Guangzhou (629 millones de toneladas), Suzhou (573 millones de toneladas), Rizhao (571 millones de toneladas), Tianjin (549 millones de toneladas), Yantai (463 millones de toneladas) y el Golfo de Beibu (371 millones de toneladas). En 2022, se enviaron 15.700 millones de toneladas de carga y 296 millones de TEU de contenedores desde puertos chinos, lo que muestra un aumento interanual del 0,9% y del 4,7%, respectivamente. La estructura de la propiedad de los diversos puertos está relativamente diversificada entre la participación estatal y del sector privado nacional y extranjero.

4.225. Con el fin de racionalizar la circulación de mercancías hacia y desde el país, China ha posicionado estratégicamente su sector marítimo como uno de los más avanzados a nivel mundial, y cuenta con algunos de los puertos más grandes y con mayor nivel de actividad del mundo. Según las autoridades, en 2022, China era propietaria de 8.839 buques autopropulsados para la navegación marítima de hasta 1.000 toneladas o más (frente a 6.896 en 2020), lo que representaba una capacidad total de 301.997.355 toneladas de peso muerto (TPM) (frente a 228.376.872 en 2020). Estas cifras convierten a China en el segundo país del mundo con mayor número de embarcaciones en cuanto a la capacidad de transporte de carga (13.4% de la capacidad mundial medida en TPM).¹²⁸ En su flota total, China tiene unas 2.800 embarcaciones registradas fuera de China, lo que representa una número considerable (el 59,5% del total en TPM).

¹²⁷ CAAC (2021), The Work Plan for Control of Plastic Pollution in the Civil Aviation Industry (2021-2025) Officially Issued. Consultado en: http://www.caac.gov.cn/English/News/202305/t20230515_219528.html.

¹²⁸ UNCTAD (2023), Informe sobre el Transporte Marítimo 2023. Consultado en: https://unctad.org/system/files/official-document/rmt2023_es.pdf.

4.226. El Informe sobre el Transporte Marítimo 2023 de la UNCTAD también indica que siete puertos chinos figuraban entre los 25 principales puertos a nivel mundial en lo que respecta al rendimiento portuario en las operaciones de manipulación de la carga, teniendo en cuenta indicadores como el promedio del tiempo de los buques en puerto.¹²⁹ Además, el índice de conectividad del transporte marítimo de línea (LSCI) de la UNCTAD pone de relieve sistemáticamente la posición de China como la economía más conectada del mundo. Esto se mide a través de diversos factores, entre ellos, la multitud de empresas que ofrecen servicios a los puertos de China y desde estos puertos, así como el tamaño de los mayores buques utilizados para prestar servicios en estos puertos.¹³⁰

4.227. En los estudios realizados sobre el comercio, se reconoce ampliamente que una mayor conectividad portuaria tiende a reducir los costos del comercio, crear oportunidades comerciales y aumentar el volumen del comercio. Esa evolución es posible debido a la mayor previsibilidad que ofrece la regularidad del transporte, así como al mayor acceso a una gama más amplia de mercados de exportación. Por ejemplo, Del Rosal (2024) constató que, independientemente del nivel de desarrollo de un país, y en un contexto en que el comercio de productos agropecuarios se realiza crecientemente en contenedores, la conectividad del transporte marítimo de línea tiene el potencial de impulsar el comercio agropecuario.¹³¹ Además, Fugazza y Hoffmann (2017) constataron que la mejora de la conectividad del transporte puede vincularse positivamente con las corrientes comerciales bilaterales.¹³²

4.228. El marco institucional no se ha modificado. El Ministerio de Transporte (MOT) se encarga de formular las políticas de transporte marítimo y portuarias; la Administración de Seguridad Marítima, en la órbita del MOT, está a cargo de la seguridad marítima y la protección del medio marino. De conformidad con el Reglamento para el Registro de Embarcaciones, las Administraciones de la Superintendencia Portuaria que se encuentran en distintos puertos son los organismos encargados del registro de buques.

4.229. El sector del transporte marítimo de China se rige por un amplio conjunto de leyes y reglamentos, en particular, la Ley Marítima, la Ley de Puertos, el Reglamento sobre la Administración del Transporte por Vías de Navegación Interior, las Disposiciones sobre la Administración de las Operaciones Portuarias, las Normas de Aplicación del Reglamento sobre el Transporte Marítimo Internacional (modificadas en 2023) y las Disposiciones sobre la Administración del Transporte por Vías de Navegación Interior.

4.230. El 1 de septiembre de 2021 se revisó la Ley de Seguridad del Tráfico Marítimo, la principal legislación que rige la seguridad del tráfico marítimo en China, y se introdujeron algunas prescripciones de notificación aplicables a distintos buques extranjeros, entre otros, los sumergibles y las embarcaciones que transportan materiales radiactivos, petróleo a granel, productos químicos, gas licuado y otras sustancias tóxicas y nocivas. Las autoridades indican que la Ley tiene por objeto garantizar la seguridad y otorgar protección al medio marino, de conformidad con los convenios internacionales pertinentes.

4.231. Las autoridades permiten operaciones específicas de embarcaciones que naveguen bajo "pabellón de conveniencia" y cumplan determinadas condiciones en China. De conformidad con un reglamento publicado por la GACC en enero de 2022 y un anuncio publicado por el MOT en diciembre de 2021, las embarcaciones extranjeras que sean de propiedad exclusiva o estén bajo el control de compañías navieras de capital chino también pueden prestar servicios de relevo de carga siempre que obtengan la autorización pertinente del MOT y cumplan las formalidades de registro de buques ante la Administración de Aduanas de China.¹³³

¹²⁹ UNCTAD (2023), Informe sobre el Transporte Marítimo 2023.

¹³⁰ UNCTAD, Índice de conectividad del transporte marítimo de línea, trimestral. Consultado en: <https://unctadstat.unctad.org/datacentre/dataviewer/US.LSCI>.

¹³¹ I. Del Rosal (2024), "Maritime Connectivity and Agricultural Trade", *Journal of Agricultural Economics*, volumen 75, páginas 153-168. Consultado en: <https://doi.org/10.1111/1477-9552.12548>.

¹³² M. Fugazza y J. Hoffmann (2017), "Liner Shipping Connectivity as Determinant of Trade", *Journal of Shipping and Trade*, volumen 2. Consultado en: <https://doi.org/10.1186/s41072-017-0019-5>.

¹³³ Anuncio sobre la Revisión de las Disposiciones relativas al Transporte de Contenedores para el Comercio Nacional y Extranjero en los Mismos Buques y las Actividades de Relevo de Carga de Embarcaciones de Navegación Internacional (Anuncio Nº 12, 2022); y Anuncio del Ministerio de Transporte sobre el Programa Piloto para que Empresas Extranjeras de Transporte Marítimo Internacional de Contenedores Realicen

4.232. El 20 de julio de 2023, una modificación del Reglamento sobre Transporte Marítimo Internacional suprimió, con efecto inmediato, la necesidad de que los operadores chinos de transporte internacional de contenedores, los operadores chinos de transporte internacional de carga común y las empresa de transporte marítimo que no explotan buques soliciten una aprobación antes de llevar a cabo sus operaciones. En lugar de ello, la modificación estipula que estos operadores solo deben presentar los registros exigidos a la autoridad competente.

4.233. En general, los extranjeros pueden invertir en actividades de transporte marítimo. Sin embargo, de conformidad con la Lista Negativa Nacional relativa a las inversiones extranjeras, la participación mayoritaria de las empresas nacionales de transporte por vía acuática debe estar en manos de una persona u organización china. El Catálogo de Sectores en los que se Incentiva la Inversión Extranjera alienta a los inversores extranjeros a invertir en la construcción y explotación de instalaciones de muelles públicos en los puertos.

4.234. China sigue percibiendo un impuesto sobre el tonelaje de buques que entran en puertos nacionales. El impuesto es proporcional al tonelaje neto del buque y al plazo de vigencia de la licencia correspondiente (cuadro 4.24). Se aplican tipos preferenciales para los buques sujetos a impuestos, sean chinos o de un país de matrícula que haya firmado tratados o acuerdos que contengan cláusulas sobre la concesión mutua de trato NMF en materia de impuestos y derechos sobre los buques. Según las autoridades, en enero de 2024, más de 60 países habían concertado acuerdos con China, en los que se preveía el trato NMF recíproco.

Cuadro 4.24 Tipos del impuesto sobre el tonelaje de las embarcaciones, 2024

	Tipo impositivo ordinario en función del plazo de vigencia de la licencia			Tipo impositivo preferencial en función del plazo de vigencia de la licencia		
	Licencia de un año	Licencia de 90 días	Licencia de 30 días	Licencia de un año	Licencia de 90 días	Licencia de 30 días
2.000 t netas como máximo	12,6	4,2	2,1	9,0	3,0	1,5
2.000-10.000 t netas	24,0	8,0	4,0	17,4	5,8	2,9
10.000-50.000 t netas	27,6	9,2	4,6	19,8	6,6	3,3
Más de 50.000 t netas	31,8	10,6	5,3	22,8	7,6	3,8

Fuente: FAO, Vessel Tonnage Tax Law of the People's Republic of China. Consultado en: <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC172978/>.

5 APÉNDICE - CUADROS

Cuadro A1. 1 Exportaciones de mercancías de China por destino, 2018-2023

	2018	2019	2020	2021	2022	2023
Exportaciones totales (en miles de millones de USD)	2.486,4	2.499,2	2.589,1	3.316,0	3.593,6	3.380,0
	(% del total)					
América	26,6	24,3	24,9	25,5	24,7	23,4
Estados Unidos	19,3	16,8	17,5	17,1	16,2	14,8
Otros - América	7,4	7,5	7,4	8,3	8,5	8,6
México	1,8	1,9	1,7	2,0	2,2	2,4
Brasil	1,4	1,4	1,4	1,6	1,7	1,7
Canadá	1,4	1,5	1,6	1,5	1,5	1,3
Europa	17,8	18,6	19,4	19,6	19,4	18,8
UE-27	14,2	14,7	15,1	15,5	15,7	14,8
Alemania	3,1	3,2	3,4	3,4	3,2	3,0
Países Bajos	2,9	3,0	3,1	3,1	3,3	3,0
Italia	1,3	1,3	1,3	1,3	1,4	1,3
AELC	0,3	0,3	0,3	0,3	0,4	0,3
Otros - Europa	3,3	3,6	4,0	3,8	3,4	3,7
Reino Unido	2,3	2,5	2,8	2,6	2,3	2,3
CEI ^a	3,0	3,2	2,9	3,1	3,5	5,4
Federación de Rusia	1,9	2,0	2,0	2,0	2,1	3,3
África	4,2	4,5	4,4	4,4	4,6	5,1
Oriente Medio	3,9	4,3	4,2	3,8	4,4	4,8
Emiratos Árabes Unidos	1,2	1,3	1,2	1,3	1,5	1,6
Asia/Oceanía	44,5	45,1	44,1	43,6	43,4	42,5
Japón	5,9	5,7	5,5	5,0	4,8	4,7
Otros - Asia/Oceanía	38,6	39,4	38,6	38,7	38,6	37,8
Hong Kong, China	12,1	11,2	10,5	10,4	8,3	8,1
Corea, República de	4,4	4,4	4,3	4,4	4,5	4,4
Viet Nam	3,4	3,9	4,4	4,1	4,1	4,1
India	3,1	3,0	2,6	2,9	3,3	3,5
Malasia	1,8	2,1	2,2	2,3	2,6	2,6
Singapur	2,0	2,2	2,2	1,6	2,3	2,3
Tailandia	1,7	1,8	2,0	2,1	2,2	2,2
Australia	1,9	1,9	2,1	2,0	2,2	2,2
Taipei Chino	2,0	2,2	2,3	2,4	2,3	2,0
Indonesia	1,7	1,8	1,6	1,8	2,0	1,9
Filipinas	1,4	1,6	1,6	1,7	1,8	1,6
<i>Pro memoria:</i>						
APEC	64,0	62,3	62,7	61,9	60,3	59,1
ASEAN	12,8	14,4	14,8	14,3	15,8	15,5

a Comunidad de Estados Independientes, incluidos determinados Estados asociados y antiguos Estados miembros.

Fuente: Cálculos de la Secretaría de la OMC a partir de información de la base de datos UN Comtrade y de la Administración General de Aduanas de la República Popular China (GACC).

Cuadro A1. 2 Importaciones de mercancías de China por origen, 2018-2023

	2018	2019	2020	2021	2022	2023
Importaciones totales (en miles de millones de USD)	2.133,6	2.079,3	2.069,6	2.679,4	2.716,0	2.556,8
	(% del total)					
América	16,0	15,2	15,8	16,1	16,7	17,7
Estados Unidos	7,3	6,0	6,6	6,7	6,6	6,5
Otros - América	8,7	9,3	9,2	9,4	10,1	11,2
Brasil	3,6	3,8	4,1	4,1	4,0	4,8
Canadá	1,3	1,4	1,1	1,1	1,6	1,7
Chile	1,3	1,3	1,4	1,5	1,6	1,7
Europa	15,1	15,3	15,3	14,9	13,9	14,5
UE-27	11,7	12,2	12,5	11,5	10,5	11,0
Alemania	5,0	5,1	5,1	4,5	4,1	4,2
Francia	1,5	1,6	1,4	1,4	1,3	1,5
AELC	2,0	1,5	1,2	1,8	2,1	2,3
Suiza	1,8	1,3	0,8	1,4	1,8	2,1
Otros - Europa	1,5	1,6	1,6	1,6	1,2	1,2
CEI ^a	3,6	4,1	3,9	3,8	5,3	6,3
Federación de Rusia	2,8	2,9	2,8	3,0	4,2	5,1
África	4,7	4,6	3,6	4,0	4,3	4,3
Sudáfrica	1,3	1,2	1,0	1,2	1,2	1,3
Oriente Medio	7,3	7,5	6,0	7,0	9,8	8,7
Arabia Saudita, Reino de la	2,1	2,6	1,9	2,1	2,9	2,5
Emiratos Árabes Unidos	0,8	0,7	0,8	1,1	1,7	1,5
Iraq	1,1	1,2	0,9	1,0	1,5	1,4
Omán	0,9	0,9	0,8	1,1	1,3	1,2
Asia/Oceanía	46,5	47,0	49,3	48,3	45,5	44,4
Japón	8,5	8,3	8,4	7,6	6,8	6,3
Otros - Asia/Oceanía	38,0	38,7	40,9	40,7	38,7	38,1
Taipei Chino	8,3	8,3	9,7	9,3	8,8	7,8
Corea, República de	9,6	8,3	8,4	8,0	7,4	6,3
Australia	5,0	5,8	5,7	6,1	5,2	6,1
Malasia	3,0	3,5	3,6	3,7	4,0	4,0
Viet Nam	3,0	3,1	3,8	3,4	3,2	3,6
Indonesia	1,6	1,6	1,8	2,4	2,9	2,9
Tailandia	2,1	2,2	2,3	2,3	2,1	2,0
Singapur	1,6	1,7	1,5	1,4	1,3	1,2
Otros	6,9	6,4	6,2	5,9	4,6	4,1
Zona franca china ^b	6,9	6,2	6,1	5,8	4,5	4,1
<i>Pro memoria:</i>						
APEC	65,5	64,2	66,7	66,0	63,6	63,0
ASEAN	12,6	13,6	14,6	14,7	15,0	15,2

a Comunidad de Estados Independientes, incluidos determinados Estados asociados y antiguos Estados miembros.

b Incluidos los bienes exportados de China y posteriormente reimportados a China.

Fuente: Cálculos de la Secretaría de la OMC a partir de información de la base de datos UN Comtrade y de la GACC.

Cuadro A1. 3 Exportaciones de mercancías por Secciones y principales Capítulos/partidas del SA, 2018-2023

Sección/capítulo/partida del SA	2018	2019	2020	2021	2022	2023
Exportaciones totales (en miles de millones de USD)	2.486,4	2.499,2	2.589,1	3.316,0	3.593,6	3.380,0
	(% de las exportaciones totales)					
<i>Exportaciones en régimen de tráfico de perfeccionamiento</i>	32,0	29,4	27,1	24,6	22,5	20,6
01 Animales vivos y productos del reino animal	0,7	0,7	0,6	0,5	0,5	0,4
02 Productos del reino vegetal	1,0	1,1	1,1	0,8	0,8	0,9
03 Grasas y aceites	0,04	0,05	0,06	0,07	0,10	0,10
04 Productos de las industrias alimentarias, bebidas y tabaco	1,3	1,3	1,2	1,1	1,3	1,5
05 Productos minerales	2,1	2,1	1,4	1,5	2,0	2,0
27 Combustibles y aceites minerales	1,9	1,9	1,2	1,3	1,8	1,8
2710 Aceites de petróleo o de mineral bituminoso, excepto los aceites crudos (...)	1,4	1,5	1,0	1,0	1,3	1,4
06 Productos químicos y sus manufacturas	5,5	5,2	5,3	6,4	6,9	5,8
29 Productos químicos orgánicos	2,4	2,3	2,2	2,5	2,8	2,3
07 Plástico y caucho	4,1	4,3	4,6	4,8	4,9	4,9
39 Plástico y sus manufacturas	3,2	3,4	3,7	3,9	4,0	3,9
08 Pieles, cueros, peletería y manufacturas de estas materias	1,4	1,4	1,0	1,0	1,2	1,2
09 Madera, corcho, espartería	0,7	0,6	0,6	0,6	0,6	0,5
10 Pasta de madera, papel y cartón	0,9	1,0	0,9	0,8	1,0	1,0
11 Materias textiles y sus manufacturas	10,7	10,4	10,8	9,1	8,9	8,6
61 Prendas de vestir de punto	3,0	2,9	2,4	2,6	2,5	2,4
62 Prendas de vestir, excepto las de punto	2,9	2,7	2,4	2,1	2,1	2,1
12 Calzado, sombreros y demás tocados, etc.	2,5	2,5	2,1	2,2	2,4	2,2
64 Calzado, polainas y artículos análogos	1,9	1,9	1,5	1,5	1,7	1,6
13 Manufacturas de piedra, yeso fraguable, cemento	2,0	2,2	2,2	2,0	2,1	1,9
14 Piedras y metales preciosos	0,8	0,8	0,7	0,9	0,8	0,9
15 Metales comunes y sus manufacturas	7,5	7,3	6,8	7,8	8,4	7,9
72 Fundición, hierro y acero	1,9	1,6	1,3	2,0	2,2	2,0
73 Manufacturas de fundición, hierro y acero	2,6	2,8	2,7	2,8	3,1	2,9
16 Máquinas, material eléctrico	44,0	43,5	44,4	43,3	41,9	41,6
84 Máquinas, aparatos y artefactos mecánicos; partes de estas máquinas o aparatos	17,3	16,7	17,0	16,4	15,4	15,1
8471 Máquinas automáticas para tratamiento de información y sus unidades (...)	6,2	5,9	6,6	6,2	5,2	4,4
85 Máquinas eléctricas y sus partes	26,7	26,8	27,4	26,8	26,6	26,5
8507 Acumuladores eléctricos, incluidos sus separadores	0,6	0,7	0,8	1,0	1,6	2,1
8517 Teléfonos, incluidos los teléfonos móviles (celulares) y los de otras redes inalámbricas (...)	9,7	9,0	8,6	7,7	6,6	6,5
8541 Diodos, transistores, dispositivos semiconductores similares (...)	1,2	1,4	1,4	1,5	1,8	1,8
8542 Circuitos electrónicos integrados	3,4	4,1	4,5	4,7	4,3	4,0
17 Material de transporte	4,7	4,5	4,3	5,2	5,6	7,2
87 Vehículos automóviles, y sus partes	3,0	3,0	2,9	3,6	4,2	5,7
8703 Vehículos automóviles para transporte de personas	0,3	0,3	0,4	0,7	1,2	2,3
8708 Partes y accesorios de vehículos automóviles de las partidas 8701 a 8705 del SA	1,4	1,3	1,3	1,4	1,4	1,6
18 Aparatos de precisión	3,1	3,2	3,3	3,1	2,2	2,3
90 Instrumentos y aparatos de óptica, fotografía, de medida, medicoquirúrgicos (...)	2,9	2,9	3,1	2,9	2,0	2,1
19 Armas y municiones	0,0	0,0	0,0	0,0	0,0	0,0
20 Manufacturas diversas	6,8	7,2	7,7	7,7	7,3	7,0
94 Muebles, aparatos de alumbrado, anuncios y letreros, construcciones prefabricadas	3,8	4,0	4,2	4,1	3,6	3,6
95 Juguetes, juegos y artículos para recreo o deporte	2,3	2,5	2,8	2,9	2,9	2,6
9503 Triciclos, (...); muñecas o muñecos; modelos reducidos; rompecabezas de cualquier clase	1,0	1,2	1,3	1,3	1,3	1,2
21 Objetos de arte, etc.	0,01	0,03	0,03	0,07	0,05	0,03
Los demás	0,2	0,7	1,0	1,1	1,3	2,0

Fuente: Cálculos de la Secretaría de la OMC a partir de información de la base de datos UN Comtrade y de la GACC.

Cuadro A1. 4 Importaciones de mercancías por Secciones y principales Capítulos/partidas del SA, 2018-2023

Sección/capítulo/partida del SA	2018	2019	2020	2021	2022	2023
Importaciones totales (en miles de millones de USD)	2.133,6	2.079,3	2.069,6	2.679,4	2.716,0	2.556,8
	(% de las importaciones totales)					
<i>Importaciones en régimen de tráfico de perfeccionamiento</i>	22,0	20,1	19,6	18,2	16,9	15,0
01 Animales vivos y productos del reino animal	1,4	2,0	2,5	2,1	2,3	2,2
02 Productos del reino vegetal	2,9	3,0	3,5	3,8	4,2	4,6
12 Semillas y frutos oleaginosos; semillas y frutos diversos	2,0	1,9	2,2	2,2	2,5	2,7
1201 Habas (porotos, frijoles, fréjoles) de soja (soya), incluso quebrantadas	1,8	1,7	1,9	2,0	2,3	2,3
03 Grasas y aceites	0,4	0,5	0,5	0,6	0,6	0,6
04 Productos de las industrias alimentarias, bebidas y tabaco	1,2	1,3	1,4	1,2	1,2	1,4
05 Productos minerales	23,0	25,1	22,6	25,6	28,6	30,3
26 Minerales metalíferos, escorias y cenizas	6,4	7,9	9,0	10,1	8,3	9,3
2601 Minerales de hierro y sus concentrados	3,6	4,9	6,0	6,8	4,7	5,3
2603 Minerales de cobre y sus concentrados	1,5	1,6	1,8	2,1	2,1	2,3
27 Combustibles y aceites minerales	16,3	16,7	13,2	15,1	19,7	20,2
2709 Aceites crudos de petróleo o de mineral bituminoso	11,3	11,7	8,6	9,6	13,5	13,2
2711 Gas de petróleo y demás hidrocarburos gaseosos	2,2	2,5	2,2	2,7	3,3	3,3
06 Productos químicos y sus manufacturas	7,3	7,5	7,3	7,1	7,3	7,2
29 Productos químicos orgánicos	3,2	2,8	2,2	2,2	2,1	1,9
30 Productos farmacéuticos	1,3	1,6	1,7	1,6	1,5	1,7
07 Plástico y caucho	4,3	4,2	4,2	3,8	3,5	3,1
39 Plástico y sus manufacturas	3,5	3,4	3,4	3,1	2,8	2,4
08 Pieles, cueros, peletería y manufacturas de estas materias	0,4	0,4	0,4	0,4	0,4	0,4
09 Madera, corcho, espartería	1,2	1,1	1,0	0,9	0,8	0,7
10 Pasta de madera, papel y cartón	1,5	1,3	1,3	1,2	1,2	1,3
11 Materias textiles y sus manufacturas	1,6	1,5	1,4	1,3	1,2	1,2
12 Calzado, sombreros y demás tocados, etc.	0,2	0,3	0,3	0,3	0,3	0,3
13 Manufacturas de piedra, yeso fraguable, cemento	0,5	0,5	0,5	0,5	0,4	0,4
14 Piedras y metales preciosos, perlas	3,7	2,9	1,5	2,9	3,8	4,5
7108 Oro en bruto, semilabrado o en polvo	2,9	2,1	0,6	1,8	2,8	3,6
15 Metales comunes y sus manufacturas	5,0	4,6	5,7	5,8	5,9	5,6
72 Fundición, hierro y acero	1,0	1,1	1,8	1,6	1,6	1,4
74 Cobre y sus manufacturas	2,2	2,0	2,4	2,5	2,5	2,5
16 Máquinas, material eléctrico	33,9	33,1	35,8	33,5	31,2	29,2
84 Máquinas, aparatos y artefactos mecánicos; partes de estas máquinas o aparatos	9,5	9,2	9,3	8,6	7,4	7,7
85 Máquinas eléctricas y sus partes	24,4	23,9	26,5	24,9	23,7	21,5
8542 Circuitos electrónicos integrados	14,7	14,7	16,9	16,1	15,3	13,7
17 Material de transporte	5,4	4,7	4,2	3,8	3,5	3,2
87 Vehículos automóviles, y sus partes	3,8	3,6	3,6	3,2	3,0	2,8
8703 Vehículos automóviles para transporte de personas	2,3	2,3	2,2	2,0	1,9	1,8
18 Instrumentos de precisión	5,0	5,0	5,0	4,3	3,2	3,2
90 Instrumentos y aparatos de óptica, fotografía, de medida, medicoquirúrgicos (..)	4,8	4,7	4,8	4,1	3,0	3,0
19 Armas y municiones	0,0	0,0	0,0	0,0	0,0	0,0
20 Manufacturas diversas	0,4	0,4	0,3	0,3	0,3	0,2
21 Objetos de arte o colección y antigüedades	0,01	0,04	0,03	0,1	0,1	0,1
Los demás	0,6	0,7	0,5	0,5	0,3	0,4

Fuente: Cálculos de la Secretaría de la OMC a partir de información de la base de datos UN Comtrade y de la GACC.

Cuadro A1. 5 Comercio de bienes intermedios por categorías, 2013-2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Exportaciones totales de bienes intermedios (excluidos los combustibles) (En miles de millones de USD)	909,2	963,1	957,5	882,2	973,6	1.102,8	1.115,8	1.122,6	1.549,8	1.745,2	1.587,9
Alimentos y bebidas (bienes intermedios)	4,4	4,4	4,4	4,4	4,2	4,6	4,6	4,7	5,2	6,3	6,6
Otros suministros industriales (bienes intermedios) ^a	484,0	544,1	534,2	486,2	612,7	698,8	718,7	724,5	1.023,0	1.191,8	1.047,1
Minerales metalíferos, piedras preciosas (bienes intermedios)	5,7	5,7	6,5	5,2	4,9	5,6	6,8	10,3	15,3	14,3	14,2
Piezas y accesorios (excepto equipo de transporte) (bienes intermedios)	337,3	323,2	328,5	304,8	263,9	295,5	287,2	286,1	369,8	363,2	331,9
Piezas y accesorios (equipo de transporte) (bienes intermedios)	77,7	85,6	83,8	81,6	88,0	98,2	98,5	97,0	136,5	169,6	188,1
Exportaciones totales (excluidos los combustibles como bienes intermedios) (en miles de millones de USD)	2.201,6	2.335,4	2.266,2	2.091,3	2.254,8	2.477,7	2.492,2	2.583,5	3.355,2	3.580,8	3.369,3
Participación de las exportaciones de bienes intermedios en las exportaciones totales (excluidos los combustibles) (%)	41,3	41,2	42,3	42,2	43,2	44,5	44,8	43,5	46,2	48,7	47,1
Importaciones totales de bienes intermedios (excluidos los combustibles) (en miles de millones de USD)	1.142,9	1.146,8	1.097,5	1.035,3	1.180,4	1.296,9	1.258,6	1.314,9	1.725,3	1.683,2	1.553,8
Alimentos y bebidas (bienes intermedios)	59,5	61,9	55,9	49,8	57,5	56,1	54,4	64,6	89,3	95,9	97,6
Otros suministros industriales (bienes intermedios) ^a	442,6	438,9	387,8	358,0	684,8	762,1	734,7	782,5	992,1	1.041,5	922,6
Minerales metalíferos, piedras preciosas (bienes intermedios)	165,6	174,7	188,7	172,5	190,3	212,0	222,2	214,5	343,5	323,5	344,8
Piezas y accesorios (excepto equipo de transporte) (bienes intermedios)	427,8	418,6	419,0	406,3	195,9	209,4	193,9	202,9	243,0	171,8	140,2
Piezas y accesorios (equipo de transporte) (bienes intermedios)	47,4	52,7	46,0	48,8	52,0	57,2	53,4	50,4	57,5	50,4	48,5
Importaciones totales (excluidos los combustibles como bienes intermedios) (en miles de millones de USD)	1.674,4	1.676,3	1.506,0	1.431,9	1.621,9	1.817,3	1.762,5	1.828,1	2.317,2	2.214,4	2.079,2
Participación de las importaciones de bienes intermedios en las importaciones totales (excluidos los combustibles) (%)	68,3	68,4	72,9	72,3	72,8	71,4	71,4	71,9	74,5	76,0	74,7

a "Otros suministros industriales" abarca una amplia gama de insumos de fabricación, como estructuras metálicas, artículos y compuestos, conductores eléctricos y productos médicos y farmacéuticos.

Fuente: Cálculos de la Secretaría de la OMC basados en datos comerciales procedentes de la base de datos UN Comtrade.

Cuadro A2. 1 Principales notificaciones efectuadas en el marco de los Acuerdos de la OMC, 13 de abril de 2021-15 de enero de 2024

Acuerdo de la OMC	Descripción	Signatura y fecha del documento más reciente
Acuerdo sobre la Agricultura		
Artículos 10 y 18.2 - ES.1	Subvenciones a la exportación	G/AG/N/CHN/58-59 , 16 de noviembre de 2022 G/AG/N/CHN/68 , 20 de septiembre de 2023
Artículos 10 y 18.2 - ES.2	Subvenciones a la exportación - exportaciones totales	G/AG/N/CHN/60-61 , 16 de noviembre de 2022 G/AG/N/CHN/69 , 20 de septiembre de 2023
Artículo 18.2 - MA.2	Contingente arancelario - importaciones	G/AG/N/CHN/56 , 29 de junio de 2021 G/AG/N/CHN/57 , 13 de septiembre de 2022 G/AG/N/CHN/70 , 21 de septiembre de 2023
Artículo 18.2 - DS.1	Ayuda interna	G/AG/N/CHN/62-65 , 14 de diciembre de 2022
Artículo 18.3 - DS.2	Introducción o modificación de medidas de ayuda interna	G/AG/N/CHN/66-67 , 14 de diciembre de 2022
Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias		
Artículo 7, Anexo B	Reglamentos:	
	41 en 2021	G/SPS/N/CHN/1207-1242
	20 en 2022	G/SPS/N/CHN/1243-1262
	35 en 2023	G/SPS/N/CHN/1263-1284
Acuerdo sobre Normas de Origen		
Artículo 5, párrafo 4 del Anexo II - <i>ad hoc</i>	ALC China-Pakistán	G/RO/N/243 , 23 de septiembre de 2022
Acuerdo sobre Salvaguardias		
Artículo 12.5	Resultados de las consultas celebradas de conformidad con el artículo 12.3	G/L/1408 ; G/SG/266 , 26 de octubre de 2021
Acuerdo sobre Subvenciones y Medidas Compensatorias		
Artículo 25.1; GATT de 1994, artículo XVI.1	Subvenciones	G/SCM/N/372/CHN , 27 de agosto de 2021 G/SCM/N/401/CHN , 20 de julio de 2023
Artículo 25.11 - <i>ad hoc</i>	Medidas compensatorias	G/SCM/N/382 , 15 de septiembre de 2021 G/SCM/N/389 , 8 de marzo de 2022
Artículo 25.11 - semestral	Medidas en materia de derechos compensatorios	G/SCM/N/379/CHN , 23 de septiembre de 2021 G/SCM/N/386/CHN , 1 de abril de 2022 G/SCM/N/392/CHN , 12 de septiembre de 2022 G/SCM/N/399/CHN , 1 de marzo de 2023 G/SCM/N/407/CHN , 30 de agosto de 2023
Acuerdo sobre Obstáculos Técnicos al Comercio		
Artículo 2.10	Reglamentos técnicos - urgentes	G/TBT/N/CHN/1675-76 , 26 de abril de 2022 G/TBT/N/CHN/1762-63 , 20 de septiembre de 2023 G/TBT/N/CHN/1772-74 , 24 de noviembre de 2023 G/TBT/N/CHN/1776-77 , 4 de enero de 2024
Artículo 2.9	Reglamentos técnicos:	
	63 en 2021	G/TBT/N/CHN/1588-1605 ; G/TBT/N/CHN/1047/Add.1 ; G/TBT/N/CHN/1606-1614 ; 1616-1625; 1628-1647; G/TBT/N/CHN/1425/Add.1 ; G/TBT/N/CHN/1452/Add.1 ; 1648-1650
	61 en 2022	G/TBT/N/CHN/1351/Add.1 ; G/TBT/N/CHN/1461/Add.1 ; G/TBT/N/CHN/1651-1672 ; 1677-1680; G/TBT/N/CHN/1145/Add.1 ; G/TBT/N/CHN/447/Add.1 ; 1681-1708; G/TBT/N/CHN/262/Rev.1/Add.1 ; 1709-1712
	59 en 2023	G/TBT/N/CHN/1495/Add.1 ; G/TBT/N/CHN/1622/Add.1 ; 1713-1754; G/TBT/N/CHN/447/Add.2 ; G/TBT/N/CHN/1585/Add.1 ; 1755; 1758-1761; 1764; 1766; 1768-1771; 1775 G/TBT/N/CHN/1778-1786
Artículos 2.9 y 5.6	Reglamentos técnicos y procedimientos de evaluación de la conformidad (en proyecto)	G/TBT/N/CHN/1756-1757 , 29 de septiembre de 2023
Artículo 5.6	Procedimientos de evaluación de la conformidad (en proyecto)	
	3 en 2021	G/TBT/N/CHN/1615 ; 1626-27
	4 en 2022	G/TBT/N/CHN/1673-74 ; 1682; 1699
	4 en 2023	G/TBT/N/CHN/1733 ; 1539/Add.1; 1765; 1767
Artículo 5.7	Procedimientos de evaluación de la conformidad (urgentes)	G/TBT/N/CHN/1787-1792 , 5 de enero de 2024
Decisión sobre el procedimiento de notificación de restricciones cuantitativas		
G/L/59/Rev.1 - bienal - notificación completa	Acceso a los mercados - restricciones cuantitativas	G/MA/QR/N/CHN/6 , 12 de mayo de 2022
GATT de 1994		
Artículo XVII.4 a) y párrafo 1 del Entendimiento relativo a la interpretación del artículo XVII	Comercio de Estado	G/STR/N/18/CHN , 12 de noviembre de 2021
Artículo XXIV.7 a) del GATT de 1994 - Zonas de libre comercio	ALC China-Pakistán	WT/REG237/N/1/Add.1 , 16 de marzo de 2022

Acuerdo de la OMC	Descripción	Signatura y fecha del documento más reciente
Artículo V.7 a) del AGCS	Zona de libre comercio China-ASEAN	S/C/N/463/Add.1 ; WT/COMTD/N/20/Add.2 , 9 de febrero de 2022
Acuerdo relativo a la Aplicación del Artículo VI del GATT de 1994		
Artículo 16.4 - <i>ad hoc</i>	Medidas antidumping	G/ADP/N/360 , 15 de septiembre de 2021 G/ADP/N/367 , 15 de marzo de 2022
Artículo 16.4 - semestral	Medidas antidumping	G/ADP/N/357/CHN , 16 de septiembre de 2021 G/ADP/N/364/CHN , 1 de abril de 2022 G/ADP/N/335/CHN/Corr.1 ; G/ADP/N/342/CHN/Corr.1 ; G/ADP/N/350/CHN/Corr.1 ; G/ADP/N/357/CHN/Corr.1 ; G/ADP/N/364/CHN/Corr.1 , 6 de julio de 2022 G/ADP/N/370/CHN , 16 de agosto de 2022 G/ADP/N/377/CHN , 6 de marzo de 2023 G/ADP/N/384/CHN , 4 de septiembre de 2023

Nota: El hipervínculo a una serie de documentos remite al primer documento de esa serie.

Fuente: Compilado por la Secretaría de la OMC sobre la base de la información facilitada por las autoridades.

Cuadro A2. 2 Asuntos de solución de diferencias en la OMC en los que ha intervenido China, 13 de abril de 2021-15 de enero de 2024

Título	Parte demandada/parte reclamante	Recepción de la solicitud de celebración de consultas	Situación (al 15 de enero de 2024)	Serie de documentos de la OMC
China como parte demandada				
<i>China – Medidas antidumping sobre productos de acero inoxidable procedentes del Japón</i>	China/Japón	11/6/2021	Informe del grupo especial adoptado	WT/DS601
<i>China – Medidas en materia de derechos antidumping y compensatorios sobre el vino procedente de Australia</i>	China/Australia	22/6/2021	Informe del grupo especial adoptado	WT/DS602
<i>China – Medidas relativas al comercio de mercancías</i>	China/Unión Europea	27/1/2022	Trabajos del grupo especial suspendidos en enero de 2024	WT/DS610
<i>China – Observancia de los derechos de propiedad intelectual</i>	China/Unión Europea	18/2/2022	Grupo especial constituido	WT/DS611
<i>China – Medidas en materia de derechos antidumping y compensatorios sobre la cebada procedente de Australia</i>	China/Australia	16/12/2020	Notificación de una solución mutuamente convenida	WT/DS598
<i>China – Medidas relativas a la importación de semillas de colza (canola) procedentes del Canadá</i>	China/Canadá	9/9/2019	La decisión de establecer el Grupo Especial quedó sin efecto el 31 de agosto de 2023	WT/DS589
China como parte reclamante				
<i>Australia – Medidas en materia de derechos antidumping y compensatorios sobre determinados productos procedentes de China</i>	Australia/China	24/6/2021	Informe del grupo especial distribuido	WT/DS603
<i>Estados Unidos – Medida de salvaguardia sobre las importaciones de productos fotovoltaicos de silicio cristalino</i>	Estados Unidos/China	14/8/2018	Informe del grupo especial en apelación	WT/DS562
<i>Estados Unidos – Medidas sobre determinados productos semiconductores y otros productos, y los servicios y tecnologías conexos</i>	Estados Unidos/China	12/12/2022	En fase de consultas	WT/DS615
<i>Estados Unidos – Medidas en materia de derechos compensatorios sobre determinados productos procedentes de China</i>	Estados Unidos/China	25/5/2012	Decisión del Árbitro de conformidad con el artículo 22.6 del ESD distribuida	WT/DS437
<i>Estados Unidos – Determinadas medidas relativas a los productos de acero y aluminio</i>	Estados Unidos/China	5/4/2018	Informe del grupo especial en apelación	WT/DS544

Fuente: Datos compilados por la Secretaría de la OMC a partir de información facilitada por las autoridades y en el portal de solución de diferencias.

Cuadro A3. 1 Resumen de los aranceles NMF aplicados, 2024

	Número de líneas	Promedio (%)	Horquilla (%)		Desviación típica	Libres de derechos (%)
			NMF aplicado	Consolidado		
Total	8.957	7,0	0-65	0-65	6,2	16,2
Productos agropecuarios (definición de la OMC)	1.211	12,6	0-65	0-65	11,0	8,9
Animales vivos y carne	169	11,4	0-25	0-25	7,9	18,3
Productos lácteos	26	11,1	2-20	6-20	3,7	0,0
Frutas y hortalizas	303	11,4	0-30	0-30	6,7	4,3
Café, té, cacao y especias	70	12,7	0-30	2-32	5,1	1,4
Cereales y preparaciones alimenticias	109	20,2	0-65	0-65	22,0	7,3
Semillas oleaginosas, grasas y aceites	99	11,3	0-30	0-30	7,4	13,1
Azúcares y artículos de confitería	21	30,6	5-50	8-50	16,2	0,0
Bebidas y tabaco	70	15,8	0-65	0-65	16,9	1,4
Algodón, seda y lana	40	14,2	1-40	6-40	12,3	0,0
Los demás productos agropecuarios	304	10,2	0-30	0-30	7,0	13,5
Productos no agropecuarios (definición de la OMC)	7.746	6,1	0-50	0-58	4,5	17,3
Pescado y productos de la pesca	350	6,8	0-15	0-23	2,9	8,3
Minerales y metales	1.251	6,0	0-21	0-35	3,7	10,0
Petróleo	20	4,8	0-9	0-9	3,0	15,0
Productos químicos	1.541	5,7	0-50	0-50	4,3	9,9
Madera, papel y muebles	471	0,9	0-12	0-20	2,2	83,7
Materias textiles	859	7,0	2-38	2-38	2,4	0,0
Prendas de vestir	287	6,6	5-12	14-25	1,3	0,0
Caucho, cuero y calzado	227	10,1	0-25	0-25	4,8	0,4
Máquinas mecánicas, de oficina y de cálculo	1.015	6,0	0-25	0-30	3,7	18,1
Maquinaria eléctrica y equipo electrónico	639	4,7	0-20	0-58	4,3	40,8
Material de transporte	516	10,5	0-45	0-45	7,0	2,3
Otras manufacturas	570	5,8	0-20	0-30	4,9	31,6

Nota: Los cálculos se basan en las líneas arancelarias nacionales (al nivel de 8 dígitos); se excluyen los tipos aplicables dentro de los contingentes y se incluyen los EAV de los derechos no *ad valorem* facilitados por las autoridades. En los cálculos se utilizan los tipos de derechos temporales cuando son aplicados en su totalidad al nivel de 8 dígitos.

Fuente: Cálculos de la Secretaría de la OMC a partir de los datos facilitados por las autoridades.

Cuadro A3. 2 Medidas aplicadas a las importaciones originarias de interlocutores comerciales específicos sobre la base de los anuncios/decretos de la GACC y otros ministerios y organismos competentes, marzo de 2024

Fecha	Anuncio/decreto	Interlocutores comerciales	Productos	Categoría de medidas	Motivo de la aplicación/anulación
10 de enero de 2023	Anuncio sobre la Prevención de la Propagación de la Peste Equina Africana de Nigeria a China (Anuncio Nº 4 de la GACC)	Nigeria	Equinos y productos conexos	Prohibición de importación	El 23 de diciembre de 2022, se registró un brote de peste equina africana en Nigeria. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de equinos y productos conexos procedentes de Nigeria. Todavía no se ha levantado esa prohibición.
25 de enero de 2021	Anuncio sobre la Suspensión de las Importaciones de Aves de Corral y Productos Conexos procedentes de Lituania (Anuncio Nº 10 de la GACC)	Lituania	Aves de corral	Prohibición de importación	El 25 de enero de 2021, se informó a la Organización Mundial de Sanidad Animal de que se había registrado un brote de gripe aviar de alta patogenicidad (subtipo H5N8) en aves de corral nacionales. A efectos de prevenir la introducción de la epidemia, se impusieron restricciones al comercio de aves de corral y productos conexos procedentes de Lituania. Todavía no se ha levantado esa prohibición.
9 de febrero de 2023	Anuncio sobre la Prevención de la Propagación de la Fiebre Aftosa del Iraq a China (Anuncio Nº 9 de la GACC)	Iraq	Animales de pezuña hendida y productos conexos	Prohibición de importación	El 26 de enero de 2023, se registró un brote de fiebre aftosa en el Iraq. A efectos de prevenir la introducción de la epidemia, se impusieron restricciones al comercio de animales de pezuña hendida y productos conexos procedentes del Iraq. Todavía no se ha levantado esa prohibición.
6 de julio de 2023	Anuncio sobre la Prevención de la Propagación de la Peste Porcina Africana de Croacia a China (Anuncio Nº 84 de la GACC)	Croacia	Cerdos, jabalíes y productos conexos	Prohibición de importación	El 27 de junio de 2023, se registró un brote de peste porcina africana en Croacia. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de cerdos, jabalíes y productos conexos procedentes de Croacia. Todavía no se ha levantado esa prohibición.
6 de julio de 2023	Anuncio sobre la Prevención de la Introducción de la Peste Porcina Africana de Bosnia y Herzegovina en China (Anuncio Nº 85 de la GACC)	Bosnia y Herzegovina	Cerdos, jabalíes y productos conexos	Prohibición de importación	El 22 de junio de 2023, se registró un brote de peste porcina africana en Bosnia y Herzegovina. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de cerdos, jabalíes y productos conexos procedentes de Bosnia y Herzegovina. Todavía no se ha levantado esa prohibición.

Fecha	Anuncio/decreto	Interlocutores comerciales	Productos	Categoría de medidas	Motivo de la aplicación/anulación
4 de agosto de 2023	Anuncio del Examen y la Resolución sobre la Aplicación de Medidas Antidumping y Medidas Compensatorias a la Importación de Cebada procedente de Australia (Anuncio Nº 29 del MOFCOM)	Australia	Cebada	Derechos antidumping	El 18 de mayo de 2020, el MOFCOM emitió los Anuncios Nº 14 y Nº 15, 2020, por los que se decidió imponer derechos antidumping y compensatorios a las importaciones de cebada procedente de Australia por un período de cinco años a partir del 19 de mayo de 2020. El 14 de abril de 2023, a petición de la Asociación China de Bebidas Alcohólicas, el MOFCOM emitió el Anuncio Nº 12, 2023, y decidió estudiar la necesidad de seguir imponiendo derechos antidumping y derechos compensatorios a las importaciones de cebada procedentes de Australia. Tras completar la investigación, el MOFCOM dictaminó el 4 de agosto de 2023 que, a la luz de los cambios producidos en el mercado de la cebada en China, no era necesario seguir imponiendo derechos antidumping ni derechos compensatorios a las importaciones de cebada procedente de Australia en virtud del artículo 49 del Reglamento Antidumping y el artículo 48 del Reglamento sobre Medidas Compensatorias. Los derechos antidumping y los derechos compensatorios impuestos a las importaciones de cebada procedente de Australia se suprimieron el 5 de agosto de 2023.
24 de agosto de 2023	Anuncio de la Administración General de Aduanas sobre la Suspensión de la Importación de todos los Productos Acuáticos procedentes del Japón (Anuncio Nº 103 de la GACC)	Japón	Productos acuáticos	Prohibición de importación	Se trata de una medida de prevención en caso de emergencia, que cumple las normas de la OMC en materia de MSF. Su objetivo es evitar el riesgo de contaminación radiactiva de la inocuidad de los alimentos causada por la descarga de agua nuclear contaminada de Fukushima en el Japón, a fin de proteger la salud de los consumidores chinos y garantizar la inocuidad de los alimentos importados.
9 de febrero de 2022	Aviso del Departamento de Cuarentena Animal y Vegetal de la GACC por el que se Suspende la Importación de Troncos de Lituania en China (Aviso Nº 12 del DAPQ, 2022)	Lituania	Carne de bovino, productos lácteos, productos alcohólicos	Prohibición de importación	El grupo de expertos chinos no pudo evaluar y confirmar la eficacia continuada del sistema de gestión de la inocuidad de la carne y los productos lácteos de Lituania (carne de bovino, productos lácteos). Hubo sospechas de fraude y de riesgo relativo a la inocuidad de los alimentos destinados a los consumidores (productos alcohólicos). Todavía no se ha levantado esa prohibición.
2 de septiembre de 2023	Anuncio sobre la Prevención de la Introducción de la Fiebre Aftosa de Omán en China (Anuncio Nº 113 de la GACC)	Omán	Animales de pezuña hendida y productos conexos	Prohibición de importación	Se registró un brote de fiebre aftosa en Omán. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de animales de pezuña hendida y productos conexos procedentes de Omán. Todavía no se ha levantado esa prohibición.
20 de septiembre de 2023	Anuncio sobre la Prevención de la Propagación de la Peste Porcina Africana de Suecia a China (Anuncio Nº 121 de la GACC)	Suecia	Cerdos, jabalíes y productos conexos	Prohibición de importación	El 7 de septiembre de 2023, se registró un brote de peste porcina africana en Suecia. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de cerdos, jabalíes y productos conexos procedentes de Suecia. Todavía no se ha levantado esa prohibición.

Fecha	Anuncio/decreto	Interlocutores comerciales	Productos	Categoría de medidas	Motivo de la aplicación/anulación
27 de septiembre de 2023	Anuncio sobre la Prevención de la Propagación de la Viruela Ovina y la Viruela Caprina de Bulgaria a China (Anuncio N° 124 de la GACC)	Bulgaria	Pequeños rumiantes	Prohibición de importación	El 16 de septiembre de 2023 se registró un brote de viruela ovina y viruela caprina en Bulgaria. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Bulgaria. Todavía no se ha levantado esa prohibición.
23 de octubre de 2023	Anuncio sobre la Prevención de la Propagación de la Enfermedad de la Lengua Azul de Bélgica a China (Anuncio N° 139 de la GACC)	Bélgica	Rumiantes y productos conexos	Prohibición de importación	El 10 de octubre de 2023 se registró un brote de la enfermedad de la lengua azul en Bélgica. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de rumiantes y productos conexos procedentes de Bélgica. Todavía no se ha levantado esa prohibición.
23 de octubre de 2023	Anuncio sobre la Prevención de la Propagación de la Enfermedad de la Lengua Azul de los Países Bajos a China (Anuncio N° 140 de la GACC)	Países Bajos	Rumiantes y productos conexos	Prohibición de importación	Se registró un brote de la enfermedad de la lengua azul en Bélgica. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de rumiantes y productos conexos procedentes de los Países Bajos. Todavía no se ha levantado esa prohibición.
23 de octubre de 2023	Anuncio sobre la Prevención de la Introducción de la Peste de los Pequeños Rumiantes de Rwanda en China (Anuncio N° 141 de la GACC)	Rwanda	Pequeños rumiantes	Prohibición de importación	El 2 de octubre de 2023 se registró un brote de peste de los pequeños rumiantes en Rwanda. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Rwanda. Todavía no se ha levantado esa prohibición.
20 de noviembre de 2023	Anuncio sobre la Prevención de la Introducción de la Viruela Ovina y la Viruela Caprina de Grecia en China (Anuncio N° 169 de la GACC)	Grecia	Pequeños rumiantes	Prohibición de importación	El 27 de octubre de 2023 se registró un brote de viruela ovina y viruela caprina en Grecia. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Grecia. Todavía no se ha levantado esa prohibición.
20 de diciembre de 2023	Anuncio sobre las Normas de Ejecución relativas a la Administración de los Contingentes Arancelarios para la Importación de Lanas y Lanas Peinadas de Nueva Zelanda y de Lanas de Australia en 2024 (Anuncio N° 59 del MOFCOM)	Australia, Nueva Zelandia	Productos de lana	Contingentes arancelarios	En relación con los contingentes arancelarios específicos a la importación de lana y lana peinada de Nueva Zelandia y de lana de Australia en 2024, se cumplen tanto el Acuerdo de Libre Comercio entre China y Nueva Zelandia como el Acuerdo de Libre Comercio entre China y Australia. En 2024, el contingente arancelario para la importación de lana de Nueva Zelandia asciende a 36.936 toneladas; el contingente arancelario correspondiente a la lana peinada de Nueva Zelandia asciende a 665 toneladas; y el correspondiente a la lana de Australia asciende a 44.324 toneladas.

Fecha	Anuncio/decreto	Interlocutores comerciales	Productos	Categoría de medidas	Motivo de la aplicación/anulación
22 de diciembre de 2023	Anuncio sobre la Prevención de la Propagación de la Peste de los Pequeños Rumiantes de Türkiye a China (Anuncio N° 191 de la GACC)	Türkiye	Pequeños rumiantes	Prohibición de importación	El 8 de diciembre de 2023 se registró un brote de peste de los pequeños rumiantes en Türkiye. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Türkiye. Todavía no se ha levantado esa prohibición.
26 de enero de 2024	Anuncio sobre la Prevención de la Propagación de la Enfermedad de la Lengua Azul del Iraq a China (Anuncio N° 8 de la GACC)	Iraq	Rumiantes y productos conexos	Prohibición de importación	El 10 de enero de 2024 se registró un brote de la enfermedad de la lengua azul en el Iraq. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de rumiantes y productos conexos procedentes del Iraq. Todavía no se ha levantado esa prohibición.
1 de febrero de 2024	Anuncio sobre la Prevención de la Propagación de la Peste Porcina Africana de Montenegro a China (Anuncio N° 16 de la GACC)	Montenegro	Cerdos, jabalíes y productos conexos	Prohibición de importación	El 17 de enero de 2024 se registró un brote de peste porcina africana en Montenegro. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de cerdos, jabalíes y sus productos procedentes de Montenegro. Todavía no se ha levantado esa prohibición.
6 de febrero de 2024	Anuncio sobre la Prevención de la Propagación de la Enfermedad de la Lengua Azul de Italia a China (Anuncio N° 19 de la GACC)	Italia	Rumiantes y productos conexos	Prohibición de importación	El 26 de enero de 2024 se registró un brote de la enfermedad de la lengua azul en las regiones italianas de Cerdeña y Toscana. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de rumiantes y sus productos conexos procedentes de Italia. Todavía no se ha levantado esa prohibición.
10 de marzo de 2024	Anuncio sobre la Prevención de la Propagación de la Peste Porcina Africana de Albania a China (Anuncio N° 29 de la GACC)	Albania	Cerdos, jabalíes y productos conexos	Prohibición de importación	El 26 de febrero de 2024 se registró un brote de peste porcina africana en Albania. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de cerdos, jabalíes y sus productos procedentes de Albania. Todavía no se ha levantado esa prohibición.
15 de marzo de 2024	Anuncio sobre la Prevención de la Propagación de la Peste de los Pequeños Rumiantes de Georgia a China (Anuncio N° 31 de la GACC)	Georgia	Pequeños rumiantes	Prohibición de importación	El 1 de marzo de 2024 se registró un brote de peste de los pequeños rumiantes en Georgia. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Georgia. Todavía no se ha levantado esa prohibición.
22 de marzo de 2024	Anuncio sobre la Prevención de la Propagación de la Viruela Ovina y la Viruela Caprina de Libia a China (Anuncio N° 34 de la GACC)	Libia	Ovejas, cabras y productos conexos	Prohibición de importación	El 11 de marzo de 2024 se registró un brote de viruela ovina y viruela caprina en Libia. A efectos de proteger la seguridad de la ganadería en China y prevenir la introducción de la epidemia, se impusieron restricciones al comercio de ovejas, cabras y productos conexos procedentes de Libia. Todavía no se ha levantado esa prohibición.

Fuente: Distintos anuncios de autoridades competentes y datos facilitados por las autoridades.

Cuadro A4. 1 Ayuda del Gobierno central a la pesca, según se ha notificado a la OMC

Título Fundamento jurídico	Objetivo	Subvención y beneficiarios	Fecha de inicio	Ingresos condonados/asignación presupuestaria (en millones de CNY)
Políticas fiscales preferenciales para proyectos de agricultura, silvicultura, ganadería y pesca <i>Ley del Impuesto sobre la Renta de las Sociedades, 2007;</i> <i>Reglamento de Aplicación de la Ley del Impuesto sobre la Renta de las Sociedades, 2007;</i> <i>Circular Cai Shui N° 149 del MOF [2008];</i> <i>Circular Cai Shui N° 26 del MOF [2011]</i>	Apoyar el desarrollo de las actividades de elaboración preliminar de los productos de la pesca, entre otras cosas.	Trato fiscal preferencial. En el caso de los ingresos obtenidos de proyectos de agricultura, silvicultura, ganadería y pesca, las empresas pueden beneficiarse de la exención o reducción del impuesto sobre la renta de las sociedades.	2008	No se dispone de datos sobre los ingresos condonados.
Fondo de Subvenciones para el Desarrollo del Sector Pesquero <i>Circular Cai Nong N° 41 del MOF [2021];</i> <i>Circular Cai Nong N° 24 del MOF [2021]</i>	Promover el desarrollo de alta calidad del sector pesquero y resolver los problemas de desarrollo de dicho sector. Optimizar las estructuras industriales y lograr la transformación y modernización de la economía. Reducir la intensidad de la pesca de altura, proteger los recursos pesqueros marinos, y promover el desarrollo de la acuicultura, de las industrias de tratamiento de productos acuáticos y de otras industrias. En consonancia con la tendencia internacional de las subvenciones a la pesca, se eliminarán las subvenciones a los costos directos para orientar a los pescadores en la conservación de los recursos pesqueros y fortalecer la cooperación externa en materia de pesca.	Donación. Pescadores, nuevas entidades comerciales, institutos de investigación y universidades, y otras entidades pertinentes que cumplan los requisitos necesarios y lleven a cabo las correspondientes tareas.	2021	2021: 1. Tareas vinculantes (1.222,5), entre ellas, pastos marinos nacionales (122,5) e instalaciones pesqueras públicas básicas (1.100). 2. Tareas de orientación (6.277,5), entre ellas, equipos e instalaciones de pesca modernos (2.627,5), desarrollo verde y circular del sector pesquero (1.100) y estudio y conservación de los recursos pesqueros y mejora de la capacidad de cumplimiento de las normas internacionales (2.550). (Estimaciones, que pueden diferir de las cuantías reales). 2022: 1. Tareas vinculantes (1.137), entre ellas, pastos marinos nacionales (150) e instalaciones pesqueras públicas básicas (987). 2. Tareas de orientación (6.363), entre ellas, equipos e instalaciones de pesca modernos (2.007,9), desarrollo verde y circular del sector pesquero (1.450) y estudio y conservación de los recursos pesqueros y mejora de la capacidad de cumplimiento de las normas internacionales (2.905,1). (Estimaciones, que pueden diferir de las cuantías reales).

Título <i>Fundamento jurídico</i>	Objetivo	Subvención y beneficiarios	Fecha de inicio	Ingresos condonados/asignación presupuestaria (en millones de CNY)
Otros pagos de transferencia para fines generales del sector pesquero <i>Circular Cai Nong N° 41 del MOF [2021]</i>	Promover el desarrollo de alta calidad del sector pesquero y resolver los problemas de desarrollo de dicho sector. Optimizar las estructuras industriales y lograr la transformación y modernización del sector. Reducir la intensidad de la pesca de altura, proteger los recursos pesqueros marinos, y promover el desarrollo de la acuicultura, de las industrias de tratamiento de productos acuáticos y de otras industrias. En consonancia con la tendencia internacional de las subvenciones a la pesca, se eliminarán las subvenciones a los costos directos para orientar a los pescadores en la conservación de los recursos pesqueros y fortalecer la cooperación externa en materia de pesca.	Donación. Pescadores, nuevas entidades comerciales, institutos de investigación y universidades, y otras entidades pertinentes que cumplan los requisitos necesarios y lleven a cabo las correspondientes tareas.	2021	2021: 16.021 2022: 16.021

Fuente: Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

Cuadro A4. 2 Ayuda de los Gobiernos locales a la pesca, según se ha notificado a la OMC

Título <i>Fundamento jurídico</i>	Objetivo	Subvención y beneficiarios	Fecha de inicio	Asignación presupuestaria (en decenas de millares de CNY)
Provincia de Liaoning				
Mejora de las poblaciones de peces y liberación de alevines <i>Ley de Pesca, Reglamento relativo a la Administración de las Pesquerías de la Provincia de Liaoning</i>	Mejorar el entorno ecológico de las aguas, restaurar los recursos pesqueros e incrementar los ingresos de los pescadores	Donación. Proyectos y unidades admisibles.	2019	2021: 540 2022: 350
Provincia de Jiangsu				
Subvención y donación para granjas experimentales nacionales para una acuicultura sólida (ciudad de Nanjing) <i>Ning Nong Ji Nº 56 [2021]; Ning Nong Ji Nº 6 [2022]</i>	Transformar el modo de desarrollo del sector de la pesca	Donación y subvención. Granjas experimentales nacionales para una acuicultura sólida.	2019	2021: 50 2022: 100
Subvención para la renovación y normalización de los estanques de acuicultura (distrito de Wuzhong, ciudad de Suzhou) <i>Wu Zheng Fa Nº 139 [2017]</i>	Mejorar las instalaciones de producción de la acuicultura en estanques	Donación. Unidades que cumplen las condiciones establecidas.	2018	2021: 985,5 2022: 485,5
Transformación ecológica de los estanques (ciudad de Changzhou) <i>Su Zheng Ban Fa Nº 51 [2022]</i>	Adherirse a la filosofía de ecología ante todo y desarrollo ecológico	Donación. Unidades o grandes acuicultores que llevan a cabo directamente proyectos de normalización de estanques de acuicultura.	2021	2021: 1.000 2022: 1.800
Provincia de Anhui				
Subvención para el seguro de pensiones de los pescadores que abandonen o tengan prohibida la pesca de captura en el Río Yangtsé (distrito de Xuanzhou, ciudad de Xuancheng) <i>Plan de Aplicación del Seguro de Pensiones Básicas Urbano y Rural para los Pescadores que Abandonen la Pesca de Captura en la Cuenca Principal del Río Yangtsé (Distrito de Xuanzhou)</i>	Garantizar la recolocación de los pescadores que abandonen o tengan prohibida la pesca de captura en el Río Yangtsé	Donación. Pescadores que abandonen la pesca de captura.	2020	2021: 325,7 2022: 372,2
Provincia de Fujian				
Fondo Especial para la Reestructuración de la Pesca <i>Min Cai Nong Nº 36 [2019]</i>	Promover la transformación, la modernización y el desarrollo ecológico y de alta calidad del sector pesquero, y fomentar la innovación y la promoción de la tecnología científica pertinente	Donación. Empresas de tratamiento de productos acuáticos, cooperativas, explotaciones agrícolas familiares, instituciones de promoción de los productos acuáticos, institutos de investigación científica, etc. en Fujian	2019	2021: 5.500

Título <i>Fundamento jurídico</i>	Objetivo	Subvención y beneficiarios	Fecha de inicio	Asignación presupuestaria (en decenas de millares de CNY)
Fondo Especial para el Desarrollo de Alta Calidad de los Servicios Marítimos y la Pesca <i>Min Cai Nong</i> Nº 25 [2022]	Intensificar la protección ambiental de los recursos pesqueros y las pesquerías, y promover la transformación, la modernización y el desarrollo ecológico y de alta calidad de la pesca	Donación. Unidades dependientes del Servicio Provincial de Pesca Marítima, institutos provinciales de investigación pertinentes, unidades administrativas pertinentes de ciudades y los condados (distritos) y entidades empresariales de pesca recreativa	2022	2022: 15.000
Fondo Especial para el Desarrollo de la Economía Marítima <i>Medidas para la Administración de los Fondos Especiales para el Desarrollo de la Economía Marítima (Min Cai Nong</i> Nº 5 [2020])	Apoyar un desarrollo más rápido de la economía marítima	Donación. Ciudades y condados con industria marítima e instituciones centrales y provinciales en Fujian	2020	2021: 12.000 2022: 12.000
Transformación y modernización de la acuicultura marina (ciudad de Zhangzhou) <i>Min Zheng Ban</i> Nº 28 [2021]	Mejorar la calidad y la eficiencia de la pesca y promover el desarrollo ecológico y de alta calidad de la acuicultura	Donación. Explotaciones de acuicultura inscritas en el registro de industria y comercio.	2021	2021: 4.400 2022: 4.200
Fondo Especial para el Desarrollo de la Pesca y del Mar (ciudad de Xiamen) <i>Xia Hai Gui</i> Nº 4 [2020]	Promover la innovación científica marina y acelerar el desarrollo económico	Donación y subvención. Empresas admisibles que participen legalmente en actividades marinas.	2021	2021: 3.878,91 2022: 5.974,19
Provincia de Shandong				
Seguro para la Ostricultura (Rushan, ciudad de Weihai) <i>Ru Fa Gai Zi</i> Nº 3 [2022]	Mejorar la resiliencia al riesgo de los desastres naturales del sector ostrícola	Donación. Ostricultores admisibles.	2021	2021: 148,62 2022: 150
Provincia de Guangdong				
Subvención para la subsistencia y la producción para los pescadores durante los períodos de veda <i>Yue Hai Yu</i> Nº 25 [2018]	Compensar las pérdidas de ingresos de los pescadores por la aplicación de la moratoria de pesca	Donación. Miembros de la tripulación de los buques de pesca locales aprobados por el departamento administrativo de pesca competente durante los períodos de veda.	2018	2021: 3.358 2022: 3.358
Fondo Especial para la Acuicultura (ciudad de Zhongshan) <i>Zhong Hai Yu</i> Nº 73 [2017]	Promover la tecnología de la acuicultura con especies mejoradas, mejorar el control de calidad de los alevines y las crías y promover el desarrollo sostenible del sector pesquero	Donación. Empresas con licencias válidas para la acuicultura en áreas acuáticas y llanuras de marea y con licencias para la producción de especies.	2021	2021: 60

Título <i>Fundamento jurídico</i>	Objetivo	Subvención y beneficiarios	Fecha de inicio	Asignación presupuestaria (en decenas de millares de CNY)
Subvención para la subsistencia de los pescadores durante los períodos de veda (ciudad de Zhongshan) <i>Yue Hai Yu N° 25 [2018]</i>	Conservar los recursos pesqueros y promover el desarrollo sostenible del sector pesquero	La subvención para los miembros de la tripulación de buques pesqueros durante los períodos de veda se basa en los niveles mínimos de subsistencia publicados por los departamentos de asuntos civiles para el año.	2013	2021: 630 2022: 690,424
Subvención para los períodos de veda (prohibición) de la pesca (ciudad de Guangzhou) <i>Sui Nong N° 117 [2019]</i>	Conservar los recursos pesqueros, resolver los problemas de los pescadores durante los períodos de veda (prohibición) de la pesca y promover el desarrollo sostenible del sector pesquero	Donación. Miembros de la tripulación de los buques de pesca de Guangzhou autorizados por el departamento administrativo de pesca regional competente durante los períodos de veda.	2019	2021: 1.196,91 2022: 1.245,71
Seguro Estatal para la Acuicultura (ciudad de Guangzhou) <i>Sui Nong N° 19 [2021]</i>	Ampliar la cobertura de los seguros agrícolas y reforzar la resiliencia de la producción agrícola a los desastres naturales	Donación. Todos los agricultores, empresas y otras entidades comerciales de la ciudad admisibles para el seguro.	2021	2021: 7.579,24 2022: 35.727,20
Subvención para la subsistencia y la producción para los pescadores durante los períodos de veda (ciudad de Dongguan) <i>Dong Nong N° 11 [2021]</i>	Compensar las pérdidas de ingresos de los pescadores por la aplicación de la moratoria de pesca	Donación. Miembros de la tripulación de los buques de pesca locales durante los períodos de veda.	2021	2021: 416 2022: 504,36
Región autónoma de Guangxi Zhuang				
Subvención para que los pescadores de altura reduzcan el número de embarcaciones y pasen a otras actividades de producción <i>Gui Nong Ting Ban Fa N° 17 [2022]</i>	Reducir la intensidad de la pesca, proteger los recursos pesqueros marinos y mejorar la seguridad de los buques pesqueros	Donación. Propietarios de buques de pesca marítima de altura que hayan declarado reducir su número de embarcaciones y pasar a otras actividades de producción comprendidas en el ámbito de aplicación.	2021	2021: 3.381 2022: 1.973,95
Provincia de Hainan				
Subvención para la conservación de los recursos pesqueros de los buques de pesca marítima que faenan durante períodos prolongados <i>Qiong Nong Zi N° 319 [2022]</i>	Mitigar los efectos de la pandemia de COVID-19 en los pescadores	Donación. Buques de pesca marítima que se vean afectados por la pandemia y no puedan faenar.	2022	2022: 2215,78
Subvención para la reforma de los impuestos y las tasas sobre el petróleo refinado (para el sector de la pesca).	Promover el desarrollo de alta calidad y la modernización del sector pesquero	Donación. Pequeñas embarcaciones pesqueras que figuraban en el registro del censo provincial de buques de pesca de 2014	2021	2021: 2.168 2022: 2.168

Título <i>Fundamento jurídico</i>	Objetivo	Subvención y beneficiarios	Fecha de inicio	Asignación presupuestaria (en decenas de millares de CNY)
Subvención para proyectos de acuicultura (condado autónomo de Qiongzong) <i>Qiong Zhong Yu Zi N° 29 [2021]; Qiong Zhong Yu Zi N° 10 [2021]</i>	Promover el aumento de los ingresos de los acuicultores	Distribución de mercancías Explotaciones de acuicultura familiares, estanques piscícolas colectivos de los pueblos, cooperativas y hogares pobres registrados en el condado, etc.	2021	2021: 98 2022: 20
Municipio de Chongqing				
Subvención para el seguro básico mixto de los pescadores que abandonen la pesca de captura (condado de Wushan) <i>Wushan Ren She Fa N° 92 [2021]</i>	Proteger la vida de los pescadores que abandonen la pesca de captura	Donación. Pescadores que abandonen la pesca de captura.	2020	2021: 213,62 2022: 138,23
Provincia de Sichuan				
Subvención de las primas de participación en el seguro mixto pagadas por los pescadores que abandonen la pesca de captura (ciudad de Yibin) <i>Yi Ren She Ban Fa N° 177 [2020]; Yi Ren She Ban Fa N° 99 [2022]</i>	Subvencionar la participación en el seguro básico mixto de los pescadores que abandonen la pesca de captura	Donación. Pescadores que abandonen la pesca de captura y participen en el seguro básico mixto.	2022	2021: 462 2022: 1.332

Fuente: Documento [G/SCM/N/401/CHN](#) de la OMC, de 20 de julio de 2023.

2024 National Trade Estimate Report on

FOREIGN TRADE BARRIERS



UNITED STATES TRADE REPRESENTATIVE

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Office of the United States Trade Representative
Ambassador Katherine C. Tai

LIST OF FREQUENTLY USED ACRONYMS

APHIS	Animal and Plant Health Inspection Service, U.S. Department of Agriculture
CET	Common External Tariff
CVA	WTO Customs Valuation Agreement
DOL	U.S. Department of Labor
EU	European Union
FDA	Food and Drug Administration, U.S. Department of Health and Human Services
FMVSS	U.S. Federal Motor Vehicle Safety Standards
FTA	Free Trade Agreement
GATS	WTO General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indication
GPA	WTO Agreement on Government Procurement
HS	Harmonized System
HTS	Harmonized Tariff Schedule
ICT	Information and Communications Technology
IP	Intellectual Property
MFN	Most-Favored-Nation
MRL	Maximum Residue Limit
MSME	Micro-, Small, and Medium-sized Enterprise
OECD	Organization for Economic Cooperation and Development
SME	Small and Medium-Sized Enterprise
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TFA	WTO Trade Facilitation Agreement
TIFA	Trade and Investment Framework Agreement
TRQ	Tariff-Rate Quota
UNECE	United Nations Economic Commission for Europe
USDA	U.S. Department of Agriculture
USTR	United States Trade Representative
VAT	Value-Added Tax
VoIP	Voice over Internet Protocol
WOAH	World Organisation for Animal Health
WTO	World Trade Organization

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FOREWORD

SCOPE AND COVERAGE

The 2024 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the 38th report in an annual series that highlights significant foreign barriers to U.S. exports, U.S. foreign direct investment, and U.S. electronic commerce. This document is a companion piece to the President's 2024 Trade Policy Agenda and 2023 Annual Report, published by the Office of the United States Trade Representative (USTR) on March 1, 2024.

In accordance with section 181 of the Trade Act of 1974, as amended by section 303 of the Trade and Tariff Act of 1984 and amended by section 1304 of the Omnibus Trade and Competitiveness Act of 1988, section 311 of the Uruguay Round Trade Agreements Act, and section 1202 of the Internet Tax Freedom Act, USTR is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers. The statute requires an inventory from the previous calendar year of the most important foreign barriers affecting U.S. exports of goods and services, including agricultural commodities and U.S. intellectual property; foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services; and U.S. electronic commerce. Such an inventory enhances awareness of these trade restrictions, facilitates U.S. negotiations aimed at reducing or eliminating these barriers, and aids in advancing the interests of workers in the United States.

The NTE Report is based upon information compiled within USTR, the Departments of Commerce and Agriculture, and other U.S. Government agencies, as well as U.S. Embassies and supplemented with information provided in response to a notice published in the [*Federal Register*](#), and by the trade advisory committees.

This Report discusses key export markets for the United States. As always, omission of particular countries and barriers does not imply that they are not of concern to the United States.

The NTE Report covers significant barriers, whether they are consistent or inconsistent with international trading rules. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade 1994. Even a very high tariff does not violate international rules unless a country has made a commitment not to exceed a specified rate, *i.e.*, a tariff binding. Nonetheless, it could be a significant barrier to U.S. exports, and therefore where appropriate covered in the NTE Report. Measures not consistent with international trade agreements, in addition to serving as barriers to trade and causes of concern for policy, are actionable under U.S. trade law as well as through the World Trade Organization and trade agreements. Since early 2020, there were significant trade disruptions as a result of temporary trade measures taken directly as a result of the COVID-19 pandemic.

Trade barriers elude fixed definitions, but may be considered government measures that unduly impede the international exchange of goods and services. It should be noted that the purpose of the NTE Report is to identify barriers the U.S. Government seeks to remove. Each trading partner has a sovereign right to adopt measures in furtherance of legitimate public purposes. However, in some cases a government might pretextually claim that a measure is in furtherance of a legitimate public purpose. In such circumstances, the facts surrounding the measure will be important in evaluating whether the measure is indeed in furtherance of a legitimate public purpose and not an unjustified barrier to trade.

The NTE Report classifies foreign trade barriers in 14 categories, as follows:

- Import policies;
- Technical barriers to trade;
- Sanitary and phytosanitary measures;
- Government procurement;
- Intellectual property protection;
- Services;
- Digital trade;
- Investment;
- Subsidies, especially export subsidies;
- Anticompetitive practices;
- State-owned enterprises;
- Labor;
- Environment; and,
- Other barriers.

The prevalence of corruption is a consistent complaint from U.S. firms that trade with or invest in other economies. Corruption takes many forms and affects trade and development in different ways. In many countries and economies, it affects customs practices, licensing decisions, and the award of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, frustrate broader reforms and economic stabilization programs, and undermine the foundations of the international trading system. Corruption also hinders development and contributes to the cycle of poverty. The Foreign Corrupt Practices Act prohibits U.S. companies from bribing foreign public officials, and numerous other domestic laws discipline corruption of public officials at the State and Federal levels. The United States continues to play a leading role in addressing bribery and corruption in international business transactions and has made real progress over the past quarter century building international coalitions to fight bribery and corruption.

Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, USTR annually reviews the operation and effectiveness of U.S. telecommunications trade agreements to make a determination on whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, "mutually advantageous market opportunities" to U.S. telecommunication products or services suppliers. The NTE Report highlights both ongoing and emerging barriers to U.S. telecommunication services and goods exports from the annual review called for in Section 1377.

TRADE IMPACT OF FOREIGN BARRIERS

Trade barriers or other trade distorting practices affect U.S. goods exports to foreign markets. In some cases, trade barriers may impose costs on U.S. exports that are not imposed on goods produced in the importing market, effectively decreasing the competitiveness of the U.S. goods, while in other cases, trade barriers may prevent U.S. goods from entering the market entirely. Estimating the impact of a foreign trade measure on U.S. exports of goods requires knowledge of the additional cost the measure imposes on them, as well as knowledge of market conditions in the United States, in the foreign market imposing the measure, and in third country markets. In practice, such information often is not available.

In theory, where sufficient data exist, an approximate impact of tariffs on U.S. exports could be derived by obtaining industry-level estimates of supply and demand price elasticities in the importing market and in the United States. Typically, the U.S. share of imports would be assumed constant. When no calculated price elasticities are available, reasonable postulated values would be used. The resulting estimate of lost U.S. exports would be approximate, depend on the assumed elasticities, and would not necessarily reflect changes in trade patterns with third country markets. Similar procedures might be followed to estimate the impact of subsidies that displace U.S. exports in third country markets.

The estimation of the impact of non-tariff measures on U.S. exports is far more difficult, since no readily available estimate exists of the additional cost these restrictions impose. Quantitative restrictions or import licenses limit (or discourage) imports and thus are likely to raise domestic prices, much as a tariff does. However, without detailed information on price differences between markets and on relevant supply and demand conditions, it would be difficult to derive the estimated effects of these measures on U.S. exports. Similarly, it would be difficult to quantify the impact on U.S. exports (or commerce) of other foreign practices, such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection.

The same limitations apply to estimates of the impact of foreign barriers to U.S. services exports. Furthermore, the trade data on services exports are extremely limited in detail. For these reasons, estimates of the impact of foreign barriers on trade in services also would be difficult to compute. With respect to investment barriers, no accepted techniques for estimating the impact of such barriers on U.S. investment flows exist. The same caution applies to the impact of restrictions on electronic commerce.

To the extent possible, the NTE Report endeavors to present estimates of the impact on U.S. exports, U.S. foreign direct investment, or U.S. electronic commerce of specific foreign trade barriers and other trade distorting practices. In some cases, stakeholder valuations estimating the effects of barriers may be contained in the NTE Report. The methods for computing these valuations are sometimes uncertain. Hence, their inclusion in the NTE Report should not be construed as a U.S. Government endorsement of the estimates they reflect. Where government-to-government consultations related to specific foreign practices were proceeding at the time of this NTE Report's publication, estimates were excluded, in order to avoid prejudice to these consultations.

March 2024

ALGERIA

TRADE AGREEMENTS

The United States–Algeria Trade and Investment Framework Agreement

The United States and Algeria signed a Trade and Investment Framework Agreement on July 13, 2001. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Algeria.

IMPORT POLICIES

Tariffs

Algeria is not a Member of the World Trade Organization (WTO) but is a WTO Observer. Goods imported into Algeria face a range of tariffs, from zero percent to 60 percent. Algeria's average Most-Favored-Nation (MFN) applied tariff rate was 18.9 percent in 2022 (latest data available). Algeria's average MFN applied tariff rate was 23.7 percent for agricultural products and 18.1 percent for non-agricultural products in 2022 (latest data available).

Goods facing the highest rates are those for which equivalents are manufactured in Algeria. Citing the need to encourage local production and ease pressure on the country's foreign exchange reserves, Algeria implemented temporary additional safeguard duties (DAPs) of 30 percent to 200 percent on a list of more than 1,000 manufactured and agricultural goods in April 2019, with the 200 percent rate applied to 10 tariff lines covering cement products under the Harmonized System heading 25.23. The items in Algeria's customs code that remain duty free are generally European Union-origin goods that are used in manufacturing and are exempt from tariffs under the 2006 European Union–Algeria Association Agreement.

Non-Tariff Barriers

Import Bans and Import Restrictions

Since January 2009, Algeria's Ministry of Health has restricted the importation of a number of generic pharmaceutical products and medical devices. Since 2007, Algeria has banned the importation of used medical equipment unless the government grants a special exception. Algeria has applied the regulation broadly to block the reimportation of machinery sent abroad for maintenance under warranty, even for equipment owned by state-run hospitals.

Algeria bans the importation of most types of used machinery, except for refurbished assembly line equipment used in domestic industries.

In February 2021, the Ministry of Commerce issued a schedule establishing a seasonal ban for individual agricultural products. The schedule adjusted a year-round restriction on almond imports to a seasonal ban covering June through August. Since October 2021, Algeria has restricted the importation of additional products for which there is minimal demand and for agricultural products not elsewhere specified or indicated in Algeria's tariff schedule. Algeria justified these decisions as necessary to reduce the country's import bill and to combat fraud.

In August 2021, the Ministry of Finance instructed banks to suspend the processing of accounts for importers of products intended for resale starting at the end of October 2021, unless importers complied with a March 2021 decree requiring them to update their import registration to include only one category of product per company. The Ministry of Finance subsequently communicated implementation instructions to the Ministry of Commerce's National Center of Commerce Registry (CNRC) but not to importers themselves. Importers must approach the CNRC individually to seek guidance regarding their particular situation rather than rely on publicly available information.

Quantitative Restrictions

In August 2022, Algeria released a new Book of Specifications concerning the automotive industry. The Book of Specifications covers automobiles, buses, trucks, construction equipment, and motorcycles and eliminates previous import quotas but requires import authorization. Due to customs duties, the VAT, and other taxes, vehicles cost more than double the market rate when purchased by individuals overseas and imported into Algeria. In November 2023, Algeria authorized 38 automobile companies to import vehicles under the 2022 regime. A provision in the October 2022 Complementary Finance Law permits those residing in Algeria to import used cars that are three years old or less; however, purchasers are required to use their own foreign currency to do so.

In 2020, Algeria established a maximum annual import volume of 4 million metric tons of bread (common) wheat. The Algerian president announced in August 2021 that the state grains agency (OAIC) would be the country's exclusive wheat importer to counteract alleged "illicit practices" by private importers. In practice, the OAIC was already the sole buyer of wheat, reselling the commodity on the domestic market at subsidized prices. In 2022, the Algerian president announced that the OAIC would have the exclusive right to import rice and pulses as well. However, Algeria has not codified the OAIC's role as the sole buyer of wheat, rice, and pulses.

Customs Barriers and Trade Facilitation

Many companies continue to face problems clearing goods through Algerian customs. Delays can take weeks or months, in many cases without explanation. In addition to a certificate of origin, the Algerian Government requires all importers to provide certificates of conformity and quality from an independent third party. Algerian customs requires that shipping documents be stamped with a "Visa Fraud" note from the Ministry of Commerce, indicating that the goods have passed a fraud inspection before the goods are cleared. Many importations also require authorizations from multiple ministries, which frequently cause additional delays, especially when the regulations do not clearly specify which ministry's authority is being exercised. Storage fees at Algerian ports of entry are high, and the fees double if goods are stored for longer than 10 days.

The 2022 Book of Specifications for the automotive industry removed the mandate that automotive importers must be 100 percent Algerian-owned. However, importers of vehicles for resale are required to partner with an Algerian company.

SANITARY AND PHYTOSANITARY BARRIERS

Algeria bans the production, importation, distribution, or sale of seeds that are the products of biotechnology. Biotechnology seeds imported for research purposes are excepted.

Algeria maintains animal health certificate requirements for animals and animal products, dairy and dairy products, and processed products of animal origin. In September 2023, the U.S. Department of Agriculture

(USDA) Animal and Plant Health Inspection Service and the Algerian Ministry of Agriculture and Rural Development Services concluded a certificate for U.S. bovine semen exports to Algeria. However, challenges with the recognition and approval of other certificates remain. In 2021 and again in 2023, the USDA Food Safety and Inspection Service submitted a letter requesting that Algeria accept the USDA 9060-5 export certificate for U.S. meat and poultry products. The USDA has not received a response. As of December 31, 2023, U.S. and Algerian veterinary authorities were continuing to negotiate export certificates to allow importation of U.S. beef cattle, dairy breeding cattle, and beef and poultry meat and meat products.

GOVERNMENT PROCUREMENT

Since August 2015, all ministries and state-owned enterprises (SOEs) are required to purchase domestically manufactured products whenever available. Procurement of foreign goods is permitted only with special ministerial authorization and if a locally made product cannot be identified. Algeria requires approval from the Council of Ministers for expenditures in foreign currency that exceed DZD 10 billion (approximately \$72 million).

Algeria is not a Member of the WTO and, therefore, is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Algeria remained on the Watch List in USTR's [2023 Special 301 Report](#). Algeria has taken some positive steps to improve intellectual property protection and enforcement, including increasing coordination on enforcement and engaging in capacity-building and training efforts. However, concerns remain, including the lack of an effective mechanism for early resolution of potential pharmaceutical patent disputes, inadequate judicial remedies in cases of patent infringement, the lack of administrative opposition in Algeria's trademark system, and the need to increase enforcement efforts against counterfeiting and piracy. In addition, Algeria does not provide an effective system for protecting against the unfair commercial use or unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

BARRIERS TO DIGITAL TRADE

Algeria imposes a maximum value per transaction of DZD 100,000 (approximately \$746) on citizens when using international credit cards to purchase goods from outside the country. In addition, Algerian foreign exchange regulations prohibit the use of online payment processors to transfer money from one account to another.

INVESTMENT BARRIERS

In 2020, Algeria lifted its longstanding requirement that Algerian individuals or entities own at least 51 percent of all projects involving foreign investments (known as the 51/49 rule). However, the 2021 Finance Law re-imposed the 51 percent requirement. The requirement was applied retroactively to foreign companies already established in Algeria and owning more than 49 percent of operations in strategic sectors such as energy, mining, defense, transportation and infrastructure, and pharmaceuticals, as well as for activities involving raw materials and importers of goods for resale in Algeria. U.S. companies report that the 51/49 rule creates concerns related to their intellectual property rights and financial control of the local venture. In July 2022, the Algerian Government enacted an investment law that called for the creation of Invest Algeria, a one-stop shop for prospective investors to register in-country. However, as of 2023, Invest

Algeria has not been established, and the Algerian Government has not provided further details as to when the initiative will be developed.

STATE-OWNED ENTERPRISES

SOEs comprise about two-thirds of the Algerian economy by market value. The national oil and gas company, Sonatrach, is the most prominent SOE, but SOEs are present in all sectors of the economy. SOEs leverage their position in the market to gain advantage over privately owned competitors. For example, state-owned telecommunications provider Algérie Télécom holds a monopoly over all undersea data cable traffic in and out of Algeria, offering services at a considerable advantage over private companies operating in the telecommunications sector.

ANGOLA

TRADE AGREEMENTS

The United States–Angola Trade and Investment Framework Agreement

The United States and Angola signed a Trade and Investment Framework Agreement on May 19, 2009. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Angola.

IMPORT POLICIES

Tariffs

Angola's average Most-Favored-Nation (MFN) applied tariff rate for all products was 11 percent in 2022 (latest data available). Angola's average MFN applied tariff rate was 21.4 percent for agricultural products and 9.4 percent for non-agricultural products in 2022 (latest data available). Angola has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 59.1 percent and average bound rates of 52.7 percent for agricultural products and 60.1 percent for non-agricultural products.

In response to the COVID-19 pandemic, as of March 27, 2020, the General Tax Administration of Angola allows all medicines and biosafety material to be imported duty free.

Non-Tariff Barriers

Import Restrictions

On October 30, 2023, Angola issued Presidential Decree No. 213/23, which focuses on restricting imports to promote domestic production. The decree replaces and expands the scope of products covered by the previous Presidential Decree No. 23/29 from 2019. As of January 31, 2024, Decree No. 213/23 has been minimally enforced. The United States continues to raise this issue with Angola bilaterally and in the WTO Committee on Market Access, the WTO Committee on Import Licensing, and the WTO Committee on Agriculture.

SANITARY AND PHYTOSANITARY BARRIERS

Angola does not maintain an effective risk management program for veterinary and sanitary control purposes. Therefore, consignments of imports classified in Chapters 2 to 23 of the Harmonized System (including animal and vegetable products and foodstuffs) must be laboratory tested prior to importation into Angola and be accompanied by a health certificate.

Agricultural Biotechnology

Angola does not allow the use of agricultural biotechnology in production, and imports containing genetically engineered (GE) components are limited to food aid and scientific research. Angola also prohibits the importation of viable GE grain or seed. The Ministry of Agriculture and Forestry requires importers to present documentation certifying that their goods do not include biotechnology products. Importation of GE food is permitted when it is provided as food aid, but the product must be milled before

it arrives in Angola. The Ministry of Agriculture and Forestry allows biotechnology imports for scientific research, subject to regulation and controls.

GOVERNMENT PROCUREMENT

Despite revisions to increase transparency in the Public Procurement Law that entered into force on January 22, 2021, simplified contracting or direct agreement have continued to be the primary mechanism for public procurement transactions. Civil society and businesses continue to note that the government's continued regular use of direct public contract awards through tenders by pre-qualification, closed bidding, or simplified contracting for a regular and select few companies without the use of public tenders in various sectors, is detrimental to competition for foreign companies. In some instances, companies have reported a lack of clarity in certain tender processes.

Angola is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

OTHER BARRIERS

Bribery and Corruption

Levels of corruption and bribery have declined, but corruption remains prevalent in Angola due to a lack of uniform implementation of anticorruption laws, an inadequately trained civil service, and other reasons.

The Criminal Law and Criminal Procedure Codes (Law No. 38/20 and Law No. 39/20) entered into force on February 9, 2021. Notable changes include corporate criminal liability, harsh penalties for corruption of public officials, criminalization of private corruption, and provisions for seizure of proceeds of a crime, among others. The law also contains provisions that criminalize bribery of national and foreign public officials; seek an appropriate balance between immunities and the ability to effectively investigate, prosecute, and adjudicate offences; enhance cooperation within local law enforcement authorities; and, designate a central anticorruption authority.

Enforcement of anticorruption laws remains poor. The United States and the international community have engaged in anticorruption initiatives to help Angola attain its anticorruption objectives. For instance, the U.S. Department of State is funding the Financial Services Volunteer Corps (FSVC), a project that supports Angolan civil society and independent media to increase public awareness and support for anticorruption and transparency reform. The FSVC is also implementing a U.S. Agency for International Development regional program that provides technical assistance, training, and mentoring at key government institutions to improve public financial management; enhance oversight; and, reduce fraud, waste, and abuse of state resources. The U.S. Department of Treasury provided technical assistance to the National Bank of Angola to increase capacity to combat money laundering and terrorist financing.

In June 2023, the Financial Action Task Force regional body—the Eastern and Southern Africa Anti-Money Laundering Group—conducted an interim mutual evaluation report and identified fundamental weaknesses in Angola's anti-money laundering/countering the financing of terrorism/counter proliferation financing system. Deficiencies cited include a lack of capacity in medium and small banks to implement targeted financial sanctions, a lack of bank capacity to determine the identity of the beneficial owner of accounts, and limited prosecutions for money laundering offenses. Angola has until September 2024 to implement the recommendations.

Foreign Exchange

Angola's dependence on oil and gas production means that activity in the sector heavily influences the availability of foreign exchange. Foreign exchange availability has improved in major economic sectors but remains inadequate for individuals and small and medium-sized businesses as a result of limited liquidity which creates delays and hurdles for the importation of goods and payment of services. As of December 2023, Angola's currency had depreciated nearly 40 percent since the beginning of the year due to a shortage of U.S. dollars in the foreign exchange market. The National Bank of Angola issued Notice 3/2023 on March 1, 2023, stipulating that individual Angolans may transfer up to \$250,000 abroad each year.

Business Licensing

Law No. 26/21 of October 2021 transferred the authority to license business activity, from provincial governments and municipal administrations to the Angolan President. The law also expands business licensing eligibility. Commercial stakeholders have expressed concern that the transfer of authority could create dependence on higher governmental powers to authorize commercial activity.

ARAB LEAGUE

The 22 Arab League members are the Palestinian Authority and the following countries: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Kuwait, Jordan, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, and Yemen. The effect of the Arab League's boycott of Israeli companies and Israeli-made goods (originally implemented in 1948) on U.S. trade and investment in the Middle East and North Africa varies from country to country. Efforts by various Arab League members to enforce the boycott have had an extremely limited practical effect overall on U.S. trade and investment ties with many key Arab League countries.

The U.S. Departments of Commerce and Treasury and the Office of the United States Trade Representative (USTR) monitor boycott policies and practices of Arab League members, and, aided by U.S. embassies, lend advocacy support to firms facing boycott-related pressures. On October 24, 2023, the U.S. Department of Treasury published the list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986). The list included Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen.

Arab League members that implement boycotts that pose a potential barrier to the United States include:

IRAQ: As a matter of policy, Iraq does not adhere to the Arab League boycott. Most Iraqi ministries and state-owned enterprises have agreed not to comply with or have rescinded regulations enforcing the boycott, following a 2009 Council of Ministers decision to cease boycott-related implementation practices. However, individual Iraqi Government officials and ministries continue to violate that policy. The Ministry of Health's procurement arm (Kimadia) was among the government entities that still issued boycott-related requests.

QATAR: Qatar has a boycott law, but the extent to which the government enforces it is unclear. Although Qatar renounced implementation of the boycott of U.S. firms that do business in Israel (the secondary and tertiary boycott) in 1994, U.S. firms and their subsidiaries continue to report receiving boycott-related requests from public Qatari companies. In those instances, U.S. companies have made efforts to substitute alternative language.

YEMEN: Although Yemen renounced observance of the secondary and tertiary aspects of the boycott in 1995, in the years since, Yemen has continued to enforce the primary boycott and certain aspects of the secondary and tertiary boycotts. Ongoing political turmoil in the country has made it impossible to ascertain current official Yemeni attitudes toward the boycott.

ARGENTINA

TRADE AGREEMENTS

The United States–Argentina Trade and Investment Framework Agreement

The United States and Argentina signed a Trade and Investment Framework Agreement on March 23, 2016. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Argentina.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Argentina's average Most-Favored-Nation (MFN) applied tariff rate was 13.3 percent in 2022 (latest data available). Argentina's average MFN applied tariff rate was 10.3 percent for agricultural products and 13.8 percent for non-agricultural products in 2022 (latest data available). Argentina has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.8 percent.

Argentina is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Argentina (not including free trade zones) is subject to the payment of the CET to Argentina's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

Taxes

Argentina maintains a variety of taxes on, and tax exemptions for, imported goods. On December 23, 2019, the Argentine Congress passed Public Emergency Law 27541, raising to 3 percent the rate of the statistical tax, a fee charged on goods imported for consumption. Temporary imports, inputs used to produce goods for export, and imported goods for scientific and technological research are exempted from this tax. Pursuant to Decree 901/2021, the 3 percent statistical tax rate was extended until December 31, 2024.

Argentina's tax collection processes burden imports by effectively requiring advance payment of income taxes. When goods are imported, Argentina collects a percentage of the value of imports as income tax withholding to be applied to the importer's income taxes. The advance value-added tax (VAT), ranging from 10 percent to 20 percent, is paid by the importer, unless the goods are for personal use. In addition, the importer is responsible for an income tax withholding of 6 percent to 11 percent of the value of the imported goods. Furthermore, imports of consumer goods have an additional advance VAT rate of 20 percent and imports of capital goods have an additional 10 percent. Although some of these taxes on

importation are reconciled after importation, in practice that takes a significant amount of time. In Argentina's inflationary environment, this advance payment system disproportionately burdens imports.

Non-Tariff Barriers

Import Bans

Argentina prohibits the importation of many used capital goods. Under the Argentina–Brazil Bilateral Automobile Pact, Argentina bans the importation of used self-propelled agricultural machinery unless it is imported to be rebuilt in-country. Argentina also prohibits the importation and sale of used or retreaded tires (but in some cases allows remolded tires); used or refurbished medical equipment, including imaging equipment; and, used automotive parts.

Argentina generally restricts or prohibits the importation of any remanufactured good, such as remanufactured automotive parts, earthmoving equipment, medical equipment, and information and communications technology products. In the case of remanufactured medical goods, imports are further restricted by the requirement that the importer of record must be the end user, such as a hospital, doctor, or clinic. These parties are generally not accustomed to importing and are not typically registered as importers.

Import Restrictions

Domestic legislation requires compliance with strict conditions on the entry of those used capital goods that are not prohibited from being imported, as follows: (1) used capital goods can only be imported directly by the end user; (2) overseas reconditioning of goods is allowed only if performed by the original manufacturer and third-party technical appraisals are not permitted; (3) local reconditioning of the good is subject to technical appraisal to be performed only by the state-run Institute of Industrial Technology, except for aircraft-related items; (4) imported used capital goods cannot be transferred (sold or donated) for a period of four years; and, (5) except for a short list of products exempted by Decree 406/2019, and regardless of where the reconditioning takes place, the Argentine Customs Authority requires the presentation of a "Certificate of Import of Used Capital Goods" at the time of importation.

Resolution 909/1994 places restrictions on the importation of certain used goods for consumption, such as parts and components that are not used in the manufacture of other products. The current list imposes import tariffs or other restrictions on goods, including electronic and recording equipment; railroad vehicles and other railroad parts; optic, photography, and filming equipment; tractors; buses; aircraft; and, ships.

Under the Por una Argentina Inclusiva y Solidaria - PAIS tax regime, consumers purchasing goods and services billed in foreign currency or that involve international transportation by air, land (except to countries that border Argentina), or water and sold in Argentina (through a physical or online point of sale) are subject to a 30 percent tax. This affects services supplied by travel and tourism agencies for international travel, as well as the importation of products from online retailers. Decree 99/2019 also sets a lower rate of 8 percent for certain imported digital services that are already subject to the VAT. Since late 2022, pursuant to General Resolution 5272/2022, some purchases also are subject to a personal asset tax equal to 25 percent of the price of the good or service. In July 2023, Argentina issued Decree 377/2023 under the PAIS tax regime, which imposes additional taxes on transactions that require access to the foreign exchange market, charged directly to importing companies. As of December 2023, these rates are 17.5 percent on most goods and 25.0 percent on most services (education and health services are exempt, and freight services pay a reduced rate of 7.5 percent). These taxes are cumulative and make foreign goods and services significantly less competitive in the Argentine market.

Import Licensing

Since 2020, Argentina had significantly expanded its regulation of imports using an extensive list of products subject to non-automatic import licensing. Argentina had focused these license requirements on import-sensitive goods and also used the process to manage its hard currency needs. Despite a nominally digitized process, in practice obtaining licenses for imports was nontransparent, which created significant uncertainty for all imports into Argentina. The United States had raised concerns with Argentina about non-automatic licensing and at the WTO Committee on Import Licensing in light of Argentina's commitments under the WTO Agreement on Import Licensing Procedures.

As a result, Argentina eliminated the non-automatic import licensing requirements and established in December 2023 a new Statistical System of Imports (SEDI), which serves as a platform to record trade data. The creation of SEDI maintains processes similar to non-automatic import licensing. According to the new requirements, Argentina's Federal Public Revenue Administration (AFIP) will verify the tax status of the applicant and whether it has the economic and financial capacity to carry out the import operation. If successfully verified, the SEDI declaration will proceed to "exit" status following the authorization from all relevant agencies within 30 days of the registration. The United States will continue to monitor Argentina's import requirements and encourage transparency and predictability in their administration.

Foreign Exchange Market Access For Imports

As of December 22, 2023, importers of goods can access the foreign exchange market to pay new invoices in installments, with most goods subject to a schedule of four installments at 30 days, 60 days, 90 days, and 120 days. Importers of some goods have preferential access to foreign exchange. Prior to this measure, importers were assigned an estimated date after dispatch on which they would be permitted to access the foreign exchange market to pay for imports. The terms averaged 90 days as of September 2023, but in practice the payment date frequently changed or was not honored. This led to a dramatic increase in Argentina's commercial debt and frequently resulted in importers being delinquent on their payments for goods and services. This has also disrupted commercial relationships, interrupted supply chains, and made imported goods less competitive.

Customs Barriers and Trade Facilitation

Argentina continues to use reference prices for goods that originate in, or are imported from, specified countries for customs valuation purposes. If a good is imported and the invoice price is lower than the reference price, Argentina requires importers to obtain an authenticated invoice, without a basis under the WTO Customs Valuation Agreement. Argentina publishes a list of reference prices and covered countries.

Consularization

Argentina imposes costly and time-consuming consularization requirements on import documentation, a practice at odds with the current trend in customs practice. Shipments to Argentina require commercial invoices and packing lists to be legalized by the Argentine consulate in the country of export. Consulates will only legalize a commercial document after it has been signed by a Chamber of Commerce that is recognized by the relevant consulate. Furthermore, Argentina requires certificates of origin that must be authenticated by an Argentine Embassy or consulate or carry a U.S. Chamber of Commerce seal.

SANITARY AND PHYTOSANITARY BARRIERS

Live Cattle

Argentina banned imports of U.S. cattle and beef products in 2002 due to purported concerns regarding bovine spongiform encephalopathy (BSE). Although the market reopened to U.S. beef in 2018, it remains closed to U.S. live cattle, pending continued technical level engagement between the United States and Argentina on a mutually agreeable sanitary certificate.

Poultry

Argentina has restricted imports of U.S. poultry (*e.g.*, day-old chicks and hatching eggs) and poultry products (fresh, frozen, or chilled meat), during periods of outbreaks of Highly Pathogenic Avian Influenza (HPAI) and virulent Newcastle Disease and due to unsubstantiated food safety concerns. Argentina experienced its first HPAI outbreak in February 2023; the World Organisation of Animal Health (WOAH) declared Argentina HPAI-free in August 2023. The United States continues to encourage Argentina to regionalize HPAI restrictions as recommended by the WOAH.

INTELLECTUAL PROPERTY PROTECTION

Argentina remained on the Priority Watch List in the [2023 Special 301 Report](#). First, the scope of patentable subject matter remains significantly restricted under Argentine law. Patent examination guidelines automatically reject patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions, and there are requirements that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Second, there is inadequate protection against unfair commercial use and unauthorized disclosure of undisclosed test and other data submitted to the Argentine Government in conjunction with its lengthy marketing approval process. The United States urges Argentina to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Argentina proceeds with the European Union–MERCOSUR Trade Agreement. In addition, the backlog continues for patent applications for pharmaceuticals and biosimilar products, resulting in unreasonable delays for these products.

Enforcing intellectual property rights in Argentina continues to prove challenging, as counterfeit and pirated goods remain widely available. The physical markets of La Salada and Barrio Once are both listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). For example, La Salada in Buenos Aires, one of the largest black markets for counterfeit and pirated goods in Argentina, continue to sell counterfeit products online. Furthermore, the existing legislative regime and weak enforcement hinder the ability of rights holders, law enforcement, and prosecutors to halt, through legal action, the growth of illegal markets, both online and physical.

SERVICES BARRIERS

Similar to goods importers, services suppliers were subject to restrictions on their ability to access the foreign exchange market and were subject to approvals from the Secretary of Trade (within the Ministry of Economy) and AFIP system (Administración Federal de Ingresos Públicos) prior to receiving authorization to import. As of December 2023, Argentina no longer requires import authorization for imports of services and eliminated the electronic system for requesting such authorizations. The United States is monitoring implementation of these changes.

Audiovisual Services

Argentina's Media Law imposes production requirements on advertising and publicity materials. The Media Law also establishes broadcast content requirements on companies with radio licenses (particularly for news and music) and on private television operators.

Telecommunications Services

In 2020, Argentina froze prices for a number of information and communications technology (ICT) services, including fixed and mobile telephone services, Internet access services, and pay television services. Later in 2020, Argentina amended the Information and Communications Technologies Law to classify these services as “essential and strategic public services” and therefore subject to additional regulation by the National Communications Agency (ENACOM), including rate regulation. ENACOM raised the regulated rate limit for these ICT services several times during 2022, but the rates established by ENACOM are still below inflation, undermining competition and discouraging additional investment in this sector in Argentina.

AUSTRALIA

TRADE AGREEMENTS

The United States–Australia Free Trade Agreement

The United States–Australia Free Trade Agreement (FTA) entered into force on January 1, 2005. Under this agreement, as of January 1, 2015, Australia provides duty-free access to all U.S. exports. The United States and Australia meet periodically to review the implementation and functioning of the FTA and to address outstanding issues.

SANITARY AND PHYTOSANITARY BARRIERS

Animal Health

Beef

Australia requires completion of a complex approval process before it will permit the importation of bovine products from a country that has reported any indigenous cases of bovine spongiform encephalopathy (BSE). In 2003, Australia closed its market to U.S. beef after the detection of BSE in the United States. In May 2018, Australia lifted its ban on heat-treated, shelf-stable beef products from the United States. However, Australia's market remains closed to fresh U.S. beef and beef products. The United States continues to press the Australian Government to align its import requirements for U.S. fresh beef and beef product exports with World Organisation for Animal Health (WOAH) guidelines for countries with a negligible risk for BSE.

Pork

Pork and pork products are the third-leading U.S. agricultural export to Australia, valued at approximately \$131.3 million in 2022. However, due to Australia's stated concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multi-systemic wasting syndrome (PMWS), Australia does not permit imports of fresh/chilled pork and bone-in products from the United States. The United States has provided Australia with scientific evidence demonstrating the safety of U.S. pork products; however, the issue remains unresolved. Access to the Australian market for fresh/chilled/frozen pork, bone-in pork, and pork products remains a high priority for the United States.

Poultry

Australia prohibits imports of uncooked poultry meat from all countries except New Zealand. While cooked poultry meat products may be imported, current import requirements (as set out in an import risk analysis) mandate that imported poultry meat products be cooked to a minimum core temperature of 74 degrees Celsius for 165 minutes or the equivalent. This cooking temperature is not suitable for prepared deli meats, resulting in a significant barrier for cooked poultry products that would be suitable for sale in restaurants or delicatessens. Since 2012, the United States and Australia have exchanged technical information to attempt to resolve the issue. The United States has identified this issue as a high priority and will continue to work with Australia to gain meaningful commercial market access for cooked turkey meat.

Plant Health

Apples and Pears

Australia prohibits the importation of apples and pears from the United States based on concerns regarding several pests. In November 2018, Australia announced it was commencing a new risk analysis for fresh apples from U.S. Pacific Northwest states. In October 2020, Australia published the draft risk analysis for a 90-day comment period. The United States provided comments in response to Australia's draft risk analysis for U.S. apples in January 2021 and the final risk analysis for U.S. Pacific Northwest apples was published on October 31, 2022. The United States continues to work with Australia to secure market access for U.S. apples.

Australia currently prohibits the importation of pears from the United States due to the bacterial disease fire blight. Australia is concerned that the disease could be transmitted to its domestic apple and pear crops. However, the United States has provided evidence to Australia that demonstrates that mature, symptomless pears do not support populations of the fire blight bacteria and are not part of the disease pathway.

INTELLECTUAL PROPERTY PROTECTION

Under the FTA, Australia must notify a pharmaceutical product patent owner of a request for marketing approval by a third party for a product claimed by that patent owner. Australia must also provide measures in its marketing approval process to prevent persons other than the patent owner from marketing a patented product during the patent term. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process. The United States has also raised concerns about certain provisions in Australian law regarding potential civil damages in cases where a patent owner seeks a preliminary injunction. The United States will continue to monitor these issues.

SERVICES BARRIERS

Audiovisual Services

Australia is considering imposing Australian screen content requirements on streaming video services as part of its National Cultural Policy. The Policy, published in January 2023, recommends that the Australian Government introduce "requirements for Australian screen content on streaming platforms to ensure continued access to local stories." The Australian Government has consulted on potential models over the course of 2023 and intends to pass legislation codifying the preferred model following further consultations in 2024. The United States will continue to monitor this issue to ensure Australia's compliance with its FTA obligations.

INVESTMENT BARRIERS

In October 2019, a parliamentary legislative committee of the New South Wales (NSW) government recommended that the NSW government address the issue of compensation for certain investors, including shareholders, in a mining project whose operating license was canceled in 2014. When canceling the license, the NSW government also passed legislation precluding the payment of compensation relating to such cancellation. To date, the NSW government has not acted on the parliamentary committee's recommendation to provide shareholders, including U.S. investors, with recourse to seek compensation.

BANGLADESH

TRADE AGREEMENTS

The United States–Bangladesh Trade and Investment Framework Agreement

The United States and Bangladesh signed a Trade and Investment Cooperation Forum Agreement on November 25, 2013. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Bangladesh.

IMPORT POLICIES

Bangladesh’s import policies are outlined in the Import Policy Order (IPO) 2015-18 issued by the Ministry of Commerce (MOC). The IPO has two lists: the “List of Controlled Goods” and the “List of Prohibited Goods.” The IPO for the years 2021 through 2024 is valid until June 30, 2024.

Tariffs

Bangladesh’s average Most-Favored-Nation (MFN) applied tariff rate was 14.1 percent in 2022 (latest data available). Bangladesh’s average MFN applied tariff rate was 17.9 percent for agricultural products and 13.5 percent for non-agricultural products in 2022 (latest data available). Bangladesh has bound 17.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 156.3 percent.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Bangladesh has not notified its customs valuation legislation to the WTO and has not yet responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement is being implemented.

GOVERNMENT PROCUREMENT

Government procurement is primarily undertaken through public tenders under the Public Procurement Act of 2006 and conducted by the Central Procurement Technical Unit. Bangladesh publicly subscribes to principles of international competitive bidding; however, charges of corruption are very common. Bangladesh launched a national electronic government procurement portal, but U.S. stakeholders have raised concerns about the use of outdated technical specifications, the structuring of specifications to favor preferred bidders, and a lack of overall transparency in public tenders. Several U.S. companies have claimed that their foreign competitors often use their local partners to influence the procurement process and to block awards to otherwise competitive U.S. company bids. U.S. companies have reported instances of alleged bid rigging in government tenders in Bangladesh. U.S. companies have also alleged the use of bribery, anticompetitive practices, and a lack of transparency in the bidding process, all of which disadvantage U.S. companies bidding on government tenders.

Bangladesh is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Bangladesh has taken some steps in recent years to improve intellectual property (IP) protection through legislative reforms. However, the effectiveness of these changes remains uncertain. For example, counterfeit and pirated goods are readily available across Bangladesh.

U.S. stakeholders have reported potential IP violations in various industries, such as fast-moving consumer goods, apparel, pharmaceutical, and software industries. Stakeholders also report a growing trend of Bangladesh serving as a source country for counterfeits distributed globally. The lack of investigative expertise of the police and reluctance of the to initiate independent investigations further exacerbates IP right holders' ability to enforce their rights. In addition, IP right holders have raised concerns about the courts' ability to adjudicate fairly IP cases.

Bangladesh has undertaken several legislative reforms related to IP, including the passing of a new patent law in April 2022, copyright amendments in October 2023, and the enactment of the Industrial Design Act in July 2023. However, the lack of stakeholder interaction and a public comment process in the development of these reforms remains a concern. Bangladesh needs transparent legislative and rulemaking processes that include seeking input from stakeholders in order to address the gaps in IP protection and make meaningful improvements to its IP regime.

To strengthen Bangladesh's IP regime, better coordination among enforcement authorities and other government institutions is crucial. These include Customs, the Office of the Attorney General, the Copyright Office, the Bangladesh Investment Development Authority, and the Department of Patents, Designs, and Trademarks. In addition, customs officials, police, and the judiciary would benefit from participating in available training opportunities as a means of improving Bangladesh's IP rights enforcement.

Recognizing the challenges faced by Bangladesh, the U.S. Department of Commerce Patent and Trademark Office and other U.S. Government agencies regularly provide technical assistance and capacity building programs.

BARRIERS TO DIGITAL TRADE

The Information and Communication Technology Act of 2006, amended in 2013, authorizes the Government of Bangladesh to access any computer system for the purpose of obtaining any information or data, and to intercept information transmitted through any computer resource. Under this law, Bangladesh may also prohibit the transmission of any data or voice call and censor online communications. The Bangladesh Telecommunications Regulatory Commission (BTRC) ordered mobile operators to limit data transmissions for political reasons on several occasions in 2019, 2020, and 2023 ahead of politically sensitive events, including local and national-level elections. The BTRC ordered mobile operators to block all services in the Rohingya refugee camps in Cox's Bazar, except for voice calls, from September 2019 until August 2020.

The Information and Communication Technology Division (ICT Division) of the Ministry of Posts, Telecommunications and Information Technology has made significant updates to the Data Protection Act, now called the Personal Data Protection Act, which received approval in principle from the cabinet in November 2023. As of December 2023, the measure was under review by the Law Ministry. Once adopted in final form, the law will apply to the collection, processing, use, sharing, or other processing of data of individuals within Bangladesh, as well as data outside Bangladesh that is related to citizens of, or business carried out in, Bangladesh. Despite modifications to narrow the definition of the types of data to which the

law is applicable, concerns remain over provisions, particularly in the context of data localization requirements that could allow access to data by Bangladeshi law enforcement.

In February 2022, the BTRC published the Regulation for Digital, Social Media and Over the Top (OTT) Platforms, 2021. The regulations were presented in their final form to a subdivision of the Supreme Court of Bangladesh on October 19, 2022. The regulations are a content governance framework for digital, social media, and media platforms operating in the country. The framework seeks to introduce traceability within end-to-end encrypted services. Industry and civil society stakeholders have expressed concerns that the regulations will grant government authorities sweeping powers to dictate online content with the threat of criminal liability for firms and employees deemed noncompliant.

INVESTMENT BARRIERS

Repatriation of profits, revenue, and external payments is allowed. However, U.S. and other international investors have raised concerns that the procedures and requirements for outbound transfers from Bangladesh remain cumbersome, lack transparency, and include significant delays for applications to repatriate profits, dividends, and other capital, with some companies waiting over a year for approvals. U.S. companies report that agency-level regulators continue to present significant obstacles to securing required approvals for remittances in a timely manner, which are required before companies can seek central bank clearance.

SUBSIDIES

Bangladesh maintains a range of agricultural subsidies but has not submitted an agricultural subsidies notification to the WTO Committee on Agriculture since 2011. These subsidies are provided as export cash incentives for a variety of agricultural products including vegetables, fruits, and processed agricultural products. Bangladesh also provides subsidies to keep the price of production inputs within the purchasing capacity of producers. Bangladesh provides non-product-specific support through subsidized fertilizers, diesel fuel, electricity, irrigation, and agricultural machinery. The subsidized fertilizer is distributed through a controlled channel, which keeps prices reasonably stable.

Bangladesh has never submitted a subsidies notification to the WTO Committee on Subsidies and Countervailing Measures. According to publicly available information from the Bangladesh Investment and Development Authority, industries exporting more than 80 percent of their goods, regardless of their locations (*i.e.*, within or outside of an export processing zone), can be exempted from income tax for 50 percent of their export earnings, provided that the industry is not already paying income tax at a reduced rate. Furthermore, exporters in certain sectors may be eligible for additional benefits in the form of a subsidy or cash incentive based on certain conditions. Other publicly available information indicates that exporters in 43 sectors receive cash incentives to export, ranging from 1 percent to 20 percent of the export value, as long as the product exported contains at least 30 percent domestic value added.

LABOR

In 2013, the United States suspended all of Bangladesh's tariff benefits under the Generalized System of Preferences (GSP) program due to Bangladesh's failure to meet statutory eligibility requirements related to worker rights, particularly with regard to acceptable conditions of work in the ready-made garment sector, including fire and building safety, and freedom of association. As of December 2023, Bangladesh remained ineligible for duty-free treatment under GSP.

OTHER BARRIERS

Bribery and Corruption

Corruption is a pervasive and long-standing problem in Bangladesh, and anticorruption law is inadequately enforced. The Code of Criminal Procedure, the Prevention of Corruption Act, the Penal Code, and the Money Laundering Prevention Act criminalize attempted corruption, extortion, active and passive bribery, bribery of foreign public officials, money laundering, and use of public resources or non-public state information for private gain. However, bribery and extortion in commercial dealings are common features of business despite the illegality of facilitation payments and gifts. There have also been efforts to water down anti-corruption safeguards of government procurement rules. U.S. companies have complained about long delays in obtaining approval of licenses and bids as Bangladeshi Government officials seek bribes.

There have been continuous proposals to curb the independence of the Anti-Corruption Commission (ACC), the main institutional anticorruption watchdog. The Sarkari Chakori Ain Bill (Government Job Act), enacted in October 2018, requires the ACC to seek permission of the authorities concerned before arresting any government official and limits the ability of the ACC in investigating corruption allegations against government officials. While the ACC has increasingly pursued cases against government officials (mainly lower-level officials and some higher-level officials), there remains a large backlog of cases.

BOLIVIA

IMPORT POLICIES

Tariffs

Bolivia's average Most-Favored-Nation (MFN) applied tariff rate was 11.7 percent in 2022 (latest data available). Bolivia's average MFN applied tariff rate for agricultural products was 13.5 percent and 11.4 percent for non-agricultural products in 2022 (latest data available). Bolivia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 40 percent.

Bolivia's MFN tariff structure consists of seven rates ranging from zero percent to 40 percent. The tariff rates are: zero percent for certain capital goods (machinery and equipment) and meat and grain products; 5 percent for other capital goods and inputs; 10 percent for various products including production inputs, food items, and equipment; 15 percent for fruit, vegetables, fish, and raw materials for manufacturing plastics; 20 percent for other manufactured and value-added products; 30 percent for wooden doors, and windows; and, 40 percent for clothing and accessories, alcoholic beverages, wooden furniture, and footwear. Bolivian law allows the government to raise tariffs if necessary to protect domestic industry or, alternatively, to lower tariffs if supplies run short.

Non-Tariff Barriers

Import Bans

In 2023, Bolivia imposed import prohibitions on 33 tariff lines. Prohibited items include some types of vehicles and motor vehicles, in particular, vehicles using liquefied gas, used motor vehicles more than one year old, motor vehicles more than three years old used for the transport of more than 10 persons, and special-purpose motor vehicles more than five years old.

Customs Barriers and Trade Facilitation

Bolivia ratified the WTO Trade Facilitation Agreement (TFA) in January 2018. Bolivia has not yet submitted transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and (3) customs contact points for the exchange of information. Those notifications had been due to the WTO on February 22, 2017, according to Bolivia's self-designated TFA implementation schedule.

SANITARY AND PHYTOSANITARY BARRIERS

The National Agricultural Health and Food Safety Service (SENASAG) is responsible for certifying the health safety status of products for domestic consumption, including imports, and for issuing sanitary and phytosanitary import permits. Importers have voiced concerns regarding SENASAG's transparency and with the inconsistent application of agricultural health and food safety standards and regulations.

SENASAG inspectors exercise significant discretion and use varied criteria when evaluating food health and safety standards and reviewing supporting importation documents. A lack of transparency in the institution increases the uncertainty about whether products entering Bolivia will be examined using consistent and uniform criteria. Bolivia's facility registration requirements for animal products (beef, pork, poultry, dairy, genetic material, and animal by-products) are onerous, and SENASAG applies these

requirements in an inconsistent and discretionary manner. These practices have limited the ability for several U.S. agricultural exporters to gain market access to Bolivia, despite the demand for these products.

GOVERNMENT PROCUREMENT

The Buy Bolivian (Compro Boliviano) program supports domestic production by giving preference margins to domestic goods or suppliers in government procurement.

Importers of foreign products can participate in procurements valued between \$142,000 and \$5.7 million only in cases where domestically-manufactured products and domestic service providers are unavailable or when the Bolivian Government does not initially select a domestic supplier. Foreign companies submitting tenders for government consultancy contracts are required to do so in association with a Bolivian company, although the Bolivian Government occasionally makes exceptions in strategic sectors. For national and international tenders, preference margins are from 10 percent to 25 percent for Bolivian inputs.

As a general matter, the tendering process is nontransparent and acts as a barrier to participation. Government requirements and the details of the tender are not always defined, and procurement notices are not always made public. For example, many of the state-owned companies, including the state-owned oil and gas company, Yacimientos Petroliferos Fiscales Bolivianos (YPFB); the state-owned electricity company, Empresa Nacional de Electricidad (ENDE); and, the state lithium company, Yacimientos de Litio Bolivianos (YLB), are not required to publish tenders through the official procurement website, Sistema de Contrataciones Estatales (SICOES). U.S. stakeholders have raised concerns that these state-owned companies are not required to follow the procedures established in the national procurement law. One U.S. company noted a Bolivian Government tender was prepared in such a way that only one specific company would be able to qualify.

Bolivia is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Bolivia remained on the Watch List in the [2023 Special 301 Report](#). The report noted that significant challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement. While certain Bolivian laws provide for the protection of copyrights, patents, and trademarks, they do not address trade secret protection. Significant challenges also persist with respect to widespread piracy and counterfeiting. The Special 301 Report again encouraged Bolivia to improve its weak protection and enforcement of IP. Bolivia's IP agency, Servicio Nacional de Propiedad Intelectual (SENAPI), signed a memorandum of understanding (MOU) with the United States Patent and Trademark Office in 2020 to help address Bolivia's challenges. However, the Bolivian administration that took office at the end of 2020 does not recognize the MOU.

STATE-OWNED ENTERPRISES

In an effort to control key sectors of the economy, the Bolivian Government obtained majority ownership in a number of companies in the hydrocarbons, electricity, mining, and telecommunications sectors. Bolivia has also created dozens of new public companies in "strategic" sectors such as food production, industrialization of natural resources, air travel, banking, and mining. U.S. stakeholders have expressed concern that these state-owned enterprises (SOEs) engage in unfair subsidized competition that constitutes a significant barrier to investment.

The Bolivian Government owns the second-largest bank in Bolivia, Union Bank, which is competitive with U.S. banking providers. Other SOEs include: the Sugar Cane Company of San Buena Aventura; Bolivia's Industrialization Company of Gas and Oil; computer technology company QUIPUS; dairy processing company Lácteosbol; recycled paper company PAPELBOL; Brazil nut export company Empresa Boliviana de Alimentos; Bolivian national airline Boliviana de Aviación, the main operator in Bolivia; oil and gas company YPFB; electricity company ENDE; and, lithium company YLB. Large SOEs such as these can acquire credit from the Central Bank at very low interest rates and on more convenient terms, resulting in an unfair financial subsidy. In many cases, government entities are directed to do business with SOEs. The United States is monitoring these companies for possible impacts on U.S. exports of goods and services.

The Bolivian Government grants ownership rights and controls the exploitation, exploration, and industrialization of natural resources through joint ventures between government entities or state-owned companies and public companies, communities, and private companies. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests.

BRAZIL

TRADE AGREEMENTS

The United States–Brazil Agreement on Trade and Economic Cooperation

The United States and Brazil signed the Agreement on Trade and Economic Cooperation (ATEC) on March 19, 2011. This agreement is the primary mechanism for discussions of trade and investment issues between the United States and Brazil.

On November 17, 2021, the Brazilian Congress ratified the 2020 United States–Brazil Protocol Regarding Trade Rules and Transparency, which entered into force on February 2, 2022. The Protocol updated the ATEC in the areas of anticorruption, good regulatory practices, and trade facilitation and customs administration. Implementation of the Protocol will foster a more transparent economic environment, reduce red tape, and improve regulatory processes, as well as serve as a foundation for future bilateral engagement.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Brazil's average Most-Favored-Nation (MFN) applied tariff rate was 11.1 percent in 2022 (latest data available). Brazil's average MFN applied tariff rate was 8.0 percent for agricultural products and 11.6 percent for non-agricultural products in 2022 (latest data available). Brazil has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.4 percent. Brazil's maximum bound tariff rate for non-agricultural products is 35 percent, and its maximum bound tariff rate for most agricultural products is 55 percent.

Brazil is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Paraguay, and Uruguay. The MERCOSUR Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Brazil (not including from free trade zones) is subject to payment of the CET to Brazil's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC and it has not taken effect. Although the Brazilian Congress approved the agreement in 2018, it has not been promulgated by the executive branch, which is necessary for ratification.

Brazil imposes relatively high tariffs on imports across a wide range of sectors, including automobiles, automotive parts, information technology and electronics, chemicals, plastics, industrial machinery, steel, and textiles and apparel. In addition, Brazil's bound rates are often much higher than its applied rates, and U.S. exporters face significant uncertainty in the Brazilian market because the government frequently modifies tariff rates within the flexibilities of MERCOSUR. The lack of predictability with regard to tariff rates makes it difficult for U.S. exporters to forecast the costs of doing business in Brazil.

Ethanol Tariff

Between 2011 and 2017, bilateral trade of ethanol between the United States and Brazil, the world's two largest producers and consumers of ethanol, was virtually duty free. However, between September 2017 and January 2022, Brazil imposed first a tariff-rate quota (TRQ) and then the MERCOSUR CET of 20 percent on all imports of ethanol, the vast majority of which are supplied by the United States. Although the tariff was below Brazil's WTO bound tariff rate of 35 percent, the TRQ and the CET have reduced previously robust bilateral trade of ethanol. Brazil temporarily suspended the tariff, effective March 23, 2022, but that suspension expired on January 31, 2023, when the tariff was reimposed at 16 percent. The tariff then increased to 18 percent in 2024. The United States continues to engage with Brazil to lower its ethanol tariff to provide reciprocal treatment for trade in ethanol between the United States and Brazil.

Taxes

Brazil imposes a 25 percent *ad valorem* Industrial Product Tax (IPI) on cachaça, a domestic distinctive product produced from sugarcane, while imposing a 30 percent *ad valorem* IPI on other alcoholic beverages, including imports from the United States.

In audiovisual services, Brazil imposes several taxes on foreign products that it does not apply equally to domestic products.

Brazil imposes a fixed tax on each foreign film released in theaters, foreign home entertainment products, foreign programming for broadcast television, and foreign content and foreign advertising released on cable and satellite channels. The taxes are significantly higher than the corresponding taxes levied on Brazilian products. In addition, 80 percent of the programming aired on "open broadcast" (non-cable) television channels must be Brazilian and foreign ownership in print media and "open broadcast" television is limited to 30 percent.

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. As an alternative to paying the full tax, producers can elect to invest 70 percent of the tax value in local independent productions. In addition, local distributors of foreign films are subject to a tax equal to 11 percent of remittances to the foreign producer or, alternatively, the distributor may invest an amount equal to 3 percent of the total remittances in local independent productions. This levy is also assessed on foreign-produced video and audio advertising.

Non-Tariff Barriers

Import Bans

Brazil restricts the entry of certain types of remanufactured goods (*e.g.*, earthmoving equipment, automotive parts, and medical equipment). Brazil only allows the importation of such goods if an importer can provide evidence that the goods are not or cannot be produced domestically, or if they meet certain other limited exceptions.

With some exceptions, Brazil generally prohibits imports of used consumer goods, including automobiles, clothing, tires, medical equipment, and information and communications technology products.

Import Licensing

Brazil has both automatic and non-automatic import licensing requirements. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies,

such as agricultural commodities and beverages (Ministry of Agriculture, Livestock, and Supply (MAPA)), pharmaceuticals (National Sanitary Regulatory Agency). A list of products subject to non-automatic import licensing procedures is available on the Secretariat of Foreign Trade's computerized documentation system, but specific information related to non-automatic import licensing requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures is an impediment to U.S. exports. U.S. exporters of footwear and apparel and in the automotive sector have expressed concerns about these non-automatic licensing requirements. For automobiles, delays in issuing non-automatic import licenses negatively affect exports of U.S. automobile and automotive parts to Brazil.

Customs Barriers and Trade Facilitation

U.S. companies continue to complain of inconsistent documentation requirements for the importation of certain types of goods, such as heavy equipment. These documentation requirements apply even if imports are on a temporary basis and are destined for use in other countries. Brazil terminated the use of ATA Carnet for temporary admission of products in January 2022, making it difficult to bring samples, equipment, or displays for exhibitions into Brazil without paying significant customs duties.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Wine Regulations

Brazil requires duplicative documentation for imports of wine. Technical Regulation No. 75 of December 31, 2019, requires both a certificate of analysis and an import inspection pre-certification report generated by a Brazilian laboratory upon importation. The United States continues to monitor Brazil's pending updates to its wine regulations, specifically regarding export certification and laboratory testing requirements for wine products. In 2023, the United States continued to raise these issues and seek updates from Brazil on the margins of WTO Committee on Technical Barriers to Trade meetings.

Telecommunications Products

Effective December 2021, Brazil's telecommunications agency (ANATEL) established approval requirements as a prerequisite for importing telecommunications products for usage and sale, with exceptions for products entering the country for demonstration, self-use, scientific purposes, or manufacturing of exports. Approval must be obtained prior to the product's entry into the country.

Sanitary and Phytosanitary Barriers

Pork

In a Joint Statement issued by the White House on March 19, 2019, the United States and Brazil agreed to science-based conditions to open Brazil's market to U.S. pork. However, Brazil's market is still closed to U.S. fresh and frozen pork due to Brazil's concerns, which Brazil has not substantiated with scientific evidence and are inconsistent with World Organisation for Animal Health (WOAH) international standards, that pork products imported into the United States from the European Union increase risks associated with African Swine Fever. Discussions between the U.S. Department of Agriculture and MAPA have been ongoing but have yet to establish access for U.S. pork exports to Brazil.

GOVERNMENT PROCUREMENT

Although Brazil has taken steps to make its procurement market more transparent, restrictions remain. For example, Brazilian state enterprises may only subcontract services to a foreign firm if domestic expertise is unavailable and foreign firms may only bid to provide technical services if there are no qualified Brazilian firms. Brazil also requires some procurement contracts to contain offset requirements, such as providing technology transfer.

Brazil is not a Party to the WTO Government Procurement Agreement (GPA), but has been an observer to the WTO Committee on Government Procurement since October 2017. Although Brazil applied for accession to the GPA in May 2020, the Brazilian Government withdrew its market access offer for accession on May 30, 2023.

INTELLECTUAL PROPERTY PROTECTION

Brazil remained on the Watch List in the [2023 Special 301 Report](#). Despite improvements in recent years, as outlined in that report, enforcement challenges continue, including the absence of deterrent-level penalties and high levels of counterfeiting and piracy online and in physical markets. The Rua 25 de Março area in São Paulo is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling counterfeit and pirated goods. Deterrent-level penalties and increased emphasis on enforcement at the tri-border region between Argentina, Brazil, and Paraguay are critical to make sustained progress on these intellectual property concerns. Patent pendency has been reduced over the past several years, although it remains closer to 10 years for biopharmaceutical patents applications. Other concerns include the pendency of patent applications and the impact on the effective patent term. Also, pharmaceutical stakeholders remain concerned that Brazilian law and regulations do not provide for protection against unfair commercial use of undisclosed test results and other data generated to obtain marketing approval for pharmaceutical products for human use although such protection is provided for veterinary and agricultural chemical products. The United States urges Brazil to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Brazil proceeds with the European Union–Mercosur Trade Agreement.

SERVICES BARRIERS

Audiovisual Services

Law 12.485 of 2011 imposes screen content quotas on subscription television services by requiring every channel (both satellite and cable) to air at least three and a half hours per week of Brazilian programming during prime time and that one-third of all channels included in any television package be Brazilian. In addition, the law delegates significant programming and advertising regulatory authority to the national film industry development agency, which raises concerns about the impartiality of regulatory decisions.

Brazil also maintains domestic film quotas for theatrical screening and home video distribution.

Express Delivery

The Brazilian Government charges a flat 60 percent duty for all express shipments imported through the Simplified Customs Clearance process. The Simplified Customs Clearance process limits commercial

shipments to \$100,000 per importer per year. Moreover, Brazilian Customs has established express delivery maximum per-shipment value limits of \$10,000 for exports and \$3,000 for imports.

Financial Services

Brazil maintains reciprocity requirements for foreign banks and insurers to establish operations in Brazil. Foreign banks may establish subsidiaries, but Brazilian residents must be directly responsible for the administration of the financial institution. Since 1995, entry into the banking sector through the establishment of branches has not been permitted.

Telecommunications Services

Satellites

Brazil permits Brazilian-owned entities to acquire the exclusive right to operate a satellite and its associated frequencies from specific positions. However, foreign-licensed satellite operators may obtain only a nonexclusive right (a landing right) to provide service in Brazilian territory. ANATEL grants these landing rights for a fixed term of no longer than 15 years, after which the operator must reacquire the landing rights to continue providing services. Foreign operators are also required to pay higher annual landing fees than Brazilian firms.

Roaming

In 2012, ANATEL ruled that “value-added services” may only be provided by locally licensed carriers using local subscriber identity module (SIM) cards. This ANATEL interpretation restricts permanent roaming options for value-added services such as international machine-to-machine and Internet of Things providers, thus requiring development of devices solely for the Brazilian market and requiring service infrastructure in Brazil.

BRUNEI DARUSSALAM

TRADE AGREEMENTS

The United States–Brunei Trade and Investment Framework Agreement

The United States and Brunei Darussalam (Brunei) signed a Trade and Investment Framework Agreement (TIFA) on December 16, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Brunei.

IMPORT POLICIES

Tariffs

Brunei's average Most-Favored-Nation (MFN) applied tariff rate was 0.2 percent in 2022 (latest data available). Brunei's average MFN applied tariff rate was zero percent for agricultural products and 0.3 percent for non-agricultural products in 2022 (latest data available). Brunei has bound 95.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 25.3 percent. Brunei's highest WTO bound tariff rate for non-tobacco products is 50 percent.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Brunei ratified the World Trade Organization Trade Facilitation Agreement (TFA) in December 2015, and the TFA entered into force in February 2017. Brunei submitted four transparency notifications related to: (1) import, export, and transit regulations; (2) the operation of the single window; (3) the use of customs brokers; and (4) customs contact points for the exchange of information on May 1, 2023. These notifications had been due to the WTO on February 22, 2017, according to Brunei's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE

Halal Import Requirements

Brunei's Halal Certificate and Halal Label Order Amendment, enacted in May 2017, requires all businesses that produce, import, distribute, or serve food and beverages to obtain a halal certificate from the Islamic Religious Council of Brunei (MUIB) and to renew this certificate annually.

Under Brunei's Halal Meat Act, halal meat can be imported only by a person holding a halal import permit issued by the MUIB and an export permit issued by the exporting country. Prior to export, Bruneian Government inspectors must travel to slaughter facilities in the home country of the exporter to inspect the slaughter and processing operations. The Bruneian Government maintains a list of the foreign and local slaughtering centers (abattoirs) that have been inspected and declared fit for supplying meat that can be certified as halal. None of the 40 foreign slaughterhouses currently approved by the MUIB are located in the United States.

OTHER BARRIERS

Residency Requirement

Under the Companies Act, 100 percent foreign-owned companies cannot locally incorporate in Brunei unless at least one of two directors of that locally incorporated company is a resident of Brunei. If a 100 percent foreign-owned company has more than two directors, then at least two must be residents of Brunei. The government may grant an exemption from this requirement, although it has granted none to date.

Transparency

In Brunei, the decision-making process regarding economic policies and regulations is centralized, including with respect to critical sectors like oil and gas, telecommunications, transportation, and energy generation and distribution. Brunei's centralized decision-making lacks public consultation mechanisms. As a result, there is a lack of transparency with respect to state-owned enterprises.

CAMBODIA

TRADE AGREEMENTS

The United States–Cambodia Trade and Investment Framework Agreement

The United States and Cambodia signed a Trade and Investment Framework Agreement on July 14, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Cambodia.

IMPORT POLICIES

Tariffs

Cambodia's average Most-Favored-Nation (MFN) applied tariff rate was 10.2 percent in 2022 (latest data available). Cambodia's average MFN applied tariff rate was 12.5 percent for agricultural products and 9.8 percent for non-agricultural products in 2022 (latest data available). Cambodia has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.3 percent. Cambodia's highest applied tariff rate is 35 percent, which is imposed on several product categories, including a wide variety of prepared food products, bottled and canned beverages, table salt, paints and varnishes, cosmetic and skin care products, glass and glassware, electrical appliances, cars, furniture, and video games.

On June 6, 2023, Cambodia issued Sub-Decree 122 on the Adjustment of Customs Tariffs and Special Tax Rates on Certain Goods, applicable to sectors such as agriculture, transportation, healthcare, industry, and mining. The Sub-Decree went into effect July 1, 2023. Businesses and importers may check the new tariff rates on the Cambodian General Department of Customs and Excise website by using the relevant Harmonized System (HS) code.

The lack of detailed guidance about HS classification of products by customs officials remains a concern for U.S. stakeholders. Some importers claimed that, due to a lack of clear guidance, if a product could fall under multiple HS codes, Cambodian customs and excise officials will typically classify the product as falling within the HS code with a higher tariff rate.

GOVERNMENT PROCUREMENT

Government procurement is often not transparent, and the Cambodian Government frequently provides short response times to public announcements of tenders, which are posted on the Ministry of Economy and Finance's website. For construction projects, only bidders registered with the Ministry are permitted to participate in tenders.

Irregularities in the government procurement process are common, despite a strict legal requirement for audits and inspections. Despite allegations of malfeasance at several ministries, the Cambodian Government has taken little action to investigate irregularities. In May 2023, the new Law on Public Procurement was promulgated to replace the 2012 law, introducing additional provisions to further regulate the management and implementation of all public procurements. U.S. stakeholders have not reported any noticeable changes to government procurement processes.

Cambodia is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Despite efforts to raise intellectual property (IP) awareness, the sale of counterfeit and pirated goods remains commonplace in Cambodian markets, especially those frequented by tourists. The Central Market in Phnom Penh is included in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). The rates of signal and cable piracy also remain high, and online sites purveying pirated music, films, electronic books, software, and television shows remain popular. In addition, sales of legitimate films have been negatively affected as a result of the popularity of illegal cinemas that show pirated material.

Various Cambodian authorities that work on IP-related issues include the Interior Ministry's Economic Crime Police unit, the General Department of Customs and Excise of Cambodia (GDCE), the Cambodia Import-Export Inspection and Fraud Repression Directorate General, the National Committee for Intellectual Property Rights, the Institute of Standards of Cambodia, the Ministry of Culture and Fine Arts, and the Ministry of Commerce. Some of these institutions have overlapping responsibilities with respect to IP-related issues. The Interior Ministry's Cambodia Counter Counterfeit Committee, which previously cracked down on counterfeit products, transferred that responsibility to the Economic Crime Police and now focuses on raising awareness only. Draft legislation to address the protection of trade secrets is under review at the Ministry of Commerce but has not been passed.

BARRIERS TO DIGITAL TRADE

Cambodia passed an electronic commerce law in November 2019, which was fully implemented in May 2020. The law governs the conduct of electronic commerce within Cambodia and from overseas. Cambodia's National Assembly passed a sub-decree in February 2021 to establish a National Internet Gateway that would require internet providers to route all online traffic through a single node regulated by a government-appointed operator. Cambodia's implementation of the National Internet Gateway has been paused, but not officially cancelled. Both the private sector and human rights organizations have expressed concerns over the effect the National Internet Gateway could have on freedom and online commerce in Cambodia. Proposed laws governing cybersecurity, cybercrime, and data privacy protection are in draft form.

INVESTMENT BARRIERS

Cambodia's constitution restricts foreign ownership of land. A 2010 law allows foreign ownership of property above the ground floor of a structure but stipulates that no more than 70 percent of a building may be foreign-owned and that foreigners may not own property within 30 kilometers of the national border. Land may be owned by foreign investors, but the title must also be held by at least one Cambodian citizen or entity.

While Cambodia has made significant progress in formalizing its tax regime and increasing tax revenues, some question the General Department of Taxation's tax collection methods, including assessing some organizations with unexplained tax bills and freezing assets for failure to pay purported back taxes. Additional concerns range from surprise tax audits to a lack of stakeholder consultation when implementing new tax codes.

OTHER BARRIERS

Transparency

Despite the Cambodian Government's calls for public consultation on new draft regulations in recent years, some businesses have raised concerns with the lack of opportunity for meaningful stakeholder engagement. Some stakeholders have also expressed concerns regarding the short notice and lack of detailed public comment procedures for proposed laws and regulations.

Foods and health-related products are commonly regulated by multi-ministerial regulations called Joint-Prakas and are subject to review and approval by all ministries listed in the Joint-Prakas for aspects ranging from a product's registration to its sale. U.S. businesses have voiced concerns about a lack of clarity on each ministry's authority under the Joint-Prakas.

Bribery and Corruption

Both foreign and local businesses have identified corruption in Cambodia as a major obstacle and a deterrent to investment. Cambodia's judiciary is viewed as one of the country's most corrupt institutions. In 2010, Cambodia adopted anticorruption legislation and established a national Anti-Corruption Unit (ACU) to undertake investigations, implement law enforcement measures, and conduct public outreach. Enforcement, however, remains inconsistent. U.S. businesses have noted that signing an anticorruption memorandum of understanding with the ACU has helped them to avoid paying "facilitation payments." However, businesses have noted that they still encounter red tape in obtaining licenses and permits.

Cambodia published official fees for all public services in 2012 in an effort to combat "facilitation payments;" however, that publication has not been updated, making it difficult to determine current public service fees. Some ministries publish service fees on their official websites, and others do not. In June 2023, Cambodia rolled out the third phase of an online, single-portal business registration platform aimed to eliminate the need for cash payments and to reduce overall fees for public services. Despite covering a total of 22 ministries and state-run institutions, the platform still does not cover all ministries and relevant agencies.

CANADA

TRADE AGREEMENTS

The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA maintains the zero tariffs that were in place among the three countries under the North American Free Trade Agreement and modernized the agreement to include strong, enforceable labor and environmental obligations, ground-breaking provisions to combat non-market practices, and provisions covering small and medium-sized enterprises.

IMPORT POLICIES

Non-Tariff Barriers

Agricultural Supply Management

Canada uses supply-management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply-management system involves production quotas, producer-marketing boards to regulate price and supply, and tariff-rate quotas (TRQs) for imports. Canada's supply-management system severely limits the ability of U.S. producers to increase exports to Canada above TRQ levels and increases the prices that Canadians pay for dairy and poultry products. Under the current system, U.S. imports above quota levels are subject to prohibitively high tariffs (*e.g.*, 245 percent for cheese and 298 percent for butter).

The USMCA expands market access opportunities for dairy products through new TRQs exclusively for U.S. products. Canada has also opened new TRQs for U.S. chicken and U.S. eggs and egg products. In addition, Canada expanded access for U.S. turkey. Canada and the United States also agreed to strong rules to ensure TRQs are administered fairly and transparently to help ensure exporters benefit from the full market access negotiated in the USMCA.

On May 25, 2021, the United States requested and established a dispute settlement panel under the USMCA to review Canada's dairy TRQ allocation measures that undermined the value of the TRQs by setting aside and reserving access to in-quota quantities exclusively for processors. The final panel report was released to the public on January 4, 2022. The panel agreed with the United States that Canada's allocation of dairy TRQs—specifically the set-aside of a percentage of each dairy TRQ exclusively for Canadian processors—is inconsistent with Canada's commitment in Article 3.A.2.11(b) of the USMCA not to “limit access to an allocation to processors.”

Canada made changes to its dairy TRQ allocation measures following the release of the panel report, but the United States rejected those changes as a basis to resolve the dispute. On May 25, 2022, the United States—for the second time—requested dispute settlement consultations with Canada under the USMCA to address Canadian allocation measures that impose new conditions on the allocation and use of the TRQs and prohibit eligible applicants, including retailers, food service operators, and other types of importers, from accessing TRQ allocations. On December 20, 2022, the United States requested new dispute settlement consultations, expanding its challenge of Canada's dairy TRQ allocation measures to include Canada's use of a market-share approach for determining TRQ allocations, which applies different criteria for different segments of applicants, and Canada's failure to allow importers the opportunity to fully utilize TRQ quantities. On January 31, 2023, the United States requested and established a second dispute

settlement panel under the USMCA to address Canada's continued failure to abide by its USMCA commitments with its dairy TRQ allocation measures. The final panel report was released to the public on November 24, 2023. The panel found that Canada's measures are not inconsistent with the USMCA provisions cited by the United States. The panel split on the U.S. claims that Canada's exclusion from eligibility of retailers, food service operators, and other entities and Canada's historical market share approach to allocate its USMCA dairy TRQs breach Canada's USMCA obligations. A dissenting panelist agreed with the United States that by excluding retailers and others, Canada was breaching its commitment to make its dairy TRQs available to all applicants active in the Canadian food or agriculture sector. The United States remains committed to securing the full benefit of the market access that Canada committed to under the USMCA and full compliance with Canada's USMCA obligations.

The United States also remains concerned about potential Canadian actions that would further limit U.S. exports to the Canadian dairy market and continues to monitor closely any tariff reclassifications of dairy products to ensure that U.S. market access is not negatively affected.

Milk Classes

Canada establishes discounted prices for milk components provided to domestic manufacturers of dairy products used in processed food products under the Special Milk Class Permit Program (SMCPP). These prices are "discounted," as they are lower than regular Canadian milk class prices for manufacturers of dairy products and pegged to U.S. prices or world prices. The SMCPP is designed to help Canadian manufacturers of processed food products compete against processed food imported into Canada and in foreign markets. An agreement reached between Canadian dairy farmers and processors in 2016 introduced a new national milk class (Class 7), with discount pricing for a wide range of Canadian dairy ingredients used in dairy products, to decrease imports of U.S. milk protein substances into Canada and increase Canadian exports of skim milk powder into third-country markets. Provincial milk marketing boards (agencies of Canada's provincial governments) began implementing Class 7 in 2017.

Under the USMCA, Canada was obligated to eliminate Class 7 within six months of entry into force. In addition, Canada is obligated to ensure that the price for nonfat solids used to manufacture skim milk powder, milk protein concentrates, and infant formula will be no lower than a level based on the U.S. Department of Agriculture price for nonfat dry milk. Transparency provisions obligate Canada to provide information necessary to monitor compliance with these commitments. Canada is obligated to apply charges to exports of skim milk powder, milk protein concentrates, and infant formula in excess of thresholds specified in the USMCA.

Ministerial Exemptions

Canada prohibits bulk imports of fresh fruits and vegetables in packages exceeding certain sizes (typically 50 kilograms) unless Canada grants a ministerial exemption. To obtain an exemption, importers must demonstrate that the supply of a product in the domestic market is insufficient. The import restrictions apply to all fresh produce in bulk containers if grade names are established in the respective regulations. There are no restrictions on bulk imports of horticultural products without prescribed grade names. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a prearranged buyer.

The 2007 Technical Arrangement Concerning Trade in Potatoes between the United States and Canada is designed to provide U.S. potato producers with predictable access to Canadian ministerial exemptions. The United States will continue to engage with U.S. potato growers on any concerns that Canada's procedures for granting ministerial exemptions are not providing access to Canada's market as agreed.

Wine, Beer, and Spirits

Most Canadian provinces restrict the sale of wine, beer, and spirits through province-run liquor control boards, which are the sole authorized sellers of wine, beer, and spirits in those provinces. Market access barriers imposed by the provincial liquor control boards greatly hamper exports of U.S. wine, beer, and spirits to Canada. These barriers include cost-of-service mark-ups, restrictions on listings (products that the liquor board will carry), reference prices (either the maximum prices the liquor board is willing to pay or the prices below which imported products may not be sold), label requirements, discounting policies (requirements that suppliers must offer rebates or reduce their prices to meet sales targets), and distribution policies.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Compositional Standards for Cheese

Canada's regulations on compositional standards for cheese limit the amount of dry milk protein products that can be used in cheese making, reducing the demand for U.S. dry milk protein products. The United States continues to monitor these regulations for any changes that could have a further adverse impact on U.S. dairy product exports.

Sanitary and Phytosanitary Barriers

Restrictions on U.S. Seeds Exports

For many major field crops, Canada's Seeds Act generally prohibits the sale or advertising for sale in Canada—or import into Canada—of any variety of seed that is not registered with Canada's Food Inspection Agency (CFIA). Canada's variety registration gives the CFIA an oversight role in maintaining and improving quality standards for grains in Canada. The registration is designed to facilitate and support seed certification and the international trade of seed; verify claims made, which contributes to a fair and accurate representation of varieties in the marketplace; and facilitate varietal identity, trait identity, and traceability in the marketplace to ensure standards are met. The United States is concerned, however, that the variety registration system is slow and cumbersome and disadvantages U.S. seed and grain exports to Canada. Under the Canada Grain Act, only grain of varieties produced from seed of varieties registered under the Seeds Act may receive a grade higher than the lowest grade allowable in each class. The USMCA includes a commitment to discuss issues related to seed regulatory systems. In January 2021, the CFIA began seed regulatory modernization efforts. The United States will continue to discuss with Canada steps to modernize and streamline Canada's variety registration system.

INTELLECTUAL PROPERTY PROTECTION

Canada remained on the Watch List in the [2023 Special 301 Report](#). Canada's commitments under the USMCA are designed to significantly improve Canada's intellectual property (IP) environment, addressing areas of longstanding concern, including enforcement against counterfeits, inspection of goods in-transit, transparency with respect to new geographical indications (GIs), and application of full national treatment for copyright. With respect to GIs, the United States remains highly concerned about countries' negotiating product-specific IP outcomes as a condition of market access from the European Union and reiterates the importance of each individual IP right being independently evaluated on its individual merits. Poor

enforcement with respect to counterfeit or pirated goods at the border and within Canada remains a concern. The Pacific Mall in Toronto is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling pirated and counterfeit goods.

SERVICES BARRIERS

Audiovisual Services

For cable television and direct-to-home broadcast services, more than 50 percent of the channels received by subscribers must be Canadian channels. Non-Canadian channels must be preapproved (“listed”) by the Canadian Radio-television and Telecommunications Commission (CRTC). Alternatively, non-Canadian channels can become Canadian by ceding majority equity control to a Canadian partner, as some U.S. channels have done. Foreign channels are prohibited from owning video distribution infrastructure in Canada.

In an annex to the USMCA Cross-Border Trade in Services Chapter, Canada committed to “ensure that U.S. programming services specializing in home shopping, including modified versions . . . are authorized for distribution in Canada.” Since entry into force, the United States has engaged with Canada to ensure its compliance with this commitment, which led Canada to introduce new rules in August 2023. The United States continues to monitor Canada’s implementation to ensure full compliance with the commitment.

Canada permits Canadian cable and satellite suppliers to pick up the signals of U.S. stations near the border and redistribute them throughout Canada without U.S. broadcasters’ consent. Content owners can apply for compensation for the use of such content in Canada from a statutorily mandated fund into which Canadian cable and satellite suppliers pay. U.S. broadcasters consider this compensation to be insufficient and have sought the right to negotiate the carriage of their signals on commercially set rates and terms, as can be done in the United States.

Online Streaming

The Canadian Government passed the Online Streaming Act on April 27, 2023, and has instructed the CRTC to create a new methodology for financial contributions and obligations on streaming platforms to support and promote Canadian programming, as well as review how it defines Canadian programs. The United States will closely monitor the implementation of the Act and any USCMA implications.

BARRIERS TO DIGITAL TRADE

Digital Services Taxation

On August 4, 2023, the Canadian Government published its latest draft legislation for a digital services tax (DST). Canada’s proposed DST could be imposed any time after January 1, 2024, and could be retroactive to January 1, 2022. Canada has taken this step, despite joining the October 8, 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce DSTs in the future. As the United States noted in comments to Canada in 2021 and 2023, most DSTs have been designed in ways that discriminate against U.S. companies, as they single out U.S. firms for taxation while effectively excluding national firms engaged in similar lines of business. Furthermore, Canada’s proposed DST would create the possibility of significant retroactive tax liabilities with immediate consequences for U.S. companies. The United States has expressed serious concerns that Canada continues to pursue a DST and has urged Canada to join the 140 other members of the OECD negotiations who have

agreed not to impose new DSTs or similar measures through the end of 2024. As of December 31, 2023, Canada and the United States were in ongoing discussions on this issue.

CHINA

TRADE AGREEMENTS

In January 2020, the United States and China signed the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, commonly referred to as the (Phase One Agreement). This agreement included commitments by China to improve market access for the United States in the agriculture and financial services sectors, refrain from problematic policies and practices related to intellectual property (IP) and technology transfer, and increase its purchases of certain U.S. goods and services.

While China followed through in implementing some provisions of the Phase One Agreement, it has not yet implemented some of the more important commitments. With regard to agriculture trade, for example, the Phase One Agreement addresses many non-tariff barriers and has expanded market access for a variety of U.S. food, agriculture, and seafood product exports. In particular, China implemented significant reforms in some agricultural sub-sectors, such as meat and poultry products, and in facility registration. However, China has not yet implemented some of its more significant agriculture commitments, such as commitments on agricultural biotechnology and the commitment to conduct a risk assessment relating to the use of ractopamine in cattle and swine. Moreover, China fell far short of implementing its commitments to purchase certain amounts of specific U.S. goods and services in 2020 and 2021.

Importantly, it is clear that the Phase One Agreement has not led to fundamental changes to China's state-led, non-market trade regime or its harmful impact on the U.S. economy and U.S. farmers, ranchers, workers, and businesses. Indeed, many of the commitments in the Phase One Agreement reflected changes that China had already been planning or pursuing for its own benefit or that otherwise served China's interests, such as the changes involving IP protection and the opening up of more financial services sectors. Other commitments to which China agreed reflected a calculation, as it saw them as appeasing U.S. priorities of the prior Administration, as evidenced by the attention paid to the agriculture sector in the Phase One Agreement and the novel commitments relating to China's purchases of U.S. goods and services ostensibly as a means to reduce the bilateral trade deficit.

STATE-LED, NON-MARKET TRADE REGIME

Industrial Plans

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

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

through more advanced and flexible manufacturing techniques, Made in China 2025 is emblematic of China's evolving and increasingly sophisticated approach to "indigenous innovation," which is evident in numerous supporting and related industrial plans. Under China's harmful and anticompetitive approach to indigenous innovation, the common, overriding aim is to replace foreign technologies, products and services with Chinese technologies, products and services in the China market through any means possible so as to enable Chinese companies first to dominate the China market and then to use that dominance as a springboard to taking on international markets.

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

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

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

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

themselves experienced deindustrialization, are especially at risk of severe harm from industrial plans like Made in China 2025.

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

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

Technology Transfer

For years, longstanding and serious U.S. concerns regarding forced or pressured technology transfer remained unresolved, despite repeated, high-level bilateral commitments by China to remove or no longer pursue problematic policies and practices. In August 2017, the Office of the United States Trade Representative (USTR) sought to address these concerns by initiating an investigation under Section 301 of the Trade Act of 1974 (Section 301) focused on policies and practices of the Government of China related to technology transfer, intellectual property, and innovation. Specifically, in its initiation notice, USTR identified four categories of reported Chinese Government conduct that would be the subject of its inquiry: (1) the use of a variety of tools to require or pressure the transfer of technologies and intellectual property to Chinese companies; (2) depriving U.S. companies of the ability to set market-based terms in technology licensing negotiations with Chinese companies; (3) intervention in markets by directing or unfairly facilitating the acquisition of U.S. companies and assets by Chinese companies to obtain cutting-edge technologies and intellectual property; and (4) conducting or supporting cyber-enabled theft and unauthorized intrusions into U.S. commercial computer networks for commercial gains. In March 2018, USTR issued a report supporting findings that the four categories of acts, policies, and practices covered in the investigation are unreasonable or discriminatory and burden and/or restrict U.S. commerce. In November 2018, USTR issued an updated report that found that China had not taken any steps to change its problematic policies and practices. Based on the findings in USTR's Section 301 investigation, the United States took a range of responsive actions, including the pursuit of a successful WTO dispute

challenging certain discriminatory technology licensing measures maintained by China in addition to the imposition of substantial additional tariffs on Chinese imports.

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

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

Throughout 2023, USTR led a statutorily-mandated four-year review of the tariffs that had been imposed on Chinese imports as a result of the Section 301 investigation into China's unfair acts, policies, and practices related to technology transfer, intellectual property, and innovation. As part of this review, USTR has been examining the effectiveness of the tariff actions in achieving the objectives of the original investigation, other actions that could be taken, and the effects of those actions on the United States economy, including consumers.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

China's average Most-Favored-Nation (MFN) applied tariff rate was 7.5 percent in 2022 (latest data available). China's average MFN applied tariff rate was 13.9 percent for agricultural products and 6.4 percent for non-agricultural products in 2022 (latest data available). China has bound 100 percent of its tariff lines in the WTO, with a simple average WTO bound tariff rate of 10.0 percent.

In April 2018, China imposed tariffs ranging from 15 percent to 25 percent on a range of agricultural, steel, and aluminum products imported from the United States in retaliation against the U.S. decision to adjust U.S. imports of steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The U.S. decision was based on a determination that the quantity and circumstances of U.S. imports of steel and aluminum products—including the circumstances of severe excess capacity and resulting overproduction emanating from China—threaten to impair U.S. national security. In July 2018, the United States launched a dispute settlement proceeding against China in the WTO pertaining to China's retaliatory tariffs. In August 2023, a WTO panel issued its report, ruling that those retaliatory tariffs were WTO-inconsistent. China appealed the panel's ruling in September 2023. The United States will continue to take all necessary action to protect U.S. interests in the face of this type of retaliation.

In 2018 and 2019, China imposed a series of retaliatory tariffs on U.S. products following U.S. actions under Section 301 addressing unfair Chinese acts, policies, and practices relating to technology transfer, intellectual property, and innovation. These tariffs remain in place.

Tariff-Rate Quota Administration for Agricultural Commodities

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

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

As part of the Phase One Agreement, China agreed that, from December 31, 2019, its administration of TRQs for wheat, corn, and rice would conform to its WTO obligations. In addition, China agreed to make specific improvements to its administration of the wheat, corn, and rice TRQs, including with regard to the allocation methodology, and to the treatment of non-state trading quota applicants. China also committed to greater transparency. As of December 31, 2023, however, China has not demonstrated full implementation of these commitments.

Taxes

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

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Food Safety

China's ongoing implementation of its 2015 Food Safety Law has led to the introduction of myriad new measures. These measures include exporter facility and product registration requirements for almost all

food and agricultural products. Overall, China's notification of these measures to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) has been uneven.

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

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

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

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

Technical Barriers to Trade

Standards

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

In January 2018, China's revised Standardization Law entered into force. Since then, China has issued numerous implementing measures, some of which contain positive references to the ability of foreign-invested enterprises to participate in China's standardization activities and purport to recognize the value of international standards. Unfortunately, many of these implementing measures cause concern for U.S. industry as they appear to focus on the development of Chinese standards without sufficient consideration

being given to existing standards. In addition, they do not explicitly provide that all foreign stakeholders may participate on equal terms with domestic competitors in all aspects of the standardization process.

As these implementing measures have been issued, China's existing technical committees have continued to develop standards. U.S. and other foreign companies have reported that they are often not permitted to participate in these domestic standards-setting processes, and even in technical committees where participation has been possible for some foreign stakeholders, it has typically been on terms less favorable than those applicable to their domestic competitors. For example, the technical committee for cybersecurity standards (known as TC-260) allows foreign companies to participate in standards development and setting, with several U.S. and other foreign companies being allowed to participate in some of the TC-260 working groups. However, foreign companies are not universally allowed to participate as voting members, and they report challenges to participating in key aspects of the standardization process, such as drafting. They also remain prohibited from participating in certain TC-260 working groups, such as the working group on encryption standards.

Over the years, U.S. stakeholders have also reported that, in some cases, Chinese Government officials have pressured foreign companies seeking to participate in the standards-setting process to license their technology or intellectual property on unfavorable terms. In addition, China has continued to pursue unique national standards in a number of high technology areas. The United States continues to press China to address these specific concerns, but this bilateral engagement has yielded minimal progress.

Notably, U.S. concerns about China's standards regime are not limited to the implications for U.S. companies' access to China's market. China's ongoing efforts to develop unique national standards aims eventually to serve the interests of Chinese companies seeking to compete globally, as the Chinese Government's vision is to use the power of its large domestic market to influence the development of international standards. The United States remains very concerned about China's policies with regard to standards and has expressed, and will continue to express, concerns to China bilaterally and multilaterally as China continues to develop and issue implementing measures for its revised Standardization Law.

In October 2021, the Central Committee of the Chinese Communist Party and the State Council issued the Outline for the Development of National Standardization, which set targets for China's standardization system. It reiterates the desire for China's standardization system to be both guided by the government and driven by the market. It also calls for China's standardization system to refocus from quantity to quality and to shift from a domestic focus to an equal domestic and international focus.

The October 2021 Outline for the Development of National Standardization is partly based on an initiative that China announced in 2019, known as China Standards 2035. A lack of transparency with regard to the initiative's findings is troubling, particularly given longstanding global concerns about inadequate foreign participation in China's standards-setting processes, China's use of bespoke standards without basis, and certain licensing practices in China's standards-setting processes.

Cosmetics

Over the past several years, the United States and U.S. industry have engaged with China's Food and Drug Administration (FDA) and its successor, the National Medical Products Administration (NMPA), to highlight serious concerns with China's regulation of cosmetics. Currently, the regulation of cosmetics in China is governed by the Cosmetics Supervision and Administration Regulation (CSAR), which was issued in June 2020 and entered into effect in January 2021. The United States has repeatedly raised serious concerns with the CSAR and its numerous implementing measures, both bilaterally and in meetings of the WTO TBT Committee and the WTO Council for Trade in Goods, as have several other WTO Members.

The CSAR implementing measures contain provisions that would require companies to disclose full product formulations, ingredient suppliers, manufacturing methods, claims and safety data to both NMPA and local agents in China when products are registered or notified. In addition, these measures require companies to publish claims abstracts that may contain trade secrets and confidential business information on NMPA's website. The United States has expressed concern to China that its regulators are applying an approach that treats cosmetics as having much higher safety risks than is warranted. China's filing and registration requirements for cosmetics also significantly diverge from those in other major markets without a valid regulatory reason, making compliance very burdensome for exporters.

The United States is particularly concerned that the CSAR implementing measures do not provide adequate assurances as to how undisclosed information, trade secrets, and confidential business information will be protected from unauthorized disclosure. China also has not addressed requests from the United States and cosmetics right holders that NMPA provide a legally enforceable mechanism to monitor and protect the trade secrets and confidential business information typically identified by companies in their cosmetics filings.

In addition, China continues to require duplicative in-country testing to assess many product and ingredient safety and performance claims, without considering the applicability of international data or other means of establishing conformity. In response to U.S. concerns, China indicated that it would allow foreign laboratories with facilities in China to conduct its required testing. However, this change does not address the burden of China's requirement, which does not consider the applicability of testing conducted via internationally recognized laboratories outside of China, as well as other means used by foreign regulators and industries to assess the conformity of product and ingredient safety and performance claims.

The United States also questions China's assertion that its cosmetics good manufacturing practices (GMP) requirements provide equal treatment for imported and domestic general and special cosmetics. If the government of a cosmetics importer does not issue GMP or manufacturing export certificates, the only means that China provides to establish conformity with China's GMP for general cosmetics is animal testing. The United States and other WTO Members have made repeated requests that China consider the many alternative means available to establish GMP conformity, including utilizing second party or third party certificates based upon the ISO 22716 Cosmetics GMP Guidelines. Although China accepts some GMP certificates issued by U.S. state governments, the process remains inconsistent and uncertain for exporters.

In sum, after years of the United States engaging with China bilaterally and via the International Cooperation on Cosmetics Regulation, the WTO, and other fora to share views and expertise regarding the regulation of cosmetics, China has not yet addressed key U.S. concerns, including the use of good regulatory practices to facilitate cosmetics conformity assessment and avoid discriminatory treatment, nor has it provided confidence that U.S. intellectual property will be protected. Until China addresses these concerns, many U.S. companies will be impeded in accessing, or simply unable to access, the China market.

Sanitary and Phytosanitary Barriers

Overview

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

Agricultural Biotechnology Approvals

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

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

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

China's approach to agricultural biotechnology remains among the most significant commitments under the Phase One Agreement for which China has not demonstrated full implementation. Despite the commitments that China made, there remains a significant lack of transparency regarding the procedures for convening meetings of the NBC, including regarding dates and agenda items for these meetings and the process for notifying applicants of outcomes and for soliciting additional information to support product applications. While the NBC is required to meet at least two times each year, the meetings are not held pursuant to a regular schedule, and information about the meetings is not widely shared with the public in a transparent and predictable manner. In addition, in conducting its approval process, China continues to ask for information that is not relevant to a product's intended use or information that applicants have previously provided. For this and other reasons, China has not reduced the average time for its approval process for agricultural biotechnology products for feed or further processing to no more than 24 months, as it had committed to do in the Phase One Agreement, even when taking into account approvals made in 2023.

Poultry

In the Phase One Agreement, China agreed to maintain measures consistent with the World Organisation for Animal Health (WOAH) guidelines for future outbreaks of avian influenza. China also agreed to sign a regionalization protocol within 30 days of entry into force of the agreement, which it did, to help avoid unwarranted nationwide animal disease restrictions in the future. This protocol requires that China resume acceptance of poultry imports from states with high pathogenicity avian influenza (HPAI) detections within five days of receiving a U.S. report that the states are HPAI-free. Following the implementation of the protocol, China initially complied with its terms.

Starting in February 2022, the United States notified China of detections of HPAI in multiple U.S. states. In the ensuing months, several states recovered from these detections, and they were deemed HPAI-free by the United States. The United States submitted reports to China for these states and requested approval to resume exporting poultry from these states to China. As of the end of 2023, China had yet to confirm the restoration of market access.

Pork

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

As part of the Phase One Agreement, China agreed to broaden the list of pork products that are eligible for importation, including processed products such as ham and certain types of offal that are inspected by the U.S. Department of Agriculture Food Safety and Inspection Service for both domestic and international trade. China also agreed to conduct a risk assessment for ractopamine in swine and cattle as soon as possible and to establish a joint working group with the United States to discuss next steps based on the risk assessment. As of December 31, 2023, China has not completed the risk assessment and therefore has not yet made any progress on next steps based on the risk assessment, which will need to include the establishment of MRLs or import tolerances.

Beef

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

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

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

GOVERNMENT PROCUREMENT

In its WTO accession agreement, China made a commitment to accede to the WTO Agreement on Government Procurement (GPA) and to open up its vast government procurement market to the United States and other GPA Parties. More than two decades later, this commitment remains unfulfilled, while China's government procurement has continued to grow. Indeed, government procurement at the central level of government alone as of December 31, 2023, totals approximately \$500 billion, even without considering procurement by state-owned enterprises.

The United States, the European Union (EU), and other GPA Parties have viewed China's GPA offers over the years as highly disappointing in scope and coverage. China submitted its sixth revised offer in October 2019. This offer showed progress in a number of areas, including thresholds, coverage at the sub-central level of government, entity coverage, and services coverage. Nonetheless, it fell short of U.S. expectations and remains far from acceptable to the United States and other GPA Parties, as significant deficiencies remain in a number of critical areas, including thresholds, entity coverage, coverage of state-owned enterprises, services coverage, and broad exclusions that would require offsets, domestic content requirements, and technology transfer for covered procurement. Although China has since stated that it will "speed up the process of joining" the GPA, it has not submitted a new offer since October 2019. China's most recent submission, made in June 2021, was only an update of its checklist of issues, which informs GPA Parties of changes to China's existing government procurement regime since its last update.

China's current government procurement regime is governed by two important laws. The Government Procurement Law, administered by the Ministry of Finance, governs purchasing activities conducted with fiscal funds by state organs and other organizations at all levels of government in China, but does not apply to procurements by state-owned enterprises. The Tendering and Bidding Law falls under the jurisdiction of the National Development and Reform Commission (NDRC) and imposes uniform tendering and bidding procedures for certain classes of procurement projects in China, notably construction and works projects, without regard for the type of entity (e.g., a government agency or a state-owned enterprise) that conducts the procurement. Both laws cover important procurements that GPA Parties would consider to be government-procurement eligible for coverage under the GPA.

China's Foreign Investment Law, which entered into force in January 2020, and the related October 2021 Ministry of Finance Notice 35 state that China will provide equal treatment to foreign companies invested in China and to domestic Chinese companies with regard to government procurement opportunities. However, foreign companies report a marked increase in preference for domestic Chinese companies over foreign companies invested in China.

In July 2022, the Ministry of Finance issued draft amendments to the Government Procurement Law. Among other changes, these draft amendments would codify the requirement that officials at all levels of government refrain from purchasing non-domestic products whenever domestic products are available. The draft amendments, which have not yet been finalized, do not define the term "domestic product."

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, known as Document 11. One of the 24 topics addressed in Document 11 is government procurement. Specifically, Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises can participate in China's government procurement market, consistent with existing Chinese law. In Article 6, the State Council recommends clarifying the meaning of "produced in China" as it relates to China's government procurement laws and regulations and providing unspecified support for foreign-invested enterprises to encourage them to develop their cutting-edge

products in China. It also recommends accelerating amendments to the Government Procurement Law. While China's leadership has been touting Document 11 to the foreign business community as a demonstration of China's sincerity about fostering a more welcoming environment for foreign companies in China, Document 11 provides little clarity as to how its suggestions would be implemented, nor does it identify timelines for acting on them. Moreover, many of the suggestions fail to demonstrate a willingness to make meaningful changes, as they either restate outcomes that China previously achieved or offer outcomes that would fall short of China's WTO commitments. Going forward, the United States expects China to make any forthcoming draft implementing measures accessible to the public, including the foreign business community, and to provide a reasonable period of time to submit comments on them.

Under both its government procurement regime and its tendering and bidding regime, China continues to implement policies favoring products, services, and technologies made or developed by Chinese-owned and Chinese-controlled companies through explicit and implicit requirements that hamper foreign companies from fairly competing in China. For example, notwithstanding China's commitment to equal treatment, foreign companies continue to report cases in which "domestic brands" and "indigenous designs" are required in tendering documents. Since China has not yet adopted clear rules on what constitutes a "domestic product," procurement officials often prefer to err on the side of caution and purchase products from domestic Chinese companies.

INTELLECTUAL PROPERTY PROTECTION

Overview

After its accession to the WTO, China undertook a wide-ranging revision of its framework of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign right holders, as required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Despite various plans and directives issued by the State Council, inadequacies in China's IP protection and enforcement regime continue to present serious barriers to U.S. exports and investment. As a result, as in 2022, China was placed on the Priority Watch List in USTR's [2023 Special 301 Report](#). In addition, several markets in China were among those listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List), which identifies online and physical markets that exemplify key challenges in the global struggle against piracy and counterfeiting and explains the harm not only to U.S. businesses, but also to U.S. workers.

The Phase One Agreement addresses numerous longstanding U.S. concerns relating to China's inadequate intellectual property protection and enforcement. Specifically, the agreement requires China to revise its legal and regulatory regimes in a number of ways in the areas of trade secrets, pharmaceutical-related intellectual property, patents, trademarks, and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures and to establish deterrent-level penalties. China must also take a number of steps to strengthen enforcement against pirated and counterfeit goods, including in the online environment, at physical markets, and at the border.

China has published a number of draft measures for comment and issued some final measures relating to implementation of the intellectual property chapter of the Phase One Agreement. Notably, China amended the Patent Law, the Copyright Law, and the Criminal Law. China has also reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods. At the same time, China has outstanding work to finalize the draft measures that it has published and to publish other draft measures, such as certain patent, geographical indications, and trade secret measures, in accordance with the Intellectual Property Action Plan that it released in April 2020. In addition, China has yet to demonstrate that it has: (1) published data online on a quarterly basis regarding enforcement actions

against counterfeit goods with health and safety risks, enforcement actions at physical markets, and enforcement actions at the border; (2) increased enforcement actions against counterfeits with health and safety risks and at physical markets; (3) increased training of customs personnel; or (4) ensured the use of only licensed software in government agencies and state-owned enterprises. The United States continues to monitor China's implementation of the intellectual property chapter of the Phase One Agreement, including the impact of the final measures that have been issued.

Trade Secrets

Serious inadequacies in the protection and enforcement of trade secrets in China have been the subject of high-profile engagement between the United States and China in recent years. Several instances of trade secret theft for the benefit of Chinese companies have occurred both within China and outside of China. Offenders in many cases continue to operate with impunity. Particularly troubling are reports that actors affiliated with the Chinese Government and the Chinese military have infiltrated the computer systems of U.S. companies, stealing terabytes of data, including the companies' proprietary information and intellectual property, for the purpose of providing commercial advantages to Chinese enterprises.

In high-level bilateral dialogues with the United States over the years, China has committed to issue judicial guidance to strengthen its trade secrets regime. China has also committed not to condone state-sponsored misappropriation of trade secrets for commercial use. In addition, the United States has urged China to make certain key amendments to its trade secrets-related laws and regulations, particularly with regard to a draft revision of the Anti-Unfair Competition Law. The United States has also urged China to take actions to address inadequacies across the range of state-sponsored actors and to promote public awareness of trade secrets disciplines.

At the November 2016 U.S.–China Joint Commission on Commerce and Trade (JCCT) meeting, China claimed that it was strengthening its trade secrets regime and bolstering several areas of importance, including the availability of evidence preservation orders and damages based on market value, as well as the issuance of a judicial interpretation on preliminary injunctions and other matters. China amended the Anti-Unfair Competition Law, effective January 2018 and April 2019, as well as the Administrative Licensing Law, effective April 2019, and the Foreign Investment Law, effective January 2020. Nevertheless, the amendments still do not fully address critical shortcomings in the scope of protections and obstacles to enforcement. In 2022, China published additional draft amendments to the Anti-Unfair Competition Law, but they contain few changes to the law's trade secrets provisions.

The Phase One Agreement significantly strengthens protections for trade secrets and enforcement against trade secret theft in China. In particular, the chapter on intellectual property requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft, and to shift the burden of proof in civil cases to the defendants when there is a reasonable indication of trade secret theft. It also requires China to make it easier for rights holders to obtain preliminary injunctions to prevent the use of stolen trade secrets, to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation, and to prohibit government personnel and third-party experts and advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets, and confidential business information submitted to the government.

In 2020, China published various measures relating to civil, criminal, and administrative enforcement of trade secrets. In September 2020, the Supreme People's Court issued the Provisions on Several Issues Concerning the Application of Law in Civil Cases of Trade Secret Infringement and the Interpretation III on Several Issues Concerning the Application of Law in Handling Criminal Cases of Infringement of

Intellectual Property Rights. In September 2020, the Supreme People's Procuratorate and the Ministry of Public Security also issued the Decision on Amendment of Docketing for Prosecution of Criminal Trade Secrets Infringement Cases Standards. These measures relate to issues such as the scope of liability for trade secret misappropriation, prohibited acts of trade secret theft, preliminary injunctions, and thresholds for initiations of criminal investigations for trade secret theft. In December 2020, the National People's Congress passed amendments to the Criminal Law that included changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. The Criminal Law amendments require revisions to certain previously issued judicial interpretations and prosecution standards. However, three years after the passage of the Criminal Law amendments, these other measures remain unchanged, and implementation of the Criminal Law amendments therefore remains incomplete. Indeed, China has only published a draft judicial interpretation. The United States will continue to monitor the effectiveness of all of these measures.

Bad Faith Trademark Registration

The continuing registration of trademarks in bad faith in China remains a significant concern. For example, trademark squatters attempt to take advantage when a genuine trademark owner has not yet registered its trademark in China by registering that trademark and then trying to sell it to the genuine trademark owner. Bad faith trademark registration also occurs when trademarks intending to deceive or confuse consumers are registered.

At the November 2016 JCCT meeting, China publicly noted the harm that can be caused by bad faith trademarks and asserted that it was taking further steps to combat bad faith trademark filings. Amendments to the Trademark Law made in 2019 and subsequent implementing measures, including the State Administration for Market Regulation's (SAMR) Provisions on Standardizing Applications for Registrations of Trademarks issued in 2019 and the Trademark Examination and Review Guidelines updated in 2021 by the China National Intellectual Property Administration (CNIPA), require the disallowance of bad faith trademark applications. In January 2023, China proposed further amendments to the Trademark Law regarding bad faith trademarks.

However, implementation in this area by China as of December 31, 2023, suggests that right holders remain insufficiently protected, as bad faith trademarks remain widespread and problems persist with the large number of inconsistent decisions, low rate of success for oppositions, lack of transparency in opposition proceedings, and unavailability of default judgments against applicants who fail to appear in proceedings. Onerous documentation requirements are also an ongoing concern for right holders. China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention), effective November 2023. The United States will monitor China's implementation of the obligations under the Apostille Convention and whether it addresses right holders' concerns regarding foreign government document legalization requirements.

As a result of these deficiencies, U.S. companies across industry sectors continue to face Chinese applicants registering their marks and "holding them for ransom" or seeking to establish a business building off of U.S. companies' global reputations. The Phase One Agreement requires China to ensure adequate and effective protection and enforcement of trademark rights, particularly against bad faith trademark registrations. The United States will continue to monitor closely developments in this area of long-standing concern.

Online Infringement

Online piracy continues on a large scale in China, affecting a wide range of industries, including those involved in distributing legitimate music, motion pictures, books and journals, software, and video games.

While increased enforcement activities have helped stem the flow of online sales of some pirated offerings, much more sustained action and attention is needed to make a meaningful difference for content creators and right holders, particularly small and medium-sized enterprises. In response to the COVID-19 pandemic, reports indicate that many infringers have moved online to distribute their pirated and counterfeit goods, which further increases the need for targeted and sustained enforcement measures in the online environment.

The United States has urged China to consider ways to create a broader policy environment to help foster the growth of healthy markets for licensed and legitimate content. The United States has also urged China to revise existing rules that have proven to be counterproductive.

At the November 2016 JCCT meeting, China agreed to actively promote electronic commerce-related legislation, strengthen supervision over online infringement and counterfeiting, and work with the United States to explore the use of new approaches to enhance online enforcement capacity. In December 2016 and November 2017, China published drafts of a new E-Commerce Law for public comment. In written comments, the United States stressed that the final version of this law should not undermine the existing notice-and-takedown system and should promote effective cooperation in deterring online infringement. In August 2018, China adopted its new E-Commerce Law, which entered into force in January 2019. This law was an opportunity for China to institute strong provisions on intellectual property protection and enforcement for its electronic commerce market, which is the largest in the world. However, as finalized, the law instead introduced provisions that weaken the ability of right holders to protect their rights online and that alleviate the liability of China-based electronic commerce platforms for selling counterfeit and other infringing goods.

The Phase One Agreement requires China to provide enforcement procedures that permit effective and expeditious action against infringement in the online environment and to require expeditious takedowns and to ensure the validity of takedown notices and counter-notifications. It also requires China to take effective action against electronic commerce platforms that fail to take necessary measures against infringement.

In May 2020, the National People's Congress issued the Civil Code, which included updated notice-and-takedown provisions. In September 2020, the Supreme People's Court issued Guiding Opinions on Hearing Intellectual Property Disputes Involving E-Commerce Platform and the Official Reply on the Application of Law in Network-Related Intellectual Property Infringement Disputes. These measures relate to issues such as expeditious takedowns and the validity of notices and counter-notifications, but have only recently taken effect. In November 2020, the National People's Congress adopted long-pending amendments to the Copyright Law, including provisions relating to increasing civil remedies for copyright infringement, new rights of public performance and broadcasting for producers of sound recordings, and protections against circumvention of technological protection measures. Right holders have welcomed these developments but have noted the need for effective implementation as well as new measures to address online piracy. The United States will closely monitor the impact of these measures going forward.

In August 2021, SAMR issued draft amendments to the E-Commerce Law for public comment. These draft amendments further attempt to address concerns that have been raised about procedures and penalties under China's notice-and-takedown system.

Counterfeit Goods

Counterfeiting in China remains widespread and affects a wide range of goods. In April 2019, China amended its Trademark Law, effective November 2019, to require civil courts to order the destruction of counterfeit goods, but these amendments still do not provide the full scope of civil remedies for right

holders. One of many areas of particular U.S. concern involves medications. Despite years of sustained engagement by the United States, China has failed to adequately improve its regulation of the manufacture of active pharmaceutical ingredients to prevent their use in counterfeit and substandard medications. At the July 2014 United States–China Strategic and Economic Dialogue (S&ED) meeting, China committed to develop and seriously consider amendments to the Drug Administration Law that will require regulatory control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients. At the June 2015 S&ED meeting, China further committed to publish revisions to the Drug Administration Law in draft form for public comment and to consider the views of the United States and other relevant stakeholders. In October 2017, China published limited draft revisions to the Drug Administration Law and stated that future proposed revisions to the remainder of this law would be forthcoming. Although the final Drug Administration Law, issued in August 2019, requires pharmaceuticals products and active pharmaceutical ingredients to meet manufacturing standards, it remains unclear how these requirements will be implemented or enforced.

The Phase One Agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with the materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit. It further requires China to ensure, through third-party audits, that government agencies and state-owned enterprises only use licensed software.

In August 2020, SAMR issued the Opinions on Strengthening the Destruction of Infringing and Counterfeit Goods, and the State Council amended the Provisions on the Transfer of Suspected Criminal Cases by Administrative Organs for Law Enforcement, which relate to the transfer of intellectual property cases from administrative authorities to criminal authorities. China has reported increased enforcement actions against counterfeit medicines and increased customs actions against pirated and counterfeit goods, but has yet to demonstrate that it has increased enforcement actions against counterfeits with health and safety risks and at physical markets, increased training of customs personnel, and ensured the use of only licensed software in government agencies and state-owned enterprises.

Indigenous Innovation

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

The United States secured a series of similar commitments from China in the government procurement context, where China agreed to de-link indigenous innovation policies at all levels of the Chinese

Government from government procurement preferences, including through the issuance of a State Council measure mandating that provincial and local governments eliminate any remaining linkages by December 2011. Many years later, however, this promise had not been fulfilled. At the November 2016 JCCT meeting, in response to U.S. concerns regarding the continued issuance of scores of inconsistent measures, China announced that its State Council had issued a document requiring all agencies and all sub-central governments to “further clean up related measures linking indigenous innovation policy to the provision of government procurement preference.”

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

SERVICES BARRIERS

Overview

The prospects for U.S. service suppliers in China should be promising, given the size of China’s market. Nevertheless, the U.S. share of China’s services market remains well below the U.S. share of the global services market, and the Organization for Economic Cooperation and Development continues to rate China’s services regime as one of the most restrictive among the world’s major economies.

In 2023, numerous challenges persisted in a number of services sectors. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, case-by-case approvals in some services sectors, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services to achieve their full market potential in China. These policies and practices affect U.S. service suppliers across a wide range of sectors, including cloud computing, telecommunications, film production and distribution, online video and entertainment services, express delivery, and legal services. In addition, China’s Cybersecurity Law and related implementing measures include mandates to purchase domestic information and communications technology (ICT) products and services, while China’s Cybersecurity Law, Data Security Law and Personal Information Protection Law and related implementing measures include excessive restrictions on cross-border data flows, and excessive requirements to store and process data locally. These types of data measures undermine U.S. services suppliers’ ability to take advantage of market access opportunities in China by prohibiting or severely restricting cross-border transfers of information that are routine in the ordinary course of business and are fundamental to any business activity. China’s data localization requirements also raise concerns about state surveillance. In addition, China has failed to fully address U.S. concerns in areas that have been the subject of WTO dispute settlement, including electronic payment services and theatrical film importation and distribution.

The Phase One Agreement addresses a number of longstanding trade and investment barriers to U.S. providers of a wide range of financial services, including banking, insurance, securities, asset management, credit rating, and electronic payment services, among others. The barriers addressed in the agreement include joint venture requirements, foreign equity limitations, and various discriminatory regulatory requirements. Removal of these barriers is designed to allow U.S. financial service providers to compete on a more level playing field and expand their services export offerings in the China market. Nevertheless,

China's excessive restrictions on cross-border data flows could continue to create significant challenges for U.S. financial service providers in China.

Banking Services

Although China has opened its banking sector to foreign competition in the form of wholly foreign-owned banks, China has maintained restrictions on market access in other ways that have kept foreign banks from establishing, expanding, and obtaining significant market share in China. Recently, however, China has taken some steps to ease or remove market access restrictions.

For example, China has removed a number of long-standing barriers for foreign banks, including the \$10 billion minimum asset requirement for establishing a foreign bank in China and the \$20 billion minimum asset requirement for setting up a Chinese branch of a foreign bank. China has also removed the cap on the equity interest that a single foreign investor can hold in a Chinese-owned bank.

In the Phase One Agreement, China committed to remove some of these barriers and to expand opportunities for U.S. financial institutions, including bank branches, to supply securities investment fund custody services by considering their global assets when they seek licenses. China also agreed to review and approve qualified applications by U.S. financial institutions for securities investment fund custody licenses on an expeditious basis. In addition, China committed to consider the international qualifications of U.S. financial institutions when evaluating license applications for Type-A lead underwriting services for all types of non-financial debt instruments in China.

Securities, Asset Management and Futures Services

In the Phase One Agreement, China committed to remove the foreign equity caps in the securities, asset management, and futures sectors by no later than April 1, 2020. It also committed to ensure that U.S. suppliers of securities, asset management, and futures services are able to access China's market on a non-discriminatory basis, including with regard to the review and approval of license applications.

Consistent with its commitments in the Phase One Agreement, China announced that it would allow wholly foreign-owned companies for the securities and asset (*i.e.*, fund) management sectors as of April 1, 2020, and that it would allow wholly foreign-owned companies for the futures sector as of January 1, 2020. Prior to these announcements, China had maintained a foreign equity cap of 51 percent for these sectors. Over the past four years, some U.S. financial institutions have applied for and received licenses to operate as wholly foreign-owned enterprises in these sectors. The United States is monitoring these and other developments as U.S. companies continue to seek to obtain licenses and undertake operations in these sectors.

Insurance Services

In the Phase One Agreement, China committed to accelerate the removal of the foreign equity caps for life, pension, and health insurance so that they are removed no later than April 1, 2020. In addition, it confirmed the removal of the 30-year operating requirement, known as a "seasoning" requirement, which had been applied to foreign insurers seeking to establish operations in China in all insurance sectors. China also committed to remove all other discriminatory regulatory requirements and processes and to expeditiously review and approve license applications.

Consistent with China's commitments in the Phase One Agreement, the China Banking and Insurance Regulatory Commission (CBIRC) announced that China would allow wholly foreign-owned companies for the life, pension, and health insurance sectors as of January 1, 2020. Prior to this announcement, China had

maintained foreign equity caps and only permitted foreign companies to establish as Chinese-foreign joint ventures in these sectors. In December 2020, the CBIRC issued a measure that provided further transparency regarding its intention to allow foreign-invested companies to take advantage of this opening.

In other insurance sectors, the United States continues to encourage China to establish more transparent procedures so as to better enable foreign participation in China's market. Sectors in need of more transparency include export credit insurance and political risk insurance.

Finally, some U.S. insurance companies established in China have encountered difficulties in getting the CBIRC, replaced by the National Administration of Financial Regulation (NAFR) in March 2023, to issue timely approvals of their requests to open up new internal branches to expand their operations. The United States continues to urge NAFR to issue timely approvals when U.S. insurance companies seek to expand their branch networks in China.

Electronic Payment Services

In a WTO dispute that it launched in 2010, the United States challenged China's restrictions on foreign companies, including major U.S. credit and debit card processing companies, which had been seeking to supply electronic payment services to banks and other businesses that issue or accept credit and debit cards in China. The United States argued that China had committed in its WTO accession agreement to open up this sector in 2006, and a WTO panel agreed with the United States in a decision issued in 2012. China subsequently agreed to comply with the WTO panel's rulings in 2013, but China did not allow foreign suppliers to apply for licenses until June 2017, when China's regulator—the People's Bank of China (PBOC)—finalized the establishment of a two-step licensing process in which a supplier must first complete one year of preparatory work before being able to apply for a license.

As of January 2020, when the United States and China entered into the Phase One Agreement, no foreign supplier of electronic payment services had been able to secure the license needed to operate in China's market due largely to delays caused by PBOC. At times, PBOC had refused even to accept applications to begin preparatory work from U.S. suppliers, the first of two required steps in the licensing process. Meanwhile, throughout the years that China actively delayed opening up its market to foreign suppliers, China's national champion, China Union Pay, has used its exclusive access to domestic currency transactions in the China market, and the revenues that come with it, to support its efforts to build out its electronic payment services network abroad, including in the United States. In other words, China consciously decided to maintain market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO.

In the Phase One Agreement, China committed to ensure that PBOC operates an improved and timely licensing process for U.S. suppliers of electronic payment services so as to facilitate their access to China's market. In June 2020, four months after the entry into force of the Phase One Agreement, American Express became the first foreign supplier of electronic payment services to secure a license from PBOC to operate in China's market. In November 2023, after years of delays, Mastercard was finally able to secure a license to operate in the China market. Meanwhile, PBOC has been delaying action for even longer periods of time on the licensing application submitted by another U.S. supplier, Visa. The United States continues to closely monitor this situation with concern.

Internet-Enabled Payment Services

PBOC first issued regulations for non-bank suppliers of online payment services in 2010, and it subsequently began processing applications for licensees. Regulations were further strengthened in 2015, with additional provisions aimed at increasing security and traceability of transactions. According to a U.S.

industry report, of more than 200 licenses issued as of June 2014, only two had been issued to foreign-invested suppliers, and those two were for very limited services. This report provided clear evidence supporting stakeholder concerns about the difficulties they faced entering China's market and the slow process foreign firms face in getting licensed. In 2018, PBOC announced that it would allow foreign suppliers, on a nondiscriminatory basis, to supply Internet-enabled payment services. At the same time, as in many other sectors, PBOC requires suppliers to localize their data and facilities in China. In January 2021, PayPal became the first foreign company to obtain full ownership of a payment platform in China, along with a license to supply payment services. The United States will continue to closely monitor developments in this area.

Telecommunications Services

China's restrictions on basic telecommunications services, such as an informal ban on new entry, a 49 percent foreign equity cap, a requirement that foreign suppliers can only enter into joint ventures with state-owned enterprises and exceedingly high capital requirements, have blocked foreign suppliers from accessing China's basic telecommunications services market. Since China acceded to the WTO almost two decades ago, not a single foreign firm has succeeded in establishing a new joint venture to enter this sector.

Restrictions maintained by China on less highly regulated value-added telecommunications services also have created serious barriers to market entry for foreign suppliers seeking to enter this sector. These restrictions include opaque and arbitrary licensing procedures, foreign equity caps, and periodic, unjustified moratoria on the issuance of new licenses. As a result, only a few dozen foreign-invested suppliers have secured licenses to provide value-added telecommunications services, while there are thousands of licensed domestic suppliers.

Internet Regulatory Regime

China's Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet, and is overseen by multiple agencies without clear lines of jurisdiction. China's Internet economy has boomed over the past decade and is second in size only to that of the United States. Growth in China has been marked in services sectors similar to those found in the United States, including retail websites, search engines, vocational and adult online education, travel, advertising, audiovisual and computer gaming services, electronic mail and text, online job searches, Internet consulting, mapping services, applications, web domain registration, and electronic trading. However, in the China market, Chinese companies dominate due in large part to restrictions imposed on foreign companies by the Chinese Government. At the same time, foreign companies continue to encounter major difficulties in attempting to offer these and other Internet-based services on a cross-border basis.

China continues to engage in extensive blocking of legitimate websites, imposing significant costs on both suppliers and users of web-based services and products. China currently blocks most of the largest global sites, and U.S. industry research has calculated that more than 10,000 sites are blocked, affecting billions of dollars in business, including communications, networking, application stores, news, and other sites. Even when sites are not permanently blocked, the often arbitrary implementation of blocking, and the performance-degrading effect of filtering all traffic into and outside of China, significantly impair the supply of many cross-border services, often to the point of making them unviable.

Voice over Internet Protocol Services

While computer-to-computer Voice over Internet Protocol (VoIP) services are permitted in China, China's regulatory authorities have restricted the ability to offer VoIP services interconnected to the public switched telecommunications network (*i.e.*, to call a traditional phone number) to basic telecommunications service

licensees. There is no obvious rationale for such a restriction, which deprives consumers of a useful communication option, and the United States continues to advocate for eliminating it.

Cloud Computing Services

Especially troubling is China's treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data processing and storage services and software application services provided over the Internet. China prohibits foreign companies established in China from directly providing any of these services. Given the difficulty in providing these services on a cross-border basis (largely due to restrictive Chinese policies), the only option that a foreign company has to access the China market is to establish a contractual partnership with a Chinese company, which is the holder of the necessary Internet data center license, and turn over its valuable technology, intellectual property, know-how, and branding as part of this arrangement. While the foreign service supplier earns a licensing fee from the arrangement, it has no direct relationship with customers in China and no ability to independently develop its business. It has essentially handed over its business to a Chinese company that may well become a global competitor. This treatment has generated serious concerns in the United States and among other WTO Members as well as U.S. and other foreign companies.

In major markets, including China, cloud computing services are typically offered through commercial presence in one of two ways. They are offered as an integrated service in which the owner and operator of a telecommunication network also offers computing services, including data storage and processing function, over that network, or they are offered as a stand-alone computer service, with connectivity to the computing service site provided separately by a telecommunications service supplier. Although China's commitments under the WTO General Agreement on Trade in Services (GATS) include services relevant to both of these approaches, neither one is currently open to foreign-invested companies in China.

Audiovisual and Related Services

China prohibits foreign companies from providing film production and distribution services in China. In addition, China's restrictions in the area of theater services have wholly discouraged investment by foreign companies in cinemas in China.

China's restrictions on services associated with television and radio greatly limit participation by foreign suppliers. For example, China prohibits retransmission of foreign TV channels, foreign investment in TV production, and foreign investment in TV stations and channels. China also imposes quotas on the amount of foreign programming that can be shown on a Chinese TV channel each day. In addition, in September 2018, the National Radio and Television Administration (NRTA) issued a problematic draft measure that would impose new restrictions in China's already highly restricted market for foreign creative content. It would require that spending on foreign content account for no more than 30 percent of available total programs in each of several categories, including foreign movies, TV shows, cartoons, documentaries, and other foreign TV programs, made available for display via broadcasting institutions and online audiovisual content platforms. It also would prohibit foreign TV shows in prime time. Although this measure has not yet been issued in final form, it continues to raise serious concerns, as it appears that, as a matter of practice, it has been implemented in China since 2021, including by online audiovisual content platforms.

Theatrical Films

In February 2012, the United States and China reached an alternative resolution with regard to certain rulings relating to the importation and distribution of theatrical films in a WTO dispute that the United States had won. The two sides signed a memorandum of understanding (MOU) providing for substantial increases in the number of foreign films imported and distributed in China each year, along with substantial

additional revenue for U.S. film producers. However, China has not yet fully implemented its MOU commitments, including with regard to critical commitments to open up film distribution opportunities for imported films. As a result, the United States has been pressing China for full implementation of the MOU.

In 2017, in accordance with the terms of the MOU, the two sides began discussions regarding the provision of further meaningful compensation to the United States in an updated MOU. These discussions continued until March 2018, before stalling when China embarked on a major government reorganization that involved significant changes for China's Film Bureau. Discussions resumed in 2019 as part of the broader U.S.-China trade negotiations that began following a meeting between the two countries' Presidents on the margins of the Group of 20 Heads of State and Government Summit in Buenos Aires in December 2018. As of December 31, 2023, no agreement has been reached on the further meaningful compensation that China owes to the United States. The United States will continue pressing China to fulfill its obligations.

Online Video and Entertainment Services

China restricts the online supply of foreign video and entertainment services through measures affecting both content and distribution platforms, as part of its authoritarian governance structure. China requires foreign companies to license their content to Chinese companies and also imposes burdensome restrictions on content, which are implemented through exhaustive content review requirements that are based on vague and otherwise non-transparent criteria. With respect to distribution platforms, NRTA has required Chinese online platform suppliers to spend no more than 30 percent of their acquisition budget on foreign content. NRTA has also instituted numerous measures that prevent foreign suppliers from qualifying for a license, such as requirements that video platforms all be Chinese-owned. NRTA and other Chinese regulatory authorities have also taken actions to prevent the cross-border supply of online video services, which may implicate China's GATS commitments relating to video distribution.

Legal Services

China restricts the types of legal services that can be provided by foreign law firms, including through a prohibition on foreign law firms hiring lawyers qualified to practice Chinese law. It also restricts the ability of foreign law firms to represent their clients before Chinese Government agencies and imposes lengthy delays on foreign law firms seeking to establish new offices. In addition, beginning with the version of China's Foreign Investment Negative List that entered into force in July 2020, China has added an explicit prohibition on the ability of a foreign lawyer to become a partner in a domestic law firm. Reportedly, China is also considering draft regulatory measures that would even further restrict the ability of foreign law firms to operate in China.

Express Delivery Services

The United States continues to have concerns regarding China's implementation of the 2009 Postal Law and related regulations through which China prevents foreign service suppliers from participating in the document segment of its domestic express delivery market. Meanwhile, in the package segment, China applies overly burdensome and inconsistent regulatory approaches and reportedly has provided more favorable treatment to Chinese service suppliers when awarding business permits. China also does not always allow foreign service suppliers to participate on an equal basis in the development of laws, regulations, and other measures, including standards, for the express delivery services sector, nor does China always publicly announce the requirements for obtaining a business license.

BARRIERS TO DIGITAL TRADE

Data Restrictions

In 2023, China continued to build out its expansive state control over the collection, storage, processing, and sharing of data. China's Data Security Law entered into force in September 2021, and China's Personal Information Protection Law entered into force in November 2021. These laws operate together with the Cybersecurity Law, which took effect in June 2017, the National Security Law, which has been in effect since 2015, and various implementing measures, including the Security Assessment Measures for Outbound Transfers of Data, which took effect in September 2022, to prohibit or severely restrict cross-border transfers of important data, a broadly and vaguely defined term, and, in certain cases, personal information collected by companies through their operations in China. These laws and implementing measures also impose local data storage and processing requirements on companies operating in China that collect important data and, in certain cases, personal information. China's data localization requirements also raise concerns about state surveillance.

It has been reported that, as a result of China's implementation of the Security Assessment Measures for Outbound Transfers of Data, China has a backlog of thousands of applications from companies seeking to export data. In addition, in September 2023, China released a draft of revisions to the Security Assessment Measures for Outbound Transfers of Data, while allowing only a two-week public comment period. Many aspects of the draft revisions appear troubling.

Cross-border transfers of data are routine in the ordinary course of business in many sectors and are fundamental to business activity in those sectors. Given the wide range of businesses and business activities that are dependent on cross-border transfers of data and flexible access to global computing facilities, these developments continue to generate serious concerns in the United States and many other countries.

Secure and Controllable Information and Communications Technology Policies

Implementing measures for China's Cybersecurity Law remain a continued source of serious concern since the law's enactment in 2016. These measures are overbroad and serve to promote domestic industry at the expense of China's trading partners. Of particular concern are the Measures for Cybersecurity Review, first issued in 2016 and later updated in 2020 and 2021. This measure implements one element of the cybersecurity regime created by the Cybersecurity Law. Specifically, the measure puts in place a review process to regulate the purchase of ICT products and services by critical information infrastructure operators and online platform operators in China. The review process is to consider, among other things, potential national security risks related to interruption of service, data leakage, and reliability of supply chains. In addition, in September 2022, China published a draft revision of the Cybersecurity Law with a 15-day public comment period. The draft revision would introduce penalties on operators of critical information infrastructure who use products or services that have not undergone the required security review, and it would also raise fines for certain violations of the Cybersecurity Law.

As demonstrated in implementing measures for the Cybersecurity Law, China's approach is to impose severe restrictions on a wide range of U.S. and other foreign ICT products and services with an apparent goal of supporting China's technology localization policies by encouraging the replacement of foreign ICT products and services with domestic ones. U.S. and other foreign stakeholders and governments around the world expressed serious concerns about requirements that ICT equipment and other ICT products and services in critical sectors be secure and controllable, as these requirements are used by the Chinese Government to disadvantage non-Chinese firms.

In addition to the Cybersecurity Law, China has referenced its secure and controllable requirements in a variety of measures dating back to 2013. Through these measures, China has mandated that Chinese information technology users purchase Chinese products and favor Chinese service suppliers, imposed domestic research and development (R&D) requirements, considered the location of R&D as a cybersecurity risk factor and required the transfer or disclosure of source code or other intellectual property. In the 2019 update of the Measures for Cybersecurity Review, China added political, diplomatic, and other non-market developments as potential risk factors to be considered.

In addition, in 2015, China enacted a National Security Law and a Counterterrorism Law, which include provisions citing not only national security and counterterrorism objectives but also economic and industrial policies. The State Council also published a plan in 2015 that sets a timetable for adopting secure and controllable products and services in critical government ministries by 2020.

Meanwhile, sector-specific policies under this broad framework continue to be proposed and deployed across China's economy. A high-profile example from December 2014 was a proposed measure drafted by the China Banking Regulatory Commission that called for 75 percent of ICT products used in the banking system to be secure and controllable by 2019 and that would have imposed a series of criteria that would shut out foreign ICT providers from China's banking sector. Not long afterwards, a similar measure was proposed for the insurance sector.

In 2015, the United States, in concert with other governments and stakeholders around the world, raised serious concerns about China's secure and controllable regime at the highest levels of government within China. During a state visit in September 2015 in Washington, D.C., the U.S. and Chinese Presidents committed to a set of principles for trade in information technologies. The issue also was raised in connection with the June 2015 S&ED meeting and the November 2015 JCCT meeting, with China making a series of additional important commitments with regard to technology policy. China reiterated many of these commitments at the November 2016 JCCT meeting, where it affirmed that its secure and controllable policies are not to unnecessarily limit or prevent commercial sales opportunities for foreign ICT suppliers or unnecessarily impose nationality-based conditions and restrictions on commercial ICT purchases, sales, or uses. China also agreed that it would notify relevant technical regulations to the WTO TBT Committee.

Again, however, China has not honored its promises. The numerous draft and final implementation measures issued by China since 2017 in the area of cybersecurity raise serious questions about China's approach to cybersecurity regulation. China's measures do not appear to be in line with the non-discriminatory, non-trade restrictive approach to which China has committed, and global stakeholders have grown even more concerned about the implications of China's ICT security measures across the many economic sectors that employ digital technologies. Accordingly, throughout the past year, the United States conveyed its serious concerns about China's approach to cybersecurity regulation through bilateral engagement and multilateral engagement, including at WTO Committee and General Council meetings, in an effort to persuade China to revise its policies in this area in light of its WTO obligations and bilateral commitments. These efforts are currently ongoing.

Encryption

Use of ICT products and services is increasingly dependent on robust encryption, an essential functionality for protecting privacy and safeguarding sensitive commercial information. Onerous requirements on the use of encryption, including intrusive approval processes and, in many cases, mandatory use of indigenous encryption algorithms (*e.g.*, for WiFi and fourth generation (4G) cellular products), continue to be cited by stakeholders as a significant trade barrier.

In October 2019, China adopted a Cryptography Law that includes restrictive requirements for commercial encryption products that “involve national security, the national economy and people’s lives, and public interest,” which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the Cryptography Law will lead to unnecessary restrictions on foreign ICT products and services. In August 2020, the State Cryptography Administration issued the draft Commercial Cryptography Administrative Regulations to implement the Cryptography Law. This draft measure did not address the concerns that the United States and numerous other stakeholders had raised regarding the Cryptography Law.

Going forward, the United States will continue to monitor implementation of the Cryptography Law and related measures. The United States will remain vigilant toward the introduction of any new requirements hindering technologically neutral use of robust, standardized encryption.

INVESTMENT BARRIERS

China seeks to protect many domestic industries through a restrictive investment regime. Many aspects of China’s current investment regime continue to cause serious concerns for foreign investors. For example, China’s Foreign Investment Law and implementing regulations, both of which entered into force in January 2020, perpetuate separate regimes for domestic and foreign investors and investments.

There has also been a lack of substantial liberalization of China’s investment regime, evidenced by the continued application of prohibitions, foreign equity caps, and joint venture requirements and other restrictions in certain sectors. China’s most recent version of its Foreign Investment Negative List, which entered into force in January 2022, leaves in place significant investment restrictions in a number of areas important to foreign investors, such as key services sectors, certain types of agriculture, and several extractive industries. With regard to services sectors, China maintains prohibitions or restrictions in key sectors such as cloud computing services and other Internet-related services, telecommunications services, film production and film distribution services, and video and entertainment software services. With regard to agriculture, China maintains prohibitions on the development of agricultural biotechnologies and restrictions on the development of new varieties of corn and wheat. Similarly, China maintains prohibitions on the exploration, mining, and processing of all of the 17 types of rare earth minerals as well as tungsten.

China’s Foreign Investment Law, implementing regulations, and other related measures suggest that China is pursuing the objective of replacing its case-by-case administrative approval system for a broad range of investments with a system that would only be applied to restricted sectors. However, it currently remains unclear whether China is fully achieving that objective in practice. Moreover, even for sectors that have been liberalized, the potential for heightened licensing requirements for foreign firms or the application of licensing processes that disadvantage foreign firms could make it difficult to achieve meaningful market access. In addition, the potential for a new and overly broad national security review mechanism, and the increasingly adverse impact of China’s Cybersecurity Law, Data Security Law, and Personal Information Protection Law and related implementing measures have serious negative implications for foreign investors and investments. Foreign companies also continue to report that Chinese Government officials may condition investment approval on a requirement that a foreign company transfer technology, conduct R&D in China, satisfy performance requirements relating to exportation or the use of local content, or make valuable, deal-specific commercial concessions.

Over the years, the United States has repeatedly raised concerns with China about its restrictive investment regime. Given that China’s investment restrictions place pressure on U.S. companies to transfer technology to Chinese companies, they were a focus of USTR’s Section 301 investigation. The responsive actions taken by the United States in that investigation are intended in part to address this concern.

In the past several years, the investment climate has turned unusually challenging, in large part because of actions taken by the Chinese Government. For example, over the past year, purportedly in implementing amendments to China's Counterespionage Law that broaden the definition of espionage, Chinese security officials raided and detained staff at several multinational companies operating in China that help investors perform due diligence regarding existing or potential new investments in China. With no effective judicial oversight or other means of challenging these actions, investors have reported that their confidence in China has been severely damaged.

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, in the apparent hope of attracting increased levels of foreign investment. Known as Document 11, this measure sets forth general guidance to central level ministries and sub-central government authorities on 24 topics related to foreign investment. China has issued similar guidance in the past without meaningfully following through.

SUBSIDIES

Industrial Subsidies

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

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

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

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

Agricultural Domestic Support

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

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

In September 2016, the United States launched a WTO dispute challenging China's government support for the production of wheat, corn, and rice as being in excess of China's commitments. Like other WTO Members, China committed to limit its support for producers of agricultural commodities. China's market price support programs for wheat, corn, and rice appear to provide support far exceeding the agreed levels. This excessive support creates price distortions and skews the playing field against U.S. farmers. In October 2016, consultations at the WTO took place. In January 2017, a WTO panel was established to hear the case. Hearings before the panel took place in January and April 2018, and the panel issued its decision in February 2019, ruling that China's domestic support for wheat and rice was WTO-inconsistent. China originally agreed to come into compliance with the panel's recommendations by March 31, 2020. The United States subsequently agreed to extend this deadline to June 30, 2020. In July 2020, the United States submitted a request for authorization to suspend concessions and other obligations pursuant to Article 22 of the DSU on the ground that China had failed to bring its measures into compliance with its WTO obligations. After China objected to this request, the matter was referred to arbitration in accordance with Article 22 of the DSU. The arbitration is currently suspended, and the United States continues to closely monitor the operation of China's market price support programs for wheat and rice.

Fisheries Subsidies

It is estimated that China is the world's largest provider of harmful fisheries subsidies, with support exceeding \$4.2 billion annually. These subsidies contribute to overfishing and overcapacity that threatens global fish stocks. Indeed, China is the world's largest producer of marine capture fisheries and, in the years since its WTO accession, has continued to support its fishing fleet through subsidies and other market-distorting means. China's annual fisheries harvest is nearly double that of the next largest producer in the world in terms of marine capture and triple that of other top producers, like the United States, India, and Japan. At the same time, reports continue to emerge about Chinese-flagged fishing vessels engaging in

illegal, unreported, and unregulated (IUU) fishing in distant waters, including in areas under the jurisdiction of other WTO Members. While China has made some progress in reducing subsidies to domestic fisheries, it continues to shift its overcapacity to international fisheries by providing a much higher rate of subsidy support to Chinese distant water fishery enterprises.

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

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

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

Excess Capacity

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

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

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

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

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

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

ANTICOMPETITIVE PRACTICES

As previously reported, China's implementation of the Anti-Monopoly Law has generated various concerns. A key concern is the extent to which the Anti-Monopoly Law is applied to state-owned enterprises. While Chinese regulatory authorities have clarified that the Anti-Monopoly Law does apply to

state-owned enterprises, as of December 31, 2023, they have brought enforcement actions primarily against provincial government-level state-owned enterprises, rather than central government-level state-owned enterprises under the supervision of the State-owned Asset Supervision and Administration Commission (SASAC). In addition, provisions in the Anti-Monopoly Law protect the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. Another key concern relates to how the Anti-Monopoly Law is applied to foreign companies. Many U.S. companies have cited selective enforcement of the Anti-Monopoly Law against foreign companies seeking to do business in China as a major concern, and they have highlighted in particular the comparatively limited enforcement of this law against state-owned enterprises. In recent years, China has begun to increase the number of actions taken against private Chinese companies and wholly domestic transactions.

Another concern expressed by U.S. industry is that remedies imposed on U.S. and other foreign-owned companies in merger cases do not always appear to be aimed at restoring competition. Instead, these remedies seem to be designed to further China's industrial policy goals, such as when the regulatory authorities seek to require the transfer of technology or a reduction in licensing fees for intellectual property.

U.S. industry has also expressed concern about insufficient predictability, due process, and transparency in Anti-Monopoly Law investigative processes of foreign companies. For example, U.S. industry reports that, through the threat of steep fines and other penalties, China's regulatory authorities have pressured foreign companies to cooperate in the face of unspecified allegations and have discouraged or prevented foreign companies from bringing counsel to meetings. In addition, U.S. companies continue to report that the Chinese regulatory authorities sometimes make informal suggestions regarding appropriate company behavior, including how a company is to behave outside China, strongly suggesting that a failure to comply may result in investigations and possible punishment. More recently, high-level policy statements suggest increased Anti-Monopoly Law enforcement where technology owned or controlled by foreign companies allegedly implicates national security concerns or implicates technology being prioritized for indigenous innovation in China.

Given the state-led nature of China's economy, the need for careful scrutiny of anticompetitive government restraints and regulation is high. The Anti-Monopoly Law's provisions on the abuse of administrative (*i.e.*, government) power are potentially important instruments for reducing the government's interference in markets and for promoting the establishment and maintenance of increasingly competitive markets in China. The State Council's adoption of the Opinions on Establishing a Fair Competition Review System in 2016 reflected a useful widening of oversight by China's anti-monopoly enforcement agencies over undue government restraints on competition and anticompetitive regulation of competition. Increased oversight in this area was also reflected in the amendments to the Anti-Monopoly Law in 2022, which included a new chapter regarding the abuse of administrative monopoly. SAMR has since issued draft rules regarding the abuse of administrative monopoly, and SAMR has also identified the elimination of administrative monopolies as an enforcement priority. It remains to be seen whether SAMR will have sufficient authority and resources to implement this enforcement priority robustly.

STATE-OWNED ENTERPRISES

While many provisions in China's WTO accession agreement indirectly discipline the activities of state-owned and state-invested enterprises, China also agreed to some specific disciplines. In particular, it agreed that laws, regulations, and other measures relating to the purchase of goods or services for commercial sale by state-owned and state-invested enterprises, or relating to the production of goods or supply of services for commercial sale or for non-governmental purposes by state-owned and state-invested enterprises, would be subject to certain specified WTO rules. China also affirmatively agreed that state-owned and state-invested enterprises would have to make purchases and sales based solely on commercial considerations,

such as price, quality, marketability, and availability, and that the Chinese Government would not directly or indirectly influence the commercial decisions of state-owned and state-invested enterprises. In addition, China agreed that enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from state-owned and state-invested enterprises on non-discriminatory terms and conditions.

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

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

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

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

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

With regard to the reform of China's state-owned enterprises, one example of China's efforts included an announcement that China would classify these enterprises into commercial, strategic, or public interest categories and require commercial state-owned and state-invested enterprises to garner reasonable returns on capital. However, this plan also allowed for divergence from commercially driven results to meet broadly construed national security interests, including energy and resource interests and cyber and

information security interests. Similarly, in recent years, China has pursued reforms through efforts to realize mixed ownership. These efforts included pressuring private companies to invest in, or merge with, state-owned and state-invested enterprises as a way to inject innovative practices into and create new opportunities for inefficient state-owned and state-invested enterprises. As should be evident, these various reforms do not strengthen the role of the market. Rather, they are intended to strengthen the role of state-owned enterprises in the economy and to direct state capital toward certain industries, including those specified in Made in China 2025, in pursuit of China's industrial domination objectives.

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

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

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

LABOR

The Chinese Government represses internationally recognized labor rights and fails to adequately enforce existing prohibitions on forced labor. China has been the subject of international attention for its forced labor practices, especially in the Xinjiang Uyghur Autonomous Region (XUAR), where China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities. Victims, news media, and think tanks report that factories, including factories producing cotton and tomato products, frequently engage in coercive recruitment, limit workers' freedom of movement and communication, and subject workers to constant surveillance, retribution for religious beliefs, exclusion from community and social life, and isolation. It is currently estimated that hundreds of thousands of Uyghurs, ethnic Kazakhs, and members of other Muslim minority groups are being subjected to forced labor in China following detention. Based on the U.S. Government's independent analysis of these sources, the U.S. Government has taken several actions to address forced labor and other human rights abuses in the XUAR.

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

of this WRO includes cotton and tomatoes and downstream products that incorporate these products as inputs.

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

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

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

Various U.S. agencies have been working to compile and update the UFLPA Entity List, a consolidated register of four distinct lists, including: (1) a list of entities in the XUAR that mine, produce or manufacture wholly or in part any goods, wares, articles, and merchandise with forced labor; (2) a list of entities that work with the government of the XUAR to recruit, transport, transfer, harbor or receive forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of the XUAR; (3) a list of entities that export products mined, produced or manufactured by entities in lists 1 or 2 above from China into the United States; and, (4) a list of facilities and entities, including the Xinjiang Production and Construction Corps, that source material from the XUAR or from persons working with the government authorities in the XUAR or the Xinjiang Production and Construction Corps for purposes of the "poverty alleviation" program or the "pairing assistance" program or any other government labor scheme that uses forced labor. As of December 31, 2023, dozens of entities have been added by the U.S. Government on the UFLPA Entity List.

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

water fishing vessels for serious human rights abuse, including forced labor, of workers aboard these vessels.

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

ENVIRONMENT

Effect of Import Ban on Scrap Materials, Recyclable Materials, and Recycling Markets

Currently, China restricts almost all imports of unprocessed scrap and recyclable materials. China only allows imports of certain processed materials, including recycled raw materials such as copper, steel, aluminum, and brass that meet purity standards, pelletized scrap plastic and pulped scrap paper. These restrictions have raised the costs of recycling in the United States, leading some communities to end recycling programs. Because China was previously such a large destination market, significant amounts of U.S. scrap materials are being redirected to landfills or incinerators.

Since 2017, China has issued numerous measures that limit or ban imports of most scrap and recovered materials, such as certain types of plastic, paper, and metals. China has also employed import licensing and inspection measures to restrict imports of scrap materials. Notably, China does not universally apply similar restrictions to domestic processors of domestically sourced scrap and recovered materials.

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

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

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

Import Ban on Remanufactured Products

China prohibits the importation of remanufactured products, which it typically classifies as used goods. China also maintains restrictions that prevent remanufacturing process inputs (known as cores) from being imported into China's customs territory, except special economic zones. These import prohibitions and restrictions undermine the development of industries in many sectors in China, including mining,

agriculture, healthcare, transportation, and communications, because companies in these industries are unable to purchase high-quality, lower-cost remanufactured products produced outside of China. Nevertheless, China is apparently prepared to pay this price in order to limit imports of remanufactured goods.

OTHER BARRIERS

Export Restraints

Over the years, China has deployed a combination of export restraints, including export quotas, export licensing, minimum export prices, export duties, and other restrictions, on a number of raw material inputs where it holds the leverage of being among the world's leading producers. In many instances, through these export restraints, it appears that China has been able to provide substantial economic advantages to a wide range of downstream producers in China at the expense of foreign downstream producers, while creating pressure on foreign downstream producers to move their operations, technologies, and jobs to China.

In 2013, China removed its export quotas and duties on several raw material inputs of key interest to the U.S. steel, aluminum, and chemicals industries after the United States won a dispute against China at the WTO. In 2014, the United States won a second WTO dispute, focusing on China's export restraints on rare earths, tungsten, and molybdenum, which are key inputs for a multitude of U.S.-made products, including hybrid automobile batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum, and chemicals. China removed those export restraints in 2015. In 2016, the United States launched a third WTO dispute challenging export restraints maintained by China. The challenged export restraints include export quotas and export duties maintained by China on various forms of 11 raw materials, including antimony, chromium, cobalt, copper, graphite, indium, lead, magnesia, talc, tantalum, and tin. These raw materials are key inputs in important U.S. manufacturing industries, including aerospace, automotive, construction, and electronics. While China appears to have removed the challenged export restraints, the United States continues to monitor the situation. In the United States' view, it is deeply concerning that the United States was forced to bring multiple cases to address the same obvious WTO compliance issues.

A more recent concern involves China's potential regulation of rare earth exports under its export controls regime. In this regard, China's Ministry of Industry and Information Technology issued the draft Regulations on the Administration of Rare Earths for public comment in January 2021, and one of the provisions in the draft measure provides that rare earth exporters need to abide by laws and regulations in the area of export controls. More recently, in November 2023, China began requiring exporters to provide detailed reporting on transactions involving rare earths.

In 2023, China also began applying its export control regime to other critical minerals. As of August 2023, China is requiring export licenses for products containing gallium or germanium. Similarly, as of December 2023, China is requiring export licenses for products containing graphite.

In November 2021, China announced an export ban on certain fertilizers. Despite repeated requests from its trading partners to lift this export ban and help address growing international concern over rising commodity prices and disrupted global supply chains, China continues to impose this export ban.

Meanwhile, U.S. companies report that China has also instituted export restrictions on corn starch, apparently in an effort to stabilize domestic prices. As of December 31, 2023, however, the Chinese Government still has not published an official notice.

Value-Added Tax Rebates and Related Policies

As in prior years, in 2023, the Chinese Government attempted to manage the export of many primary, intermediate, and downstream products by raising or lowering the VAT rebate available upon export. China sometimes reinforces its objectives by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty, and unfairness in the global markets for some products, particularly downstream products for which China is a leading world producer or exporter, such as products made by the steel, aluminum, and soda ash industries. These practices, together with other policies, such as excessive government subsidization, have also contributed to severe excess capacity in these same industries.

An apparently positive development took place at the July 2014 S&ED meeting, when China committed to improve its VAT rebate system, including by actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade. Once more, however, this promise remains unfulfilled. As of December 31, 2023, China has not made any movement toward the adoption of international best practices.

Trade Remedies

As of December 31, 2023, China had in place 117 antidumping measures, affecting imports from 17 countries or regions, with two new antidumping investigations underway. China also had in place four countervailing duty measures, affecting imports from two countries or regions. The most significant systemic shortcomings in China's antidumping and countervailing duty practice continue to be in the areas of transparency and due process. Over the years, China has often utilized antidumping and countervailing duty investigations as more of a retaliatory tool than as a mechanism to nullify the effects of dumping or unfair subsidization within its domestic market. In response, the United States has pressed China bilaterally, in WTO meetings and through written comments submitted in connection with pending antidumping and countervailing duty proceedings to adhere strictly to WTO rules in the conduct of its trade remedy investigations.

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

A review of China's conduct of countervailing duty investigations makes clear that, as in the antidumping area, China has failed to adequately improve its transparency and due process when conducting these investigations. In addition, the United States has noted procedural concerns specific to China's conduct of countervailing duty investigations. For example, in recent years, China has initiated investigations of alleged subsidies that raised concerns, given the requirements regarding sufficient evidence in Article 11.2

of the Subsidies Agreement. The United States is also concerned about China's application of facts available under Article 12.7 of the WTO Subsidies Agreement.

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

In certain recent investigations of U.S. imports, China has also made determinations without legal or factual support. For example, in the final countervailing duty determination on imports of n-propanol from the United States, China found that alleged subsidies to the U.S. oil and gas sector automatically passed through to petrochemical products without providing the analysis required by the Subsidies Agreement.

Pharmaceuticals

For several years, the United States has pressed China on a range of pharmaceuticals issues. These issues have related to matters such as overly restrictive patent application examination practices; regulatory approvals that are delayed or linked to extraneous criteria; weak protections against the unfair commercial use and unauthorized disclosure of regulatory data; issues with the implementation of an efficient mechanism to resolve patent infringement disputes; requirements to share ownership with a Chinese partner of patent rights arising from research generated by using human genetic resources in China; and, implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. While China has implemented some helpful reforms, the United States still has many of the same concerns with China's pharmaceutical market, especially as it pertains to treatment of foreign companies.

In its WTO accession agreement, China committed to provide effective protection against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. To provide this protection, known as regulatory data protection (RDP), China committed to enact laws and regulations to ensure that no person, other than the submitter of the data, could rely on the submitted data in a product approval application without permission from the submitter for six years from the date on which China granted marketing approval to the submitter.

In 2017, CFDA finally issued several draft notices addressing the issue of RDP. These draft notices set out a conceptual framework to protect against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products and also sought to promote the efficient resolution of patent disputes between right holders and the producers of generic pharmaceuticals. However, the proposed framework did not provide for a six-year period of RDP despite the commitment that China had made in its WTO accession agreement in 2001.

In 2018, CFDA's successor agency, NMPA, issued draft Drug Registration Regulations and draft implementing measures on drug trial data that would preclude or condition the duration of RDP on whether clinical trials occur in China and whether marketing approval is sought first in China. Subsequently, China issued a revised Drug Administration Law in 2019, followed by NMPA's revised draft Drug Registration Regulations in 2020 and NMPA's revised draft Drug Administration Law Implementing Regulations in 2021. Despite the opportunities that these revised draft measures afforded China's regulatory authorities,

the concerning limitations on RDP were not removed, and China still has not created a regulatory framework providing for the six-year period of RDP as it had committed to do in 2001.

Since 2018, volume-based procurement has presented a new market access complication for foreign suppliers of pharmaceuticals, largely because of the opaque and unpredictable nature of the bidding processes. In November 2018, a National Drug Centralized Procurement Pilot Scheme was launched. Then, in January 2019, the State Council issued a Pilot Plan for National Centralized Drug Procurement and Use. In January 2023, China's National Healthcare Security Administration (NHSA) published the 2022 edition of its annual National Reimbursement Drug List (NRDL), which became effective on March 1, 2023. U.S. industry also cites the need for increased transparency and greater harmony between national and provincial bidding processes as well as a greater emphasis on a competitive, market-based approach to evaluating a product's value and relevant bids. In December 2022, NHSA and CNIPA jointly issued the Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Centralized Pharmaceutical Procurement, which sets out to establish a coordination mechanism to remove patent-infringing drugs from the NRDL, with further implementing measures to follow.

As part of the Phase One Agreement, the two sides agreed that China would establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes that covers both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product. The United States has been working closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the agreement also provides for patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term as well as for the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

In October 2020, China amended the Patent Law to provide for patent term extensions for unreasonable patent and marketing approval delays, and it also added a mechanism for the early resolution of potential patent disputes, known as patent linkage. Implementing measures for the patent linkage mechanism were issued in July 2021, as NMPA and CNIPA jointly issued the Trial Implementation Measures for the Mechanism for Early Resolution of Drug Patent Disputes and the Supreme People's Court issued the Regulations on Several Issues Concerning the Application of Law in the Trial of Civil Patent Disputes Related to Drug Registration Application. In 2021 and 2022, CNIPA issued draft implementing rules for the amended Patent Law and drafts of amendments to the Patent Examination Guidelines. In December 2023, China released the final implementing rules for the amended Patent Law.

Among other things, the United States and U.S. stakeholders remain concerned about China's implementation of patent term extensions for unreasonable patent and marketing approval delays, including the limits on the type of protection provided by China's regulatory framework. The United States and U.S. stakeholders also remain concerned about China's patent linkage mechanism.

Medical Devices

For many years, working closely with U.S. industry, the United States has raised concerns about China's pricing and tendering procedures for medical devices and its treatment of imported medical devices. Notably, at the November 2015 JCCT meeting, China committed that, in terms of accessing the market, it will give imported medical devices the same treatment as medical devices manufactured or developed domestically. Unfortunately, despite this commitment, China continues to pursue a wide range of policies that direct China's purchasing authorities to prioritize the procurement of domestic medical device manufacturers over imported medical device manufacturers.

Separately, the United States has pressed China's regulatory authorities to develop sound payment systems for medical devices that are transparent, predictable, and competitive. The United States has also urged China to adequately recognize quality, safety, and the costs of R&D in its approach to procurement policy.

In 2019, China's State Council launched a concerning volume-based procurement (VBP) approach for medical devices in a few provinces and municipalities in an attempt to cut healthcare costs. Since then, the VBP approach has become further engrained in China's system, with the formation of multi-province and municipal alliances to conduct joint procurements under VBP. In 2020, China implemented its first national VBP tender, which has been followed by additional national tenders in 2021 and 2022. However, U.S. industry reports that the vast majority of VBP tendering activities are occurring at the sub-national level. In practice, moreover, implementation of China's VBP prioritizes cost over the product's value or quality.

According to U.S. industry, if China continues to pursue VBP without significant changes, it could lead to the creation of a low-cost, low-quality medical devices sector in China, with Chinese medical device companies developing monopolies in the manufacture and sale of various low-quality medical devices in the China market. This outcome would operate to the disadvantage of innovative medical device companies, many of which are foreign companies, and the patients who rely on advanced medical technologies. Currently, medical device companies that are successful at winning bids often have very thin profit margins or even lose money. Reportedly, some medical device companies are reducing training to healthcare providers in order to offer the expected price cuts. In addition, given the size of China's medical device market, monopolies from China could expand and then prioritize exports of their low-quality medical devices to third countries. With the choice between a higher cost but more effective product or a lower cost, lower quality product, countries with greater budget constraints, and greater vulnerability to Chinese influence, may be more inclined to procure China's offerings. Overall, China's VBP approach poses a risk to the medical device sector and the provision of high-quality medical treatment worldwide.

In July 2022, China's Ministry of Finance issued a revised Government Procurement Law. While China has a history of distributing unofficial, non-public guidance to give preference to domestic over foreign medical devices companies, China's revisions to the Government Procurement Law also officially expands the coverage of products for which domestic alternatives should be given preference.

Meanwhile, the Made in China 2025 industrial plan announced by the State Council in 2015 seeks to prop up China's domestic medical device sector through a series of support policies, including targeted funds and procurement policies. The goal of these policies is to significantly increase the market share of domestically owned and domestically manufactured medical devices, and correspondingly decrease market share of foreign medical devices, by 2025. At the same time, some provincial governments directly subsidize the purchase of domestically manufactured medical devices. In addition, some provincial governments have issued guidelines urging medical institutions to prioritize the procurement of local medical equipment over imported equipment. In at least one province, the guidelines suggest that only imported medical devices for which there is not a domestic replacement will be eligible for procurement.

In August 2023, China's State Council issued the Opinions on Further Optimizing the Foreign Investment Environment and Enhancing the Attraction of Foreign Investment, known as Document 11. (*Document 11 is also discussed in the Government Procurement section of this NTE Report chapter*). Article 6 of Document 11 offers various suggestions for how central level ministries and sub-central government authorities could work to ensure that foreign-invested enterprises are able to participate fairly in China's government procurement market, consistent with existing Chinese law. One of the suggestions is to provide a definition for "produced in China." Currently, the vast majority of medical devices in China are purchased through government procurement. To the extent that China follows through on the State Council's suggestions, the United States urges China to make any draft implementing measures public and to provide a reasonable period for the public to submit comments.

U.S. industry also reports that while sub-central governments in China have always provided some financial support to domestic medical devices companies, their support appears to have increased since 2020. U.S. industry notes that this trend could be attributed to the COVID-19 pandemic, China's five-year industrial plan for medical equipment covering the years 2021 to 2025, the Action Plan to Promote the High-Quality Development of the Medical Equipment Industry (2023-2025), or perhaps all three measures. The United States will monitor this situation closely and will encourage China to be transparent in its approach.

Social Credit System

Since 2014, China has been working to implement a national "social credit" system for both individuals and companies. The implementation of this system is at a more advanced stage for companies versus individuals, as 18-digit "unified social credit codes" are assigned to every domestic and foreign company in China. These 18-digit codes will provide a way for the Chinese Government to track a company's record of administrative and regulatory compliance and generate public credit information. In a report to the 20th National Party Congress in October 2022, China's President, in the capacity as the General Secretary of the Chinese Communist Party, emphasized the need to refine the social credit system. Since then, the Chinese Government has continued to take steps to make the social credit system fully operational.

Under the corporate social credit system, government records, and market-generated corporate compliance data are collected on every legal entity in China. The collected information contains regulatory and administrative records contributed by at least 44 state agencies and their branch offices across every province in China. Previously disparate information relating to a company's financial records, regulatory compliance, inspection results, and other administrative enforcement activities is being consolidated under each company's unified social credit code. All of this data will be aggregated and shared between regulatory agencies via the National Credit Information Sharing Platform. Reportedly, approximately 75 percent of the records collected on companies is intended to be designated as open to the public, while the remaining 25 percent that is intended to be withheld will include potentially sensitive information, such as approval records related to national development projects and details of any criminal cases.

Nationwide data collection under the corporate social credit system provides mechanisms to penalize companies with poor corporate and legal compliance records by, among other things, subjecting them to public censure, while rewarding compliant companies with positive incentives. Negative ratings or placement on a government agency's censure list can lead to various restrictions on a company's business activities. A company could face increased inspections, reduced access to loans and tax incentives, restrictions on government procurement, reduced land-use rights, monetary fines, or permit denials, among other possible penalties.

However, currently, there is no fully integrated national system for assigning comprehensive social credit scores for companies, and the social credit system remains highly fragmented. Certain central government agencies and sub-central government agencies maintain their own rating systems, with each agency making its own decisions about the types of transgressions that warrant negative ratings or placing a company on a censure list.

In November 2022, the NDRC and the PBOC jointly published a draft Social Credit Construction Law that would give the social credit system a legal basis, further embedding it into China's regulatory network. The draft law seeks to establish the NDRC and the PBOC as the main government agencies for construction of the social credit system. Their responsibilities would include overall coordination, supervision and guidance of the construction of the social credit system and taking the lead in organizing the formulation and implementation of relevant policies and standards. The draft law also seeks to provide formal legal definitions for certain terms used in implementing the social credit system, such as "untrustworthy," "credit

supervision” and “credit information.” In addition, the draft law seeks to codify the protection of certain rights, as it calls for the establishment of a social credit system that maintains the security of social credit information and strictly protects state secrets, business secrets, and personal privacy, while also protecting the lawful rights and interests of natural persons, legal persons, and unincorporated organizations. As of December 31, 2023, the draft law has not been issued in final form.

Earlier in 2022, prior to the publication of the draft law, the NDRC issued a draft update of the 2021 National Basic Catalogue of Public Credit Information and a draft update of the 2021 National Basic List of Disciplinary Measures against Dishonest Acts. The draft Catalogue of Public Credit Information compiles the scope and types of credit information that can be collected by government agencies. It also stipulates that certain categories of information are exempt from collection, including state secrets and trade secrets. The draft List of Disciplinary Measures includes a range of punitive actions that may be applied to violators of trust, such as duties, fees, restrictions on market activity, prohibitions, or limitations on occupations and bans from government procurement bidding. Like the draft law, neither the draft Catalogue of Public Credit Information nor the draft List of Disciplinary Measures has been issued in formal form.

The social credit system has been tied to larger policy objectives as well. For example, the General Office of the State Council and the General Office of the Chinese Communist Party issued a joint opinion on promoting a high-quality credit system in order to further China’s “dual circulation” objectives. In addition, in November 2022, China’s Ministry of Science and Technology (MOST) announced a new pilot project for evaluating science, technology, engineering, and mathematics talent. Under the MOST’s new pilot project, evaluation of scientists’ performance is to incorporate metrics related to their moral character, which includes their social credit record, in order to ensure that scientific researchers have no history of plagiarism or academic fraud. This pilot project appears to reflect China’s struggle to improve the quality of its scientific research talent.

Foreign companies also have numerous concerns with China’s social credit system, which is becoming increasingly complex and expansive. They are concerned that the Chinese Government will use it to disadvantage or coerce foreign companies or provide favorable treatment to domestic companies. They are concerned that the Chinese Government will use the social credit system to pressure them to act in furtherance of China’s industrial policies or other state priorities or otherwise to make investments or conduct their business operations in ways that run counter to market principles or their own business strategies. In addition, foreign companies are concerned about the opaque nature of the social credit system. Currently, for example, a company sometimes only learns about its negative ratings when, for example, it requests a permit and receives a denial, even though the Measures for Administration of the List of Serious Violators of Trust and Law includes a requirement that companies be informed of their being censured in advance. Other times, a company learns for the first time that it has been censured when a Chinese Government agency posts its name on the agency’s website, even though the censuring of a company can cause severe harm to the company’s reputation and adversely impact its efforts to attract customers, secure needed financing, or make new investments. When Chinese Government agencies begin to pursue joint punishment in the way that the NDRC envisions, it will mean that an infraction in one regulatory context could have wider consequences across the company’s entire business operations.

Foreign companies are also concerned about the links between corporate social credit and individual social credit. They can foresee the Chinese Government using the social credit system as another tool to coerce foreign companies and those who work for them not to cross political redlines on sensitive matters like deprivation of human rights. Foreign companies can also foresee the Chinese Government potentially using corporate social credit in the future to exert extraterritorial influence by threatening the social credit standing of foreign companies or their officials for behavior or speech outside of China. Similarly, foreign companies are concerned that China will abuse its legion of laws regulating how data is stored and transferred to access information to use against them.

Administrative Licensing

U.S. companies continue to encounter significant problems with a variety of administrative licensing processes in China, including processes to secure product approvals, investment approvals, business expansion approvals, business license renewals, and even approvals for routine business activities. While there has been an overall reduction in license approval requirements and a focus on decentralizing licensing approval processes, U.S. companies continue to report that one of their key concerns involves China's problematic licensing approval processes.

Transparency

One of the core principles reflected throughout China's WTO accession agreement is the enhancement of transparency. Unfortunately, after more than 20 years of WTO membership, China still has a poor record when it comes to adherence to its transparency obligations.

Publication of Trade-Related Measures

In its WTO accession agreement, China committed to adopt a single official journal for the publication of all trade-related laws, regulations, and other measures. China adopted a single official journal, to be administered by the MOFCOM, in 2006. However, it appears that China only publishes trade-related measures from some, but not all, central-government entities in this journal. It also appears that China rarely publishes trade-related measures from sub-central governments in the journal.

At the central government level, moreover, China tends to take a narrow view of the types of trade-related measures that need to be published in the official journal. For those government entities whose trade-related measures are published in the official journal, China more commonly (but still not regularly) publishes trade-related administrative regulations and departmental rules in the journal, but it is rare for China to publish other measures such as opinions, circulars, orders, directives and notices, which are known as "normative documents" in China's legal system. Normative documents are regulatory documents that do not fall into the category of administrative regulations or departmental rules, but still impose binding obligations on enterprises and individuals. Although the State Council introduced a definition for "administrative normative documents" in 2014, this definition is narrow and does not appear to encompass all normative documents, nor has it resulted in their regular publication as required by China's WTO commitments. Among other things, publication of all normative documents would facilitate compliance by enterprises and individuals with the obligations addressed in them.

Meanwhile, China rarely publishes certain types of trade-related measures from either the central level or the sub-central level of government in the official journal; an important example involves subsidy measures.

Notice-and-Comment Procedures

In its WTO accession agreement, China committed to provide a reasonable time period for public notice and comment before implementing new trade-related laws, regulations, and other measures. While little progress has been made in implementing this commitment at the sub-central government level, the National People's Congress instituted notice-and-comment procedures for draft laws in 2008, and shortly thereafter China indicated that it would also publish proposed trade- and economic-related administrative regulations and departmental rules for public comment. Subsequently, the National People's Congress began regularly publishing draft laws for public comment. China's State Council often (but not regularly) published draft administrative regulations for public comment, but many of China's ministries were not consistent in publishing draft departmental rules or normative documents for public comment.

At the May 2011 S&ED meeting, China committed to issue a measure implementing the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the website of the State Council's Legislative Affairs Office (SCLAO) for a public comment period of not less than 30 days. In April 2012, the SCLAO issued two measures that appear to address this requirement.

In the Phase One Agreement, China committed to provide no less than 45 days for public comment on all proposed laws, regulations, and other measures implementing the Phase One Agreement. Since the entry into force of this commitment in February 2020, China has generally been providing the required 45-day public comment period and working constructively with the United States whenever it has raised questions or concerns regarding provisions in proposed implementing measures.

Currently, outside the context of Phase One Agreement implementing measures, the process for issuing new measures in China can be opaque and unpredictable and implemented without adequate notice. China has yet to adequately improve its practices relating to the publication of administrative regulations and departmental rules for public comment. China also has yet to formalize its use of notice-and-comment procedures for all normative documents. In addition, even when China provides for a notice-and-comment period, too often it issues the final measure immediately after the end of the comment period, suggesting that it did not give serious consideration to the comments received.

China also has yet to consistently implement the notice-and-comment obligations applicable to all WTO Members. Most notably, China needs to adhere consistently to the notice-and-comment periods required by the TBT Agreement and the SPS Agreement.

Translations

In its WTO accession agreement, China committed to make available translations of all of its trade-related laws, regulations, and other measures at all levels of government in one or more of the WTO languages, *i.e.*, English, French, and Spanish. Prior to 2014, China had only compiled translations of trade-related laws and administrative regulations (into English), but not other types of measures, such as departmental rules, normative documents, and sub-central government measures. Even for trade-related laws and administrative regulations, China was years behind in publishing these translations. At the July 2014 S&ED meeting, China committed that it would extend its translation efforts to include not only trade-related laws and administrative regulations but also trade-related departmental rules. Subsequently, in March 2015, China issued a measure requiring trade-related departmental rules to be translated into English. This measure also provides that the translation of a departmental rule normally must be published before implementation.

Notably, however, even if China were to fully implement its existing measures requiring translations, they would not be sufficient to bring China into full WTO compliance in this area. China does not consistently publish translations of trade-related laws, administrative regulations, and departmental rules in a timely manner (*i.e.*, before implementation), nor does it publish any translations of trade-related normative documents or trade-related measures issued by sub-central governments.

Enquiry Point

In its WTO accession agreement, China committed to establish an enquiry point that would respond to requests for information relating to legal measures required to be published in its official journal. At times, however, China has refused to provide copies of legal measures in response to legitimate requests directed to its enquiry point.

In April 2020, for example, the United States submitted a request concerning five Chinese legal measures covering semiconductors and fisheries subsidy programs that had not been published in China's official journal and were not otherwise available online, nor had they been notified to the WTO. Despite the obligation in its WTO accession agreement to either provide the documents or respond in writing within 45 days, China did not meet this deadline. The United States made repeated follow-up requests, to no avail. Five months after the United States submitted its request to China's enquiry point, the MOFCOM orally informed the U.S. Embassy in Beijing that it would not be providing any of the requested legal measures because two of the measures would soon be replaced and the other three measures, in China's view, were not relevant to China's WTO obligations. USTR promptly responded to the MOFCOM in writing, countering its assertions and urging it to provide the requested documents. Since then, China has continued to refuse to provide a written response to the United States' request or to provide any of the requested legal measures, even though the United States and other WTO Members have repeatedly raised this matter in the WTO Subsidies Committee and the WTO Council for Trade in Goods.

Other Non-Tariff Measures

A number of other non-tariff measures can adversely affect the ability of U.S. industry to access or invest in China's market. Key areas of concern include laws governing land-use in China, commercial dispute resolution, and the treatment of non-governmental organizations. Corruption among Chinese Government officials, enabled in part by China's incomplete adoption of the rule of law, is also a key area of concern.

COLOMBIA

TRADE AGREEMENTS

The United States–Colombia Trade Promotion Agreement

The United States–Colombia Trade Promotion Agreement (CTPA) entered into force on May 15, 2012. The United States and Colombia work closely to review the implementation and functioning of the CTPA and to address outstanding issues.

IMPORT POLICIES

Tariffs

Since January 1, 2021, U.S. consumer and industrial products have been duty free pursuant to the CTPA. Duties on some remaining U.S. agricultural goods were phased out on January 1, 2023. Tariffs on the most sensitive products for Colombia will be phased out between January 1, 2026, and January 1, 2030. U.S. agricultural exporters also currently benefit from duty-free access under tariff-rate quotas for some sensitive products.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Colombia ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) on August 6, 2020. Colombia has not yet implemented customs reforms that would allow traders to submit electronic copies of invoices instead of physical copies, as encouraged by the TFA. Slow customs clearance in Colombia hampers both imports and exports, and the ability to submit electronic copies of documents would help accelerate customs clearances. The Colombian Government reports that its digital system is under development, and the United States will continue to follow the development of the system.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Automobile Conformity Assessment

Colombia's requirement for third-party safety certification for several components of imported vehicles will go into effect August 2024. U.S. manufacturers already test their products for compliance with U.S. Federal Motor Vehicle Safety Standards. Furthermore, there are no conformity demonstration laboratories and organizations for carrying out technical tests in Colombia. After consultation and the receipt of U.S. Government and other stakeholder comments, Colombia amended its regulations to state that U.S. manufacturers can satisfy the legal requirement for third-party certification by providing documentation issued by the U.S. National Highway Traffic Safety Administration (NHTSA). The U.S. Government and stakeholders remain concerned with this approach, given that NHTSA does not issue such documentation. U.S. industry states that Colombia's burdensome and duplicative requirement will significantly impact exports of U.S.-manufactured vehicles and parts to Colombia. In August 2023, the Colombian Government announced its intention to impose similar requirements on other automobile components but has delayed

implementation of these requirements until September 2024 to allow additional time for discussion. The United States will continue working with the Colombian Government and stakeholders to seek workable alternatives.

Sanitary and Phytosanitary Barriers

Lactic Acid and Bulk Dried Milk

In August 2020, INVIMA (Colombia's regulatory authority equivalent to the U.S. Department of Health and Human Services Food and Drug Administration) informed the United States that all U.S. shipments of milk powder to Colombia must meet the physical and chemical properties requirements in Decree 616 of 2006, including minimum lactic acid content requirements. Decree 616 was notified to the WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee) in 2005 and again in 2012. The scientific basis and rationale for the regulation remain unclear. The Codex Alimentarius Commission standards for food additives only establish a maximum limit for lactic acid and do not set a minimum limit. In July 2022, Colombia's Ministry of Health published a draft regulation to amend Decree 616, which continued to include mandatory minimum lactic acid requirements for milk powder, and added other restrictions on the sale of bulk powdered milk. The United States participated in Colombia's domestic consultation process for the draft regulation, which ended on August 12, 2022. The draft regulation is pending notification to the WTO SPS Committee.

Cessation of Issuance of Import Permits for U.S. Poultry

Since 2012, Colombia had allowed the United States to export poultry products coming from U.S. zones (or counties) free of highly pathogenic avian influenza (HPAI), a procedure recognized in a 2012 regionalization agreement that was signed by the U.S. Trade Representative and the Colombian Ministers of Agriculture and Trade. On August 7, 2023, Colombia's national animal health authority (ICA) stopped issuing import permits for certain U.S. poultry products, pursuant to Resolution 2478 of 2023. This resolution puts in place sanitary restrictions on the importation of poultry products from countries with the presence of HPAI. U.S. regulators have provided extensive technical information regarding U.S. disease control measures and facilitated a number of site visits by ICA officials in December 2023. On February 13, 2024, ICA officially reopened the market to U.S. day-old chicks and hatching eggs. On February 26, 2024, ICA officially reopened the market to U.S. poultry meat.

INTELLECTUAL PROPERTY PROTECTION

Colombia remained on the Watch List in the [2023 Special 301 Report](#). Colombia has not yet implemented the provisions of the CTPA regarding enforcement against online copyright infringement and has not yet acceded to the 1991 Act of the International Convention for the Protection of New Varieties of Plants. During 2023, the United States continued to engage with Colombia on these outstanding CTPA commitments.

With respect to concerns raised about Article 72 of the 2015 National Development Plan, Colombia issued Decree 433 in March 2018 and Decree 710 of April 2018 to clarify that Colombia would not condition regulatory approvals for pharmaceuticals on factors other than the safety and efficacy of the underlying compound. An action challenging both these decrees led Colombia's Council of State to provisionally suspend the decrees in September 2019.

Colombia continues to face a large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country. High levels of digital piracy

persist, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television services that permit the retransmission of otherwise-licensed content to a large number of nonsubscribers.

SERVICES BARRIERS

Distribution Services

A section of Colombia's commercial code provides protections for agents that can make it difficult and costly for companies to terminate a commercial agent (sales representative) contract. The United States has been working with Colombia to implement its commitments under the CTPA that address this issue.

LABOR

The United States and Colombia continue to consult on labor issues pursuant to Article 17.5.5 of the CTPA. This engagement includes discussing Colombia's progress on implementing specific recommendations contained in a U.S. Department of Labor (DOL) report. The [DOL report](#), published in 2017, raises significant concerns regarding labor law enforcement throughout Colombia, especially with respect to the right to freedom of association, the right to organize and bargain collectively, violence against unionists, and impunity for the perpetrators of the violence.

COSTA RICA

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Costa Rica applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, U.S. non-agricultural goods enter Costa Rica duty free.

In addition, nearly all U.S. agricultural exports enter Costa Rica duty free under the CAFTA–DR. Costa Rica will eliminate its remaining tariffs on certain rice and dairy products by 2025. On August 12, 2022, Costa Rica unilaterally reduced tariffs on imported rice irrespective of origin. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free quantities expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through continual expansion of a TRQ, rather than the reduction of the out-of-quota tariff. Costa Rica is required under the CAFTA–DR to make TRQs available on January 1 of each year. Costa Rica monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these import licensing permits.

Taxes

Costa Rica assesses an excise tax on distilled spirits calculated as a percentage of alcohol per liter, based on three specific rates (Law 7972). The highest rate applies to spirits bottled at a rate above 30 percent alcohol-by-volume (abv). While locally produced spirits (produced in the largest volume by the state-owned alcohol company) are bottled at 30 percent abv, the vast majority of internationally traded spirits are bottled at 40 percent abv. As a result, most imported spirits are taxed at a higher rate than most spirits produced domestically. Furthermore, domestic producers may pay the tax within the first 15 days of each month on sales made during the prior month, while importers must pay the tax prior to release of their product from customs.

SANITARY AND PHYTOSANITARY BARRIERS

The Costa Rican Ministry of Agriculture occasionally delays the issuance of phytosanitary import permits for sensitive products during specific periods, such as harvest time (usually from April to June for onions), creating difficulties for U.S. exporters of those products. The table-stock potato market is closed pending completion of a pest risk assessment. The United States exported approximately \$1.9 million and \$1.7

million of chipping potatoes to Costa Rica in 2021 and 2022, respectively, and an estimated \$2.2 million in 2023. However, industry estimates that exports could increase to over \$5 million if phytosanitary issues are addressed and the table-stock potato market is reopened. The U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service and the Costa Rican Ministry of Agriculture conduct frequent bilateral meetings to discuss regulatory procedures for the import and export of new products, promoting market access for new U.S. products.

A 2016 Costa Rican regulation requires completion of extensive questionnaires for certain animal product facilities that export products to Costa Rica, including dairy, seafood, lamb, and egg product facilities. Most U.S. exporting facilities have complained that the questionnaire requests require disclosure of irrelevant and business proprietary information. As a result, U.S. exports of these products face delays of several months or longer when introducing new products to the Costa Rican market. The USDA and the U.S. Department of Health and Human Services Food and Drug Administration have engaged Costa Rica's National Animal Health Service to consider a less burdensome alternative to the questionnaire for U.S. exporters.

GOVERNMENT PROCUREMENT

U.S. companies have indicated that the private sector is sometimes disadvantaged in public bids when competing against Costa Rican state-owned enterprises in both the information and communications technology and insurance sectors. Article 2 of the Public Contracting Law allows for the noncompetitive awarding of contracts to public entities if officials of the awarding entity certify the award to be an efficient use of public funds. The United States has engaged with Costa Rica on these issues.

Costa Rica is not a Party to the World Trade Organization (WTO) Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2015. Costa Rica applied for membership in the WTO Committee on Government Procurement on September 28, 2023. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Costa Rica was removed from the Watch List in the [2020 Special 301 Report](#) due to the concrete steps it took to improve its intellectual property (IP) regime, including initiating new programs within the government to track licenses to address unlicensed software use in the central government, and to implement an online recordation system to improve border enforcement. While the United States recognizes the progress Costa Rica has made, and the potential of these positive developments, their effectiveness remains to be demonstrated through enforcement and outcomes on the ground. Costa Rica's IP Registry issued its second report on government usage of unlicensed software in July 2022, with results of the use of legal software at 95 government institutions. The decree that calls for these reports does not mandate they be published, and neither the first nor the second report has been published. The Ministry of Science, Innovation, Technology and Telecommunications and the Ministry of Foreign Trade authorities are working to accelerate the analyses and delivery of the reports to the president to coordinate actions needed in the event of noncompliance. The United States continues to request that Costa Rica publish the results of the reports.

The United States also continues to urge Costa Rica to bolster IP enforcement to curb online piracy, address cumbersome border measure processes to deter counterfeit and pirated goods, and effectively utilize *ex officio* authority for border enforcement against counterfeit and pirated goods. Costa Rica has implemented an online recordation system that provides information to improve border enforcement but is not as robust as the U.S. Department of Homeland Security Customs and Border Protection e-Recordation Program. The

Ministry of Foreign Trade is working with IP Registry and private sector representatives to strengthen Costa Rica's recordation system and learn from best practices in this area. The United States continues to encourage Costa Rica to build on initial positive steps to protect and enforce IP and to continue bilateral discussions of these issues.

COTE D'IVOIRE

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Cote d'Ivoire's average Most-Favored-Nation (MFN) applied tariff rate was 12.1 percent in 2022 (latest data available). Cote d'Ivoire's average MFN applied tariff rate remained 15.8 percent for agricultural products and 11.5 percent for non-agricultural products in 2022 (latest data available). Cote d'Ivoire has bound 33.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.2 percent.

Consistent with the Economic Community of West African States (ECOWAS) Common External Tariff (CET), Cote d'Ivoire applies: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on final consumer goods; and (5) 35 percent duty on certain goods that the Ivoirian Government elected to afford greater protection. After a three-year delay in harmonizing the CET, as of 2023, it is based on the 2022 Harmonized System nomenclature developed by the World Customs Organization.

Since 2021, the tariff rate was reduced to 9 percent for milk (except yogurt and other dairy products), infant milk, homogenized and composite preparation foods for infants, imported rice, meat imported from outside ECOWAS, pasta products containing 100 percent durum wheat semolina, and equipment designed for solar energy. The Ivoirian Government applies a tariff of 1,000 CFA (approximately \$1.75) per kilogram to imports of frozen meats.

Taxes

Imports from countries that are not members of the West African Economic and Monetary Union (WAEMU) are subject to an additional 2.5 percent tax on the cost, insurance, and freight (CIF) value of imports, which consists of the solidarity tax (0.8 percent), African Union import tax (0.2 percent), ECOWAS community levy (0.5 percent), and statistical charge (1.0 percent), all of which are used for financing WAEMU commissions and assisting landlocked WAEMU members Niger, Burkina Faso, and Mali. Like all ECOWAS countries, Cote d'Ivoire imposes a 1 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Cote d'Ivoire levies an additional 1 percent charge on the CIF value of imports, except those destined for re-export, transit, or donations for humanitarian purposes under international agreements.

An import tax of 15 percent is applied on imports of electrical transformers from 16 kilovolt-amperes (kVA) to 500 kVA.

Excise duties apply to certain imports, including alcoholic or nonalcoholic beverages and oil products. The tax on cosmetic products containing hydroquinone decreased from 50 percent to 15 percent.

Non-Tariff Barriers

A number of items are subject to import prohibitions, restrictions, or prior authorization, including: certain petroleum products, animal products, flour, live plants, seeds, plastic bags, distilling equipment, and analog televisions. Textile imports are subject to some authorization requirements by the External Trade Promotion Office.

Import Bans

Cote d'Ivoire has prohibited wheat flour imports without iron and acid folic fortification since 2008. In January 2020, Cote d'Ivoire banned the importation of sugar for five years. By doing so, Cote d'Ivoire ensures the consumption of domestically-produced sugar and protects a well-known national company in this sector. Two local companies are authorized to import sugar in case of a national shortage.

Import Restrictions

A regulation in force since July 2018 limits the age of imported used vehicles to a maximum of five years.

Customs Barriers and Trade Facilitation

All goods imported into Cote d'Ivoire must first be examined by a pre-shipment inspection company for compliance with relevant requirements. U.S. exporters find the process often increases the time and cost to export without providing assurance of a more streamlined clearance process at the border. Four European companies—BIVAC (affiliated with the French group Bureau Veritas), Swiss-based firms COTECNA and SGS, and British company Intertek—are contracted to carry out pre-shipment inspections of goods exported to Cote d'Ivoire with a value exceeding 1 million CFA (approximately \$1,750). A certificate of compliance from one of these firms is required to clear customs. In 2023, customs authorities enforced a rule mandating that all imported containers must undergo a verification scan before being allowed to enter the country.

Cote d'Ivoire notified its latest update to its customs valuation legislation to the WTO in June 2002, but it has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

Minimum Import Prices

The Ivoirian Government imposes minimum import prices on products including cooking oil, sugar, used clothing, concentrated tomato paste, broken rice, matches, notebooks, tissues, polypropylene sacks, alcohol, and milk.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Cote d'Ivoire has not consistently notified draft measures to the WTO Committee on Technical Barriers to Trade nor the WTO Committee on the Application of Sanitary and Phytosanitary Measures since becoming a WTO Member on January 1, 1995. Transparency of the regulatory system in Cote d'Ivoire is a concern, as companies complain that regulations are issued only as final measures without a clear process or a period for public comment on draft regulations.

GOVERNMENT PROCUREMENT

The Ivoirian Government publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The National Bureau of Technical and Development Studies—the government's technical and investment planning agency and think tank—occasionally serves as an executing agency in major projects to be financed by international institutions.

The Public Procurement Department is a centralized office of public tenders in the Ministry of Finance to help ensure compliance with international bidding practices. Cote d'Ivoire's update to its public procurement code in 2019 introduced some positive changes, including electronic procurement bidding, provisions on sustainable public procurement, and promotion of socially responsible vendors as a bidding qualification. While the public procurement process is open by law, in practice it is often opaque and government contracts are occasionally awarded outside of public tenders. Some foreign companies appear to secure contracts as a result of longstanding relationships with government officials or aided by partnerships with Ivoirian commercial entities that have close connections to the government. In other instances, although specific regulations govern the use of sole source procurements, the government has awarded sole source bids without tenders, citing the high technical capacity of a firm or a declared emergency.

Many firms continue to cite corruption as an obstacle to a transparent understanding of procurement decisions.

Cote d'Ivoire is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since July 2020.

INTELLECTUAL PROPERTY PROTECTION

Inadequate enforcement of intellectual property (IP) rights remains a serious concern. The Ivoirian Copyright Office (BURIDA) uses a labeling system to combat counterfeiting and piracy in audio, video, literary, and artistic works. BURIDA has also facilitated stakeholder engagement to promote IP, and its police unit still conducts some raids to confiscate pirated CDs and DVDs; however, due to recent streaming alternatives, CDs and DVDs are circulated less and less in the market. In 2023, Cote d'Ivoire made efforts to operationalize the National Committee for the Fight against Counterfeiting (CNLC), which was created by decree in 2014, accepts IP enforcement complaints from stakeholders, and reportedly will conduct seizures on right holders' behalf. However, detailed information about the CNLC's activities is not publicly available. IP enforcement continues to suffer in Cote d'Ivoire due to limited resources and a lack of customs checks at the country's porous borders.

SERVICES BARRIERS

The chartered accountants' association of Cote d'Ivoire restricts registration to foreign nationals, with the exception of those who have practiced in Cote d'Ivoire for several years under the license of an Ivoirian practitioner.

INVESTMENT BARRIERS

Cote d'Ivoire has restrictions on and requires prior approval for foreign investment in the health sector, law and accounting firms, petroleum and gas, and travel agencies. Majority foreign ownership of companies in

these sectors is not permitted, and all foreign companies currently operating in these sectors do so in partnership with local firms.

SUBSIDIES

In 2023, the Ivorian Government granted cotton producers a subsidy of 29 billion CFA (approximately \$45 million) to offset significant increases in the cost of fertilizer (*e.g.*, an increase of 84 percent for nitrogen, phosphorus, and potassium and 114 percent for urea) and other inputs.

OTHER BARRIERS

Bribery and Corruption

Bribery and corruption remain a significant concern. Stakeholders report that bribes are sometimes solicited to speed up the slow bureaucratic process or to secure public tenders. The High Authority of Good Governance (HABG) is an independent administrative authority that is nominally under the Office of the President. It is responsible for executing the national plan to fight corruption and investigating allegations of corruption. In 2021, the HABG undertook an audit of Ivorian parastatal companies in key sectors. Several parastatals' managers have been suspended from their positions. In addition, 14 entities (11 public companies and 3 private companies) in the health sector were charged with corruption. Corruption, opaque business practices, and capacity constraints on the judiciary and in law enforcement have resulted in poor enforcement of the law. This situation has been particularly acute with regard to the protection of private property rights, particularly when the subject of the judicial proceeding or law enforcement action is a foreigner and the plaintiff is Ivorian or a long-established foreign resident. These situations are further complicated by conflicting modern and traditional concepts of land tenure, the latter including communal ownership. On July 11, 2022, the government launched Spacia, a platform for monitoring and preventing acts of corruption and similar offenses.

Export Policies

Cote d'Ivoire's 2021–2025 National Development Plan prioritizes agro-industrial development. As a result, the government provides incentives and supports funds to investors expanding agro-industrial processing of locally grown cashew, cocoa, and other commodities for export. The government also incentivizes domestic processing of agricultural commodities such as cocoa, rubber, palm oil, and coffee, by imposing a higher export tax on unprocessed commodities. The government prohibits the export of iron products. Exports of metallic ores, gems, and precious metals require prior authorization from both the Ministry of Mining and Geology and the Ministry of Economy and Finance.

DOMINICAN REPUBLIC

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Under the CAFTA–DR, as of January 1, 2015, non-agricultural goods enter the Dominican Republic duty free. In addition, nearly all U.S. agricultural exports enter the Dominican Republic duty free under the CAFTA–DR. Under the CAFTA–DR, the Dominican Republic has committed to eliminating its remaining tariffs on rice, chicken leg quarters, and some dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period. The Dominican Republic is required under the CAFTA–DR to make TRQs available on January 1 of each year.

Taxes

U.S. ethanol imported into the Dominican Republic is subject to an internal 10 percent *ad valorem* tax and an excise tax of approximately \$11 per liter, and these taxes disincentivize importation of U.S. ethanol. Imported ethanol is also subject to the internal Tax on Transfer of Industrial Goods and Services (ITBIS) at a rate of 18 percent. This practice disadvantages U.S. exports as locally produced ethanol is not subject to these internal taxes.

Cheese importers face unequal treatment with regard to taxation; imported cheese is subject to the ITBIS of 18 percent, while locally produced cheese is not. This puts U.S. exports of these products at a competitive disadvantage. In meetings conducted in 2020, 2021 and 2022, the Dominican Republic Government advised that the General Directorate of Internal Taxes (DGII) had discussed implementing the ITBIS on local cheese producers through a schedule. The DGII has not made any progress on this proposed implementation. The U.S. Government will continue to work with the DGII to seek a resolution of this issue.

Non-Tariff Barriers

Import Licensing

The Dominican Republic’s Ministry of Agriculture continues to administer import licenses as a means to manage trade in sensitive commodities such as rice, beans, dairy, sugar, poultry, beef, pork, onions, and garlic and intermittently with respect to other products. In August 2004, a side letter was signed under the

CAFTA–DR by the United States and the Dominican Republic affirming that the Dominican Republic would not grant or deny import licenses on the basis of unjustified sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. However, the need to obtain an import license from the Ministry of Agriculture and the way in which the licensing process is handled can lead to inconsistent application of the law and uneven treatment. In 2022, the Dominican Republic proposed a new system to issue import licenses for agricultural products, led by the Ministry of Agriculture. In April 2022, the United States submitted comments on the new regulations. The Dominican Republic Government had not responded to the U.S. comments or implemented the new system as of December 2023. The United States will continue to work with the Ministry of Agriculture to ensure that this new system responds to U.S. concerns.

Importers of U.S.-made used vehicles less than five years old have reported that the Dominican Republic customs authority frequently has challenged the eligibility of those vehicles for preferential tariff treatment under the CAFTA–DR, citing technical difficulties in demonstrating compliance with the rules of origin. The United States continues to engage with the Dominican Republic to address these complaints.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Regulation of Steel Rebar

Multiple U.S. exporters of steel rebar used for construction have complained that a Dominican Republic technical regulation (RTD 458) constitutes a barrier to trade. Dominican Republic authorities have required imported U.S. rebar to be sampled and tested by third-party laboratories, which is not required of domestic production. Because no suitable third-party laboratories exist in the Dominican Republic, samples have been sent back to the United States for testing. These conformity assessment procedures appear to present unnecessary obstacles to international trade, lack transparency in their application, and have unduly increased the cost and time required for commercialization of rebar in the Dominican Republic.

The United States has continued to engage with U.S. companies and Dominican Republic authorities on this issue. While Dominican Republic authorities have worked with certain individual companies in the U.S. steel industry to accept test results and certify rebar before export so that products may clear customs and enter commerce in the Dominican Republic without delay, the Dominican Republic has yet to reform the regulations and practices to ensure that imported rebar is treated no less favorably than domestically manufactured rebar.

Sanitary and Phytosanitary Barriers

Delays in the process for obtaining sanitary registrations from the Dominican Republic for foods, medicines, and health products have resulted in higher operating costs and delays moving products to market, according to industry representatives. Since April 2018, the General Directorate of Medicines, Food, and Health Products (DIGEMAPS), which oversees the registration process, has requested declarations of product additives, which are not required under Dominican Republic health law. Improvements have been made in expediting new registrations and renewals through the implementation of a simplified procedure, including accepting a sworn statement on why confidential additives are not provided. The functioning of the sanitary registration process remains inconsistent, with certain products taking up to a year to be registered by DIGEMAPS, often resulting in importers choosing not to import the product. On June 5, 2023, the Dominican Republic issued Decree 231-23 decentralizing DIGEMAPS from

the Ministry of Public Health and Social Welfare. The Directorate will now exercise operational and administrative autonomy.

INTELLECTUAL PROPERTY PROTECTION

The Dominican Republic remained on the Watch List in the [2023 Special 301 Report](#). The Dominican Republic continues to demonstrate political will to improve intellectual property (IP) protection and enforcement, including the creation in December 2022 of the National Inter-Ministerial Council of Intellectual Property, intended to coordinate the agencies involved in IP protection and enforcement and ensure better cooperation and information sharing. Despite this progress, the United States remains concerned with prevalent online and signal piracy, the widespread sale of counterfeit goods, and the inconsistent quality of patent examinations. The United States also continues to urge the Dominican Republic to improve coordination among enforcement agencies and to ensure that such agencies are adequately funded and staffed.

GOVERNMENT PROCUREMENT

U.S. suppliers have complained that government procurement in the Dominican Republic is not conducted in a transparent manner and that corruption is a problem. The U.S. Government has engaged with the Dominican Republic Government on this issue and transparency has increased in its procurement system over the last few years. In a Memorandum of Understanding signed by the United States and the Dominican Republic in October 2020, the Dominican Republic Government expressed its intent to prioritize passage of new legislation on public procurement and implement it in a manner that is timely, transparent, and consistent with international best practices. In March 2022, the Dominican Republic issued a draft law on government procurement, which would establish a legal regime for all stages of the procurement process. The draft law excludes “international treaties, trade or integration agreements . . . when so determined by the treaties, agreements, or conventions” from the scope of the law, but it does not offer guidance as to how procuring entities are to implement the law in accordance with the Dominican Republic’s CAFTA–DR commitments. The U.S. Government also engaged the Dominican Republic Government on this matter and will continue to monitor the Dominican Republic’s procurement practices for consistency with the CAFTA–DR’s disciplines.

On September 14, 2023, the new Regulation for the Application of Law No. 340-06 on Procurement and Contracting of Goods, Services and Works and its amendments was approved by Decree 416-23 of the Executive Branch of the Dominican Republic. This regulation repeals the previous Regulation on Procurement and Contracting of Goods, Services and Works No. 543-12 of September 6, 2012. Several elements included are transparency and electronic procurement portals, micro-purchases methodology, streamlining participation for foreign companies in government tenders, integrity and mitigation risks for vendors, value for money, transparency of government procurement committees, exception rules, and sustainability in the valuation criteria for government tenders.

The Dominican Republic is not a Party to the World Trade Organization (WTO) Agreement on Government Procurement but has been an observer to the WTO Committee on Government Procurement since September 2022. However, the CAFTA–DR contains disciplines on government procurement.

LABOR

A review of the Dominican Republic’s progress on implementing specific recommendations from the United States to improve worker rights practices in the Dominican Republic sugar sector has been ongoing since the issuance of a U.S. Department of Labor (DOL) report in 2013. The DOL report, published in

response to a submission from the public under the CAFTA–DR, raised concerns regarding labor law enforcement in the sugar sector related to acceptable conditions of work, the minimum age for work and the worst forms of child labor, and forced labor. In its [seventh report of review](#), published in September 2022, the DOL detailed ongoing concerns and challenges in the Dominican Republic’s sugar industry. Although the country’s Ministry of Labor and sugar companies have made progress in some areas, the country still faces challenges related to labor law enforcement. Concerns remain about dangerous working conditions, verification of pay and hours, unsuitable living conditions, workers’ precarious legal status, and other potential labor rights abuses. The United States has also established a bilateral technical working group with the Dominican Republic under the CAFTA–DR to help improve labor law enforcement in the Dominican Republic sugar sector.

ECUADOR

TRADE AGREEMENTS

The United States–Ecuador Trade and Investment Council Agreement

The United States and Ecuador signed a Trade and Investment Council Agreement (TIC) in 1990. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ecuador.

On December 8, 2020, the United States and Ecuador signed a Protocol on Trade Rules and Transparency (the Protocol), which entered into force on August 15, 2021. The Protocol is an update to the TIC and is an integral part of that Agreement, containing provisions that establish important commitments for increased trade facilitation, transparency in regulatory development, anticorruption policies, and cooperation and information sharing to benefit small and medium-sized enterprises. The Protocol establishes high-level trade rules that will improve opportunities for bilateral trade and investment in all sectors. The United States will continue to work with Ecuador to monitor the full implementation of the Protocol.

IMPORT POLICIES

Tariffs

Ecuador's average Most-Favored-Nation (MFN) applied tariff rate was 11.2 percent in 2022 (latest data available). Ecuador's average MFN applied tariff rate was 17.4 percent for agricultural products and 10.2 percent for non-agricultural products in 2022 (latest data available). Ecuador has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.9 percent.

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at or below 30 percent *ad valorem*; most products bound at higher rates are agricultural products covered by the Andean Price Band System (APBS). Ecuador agreed to phase out its participation in the APBS when it joined the WTO; however, as of December 2023 Ecuador had taken no steps to phase out use of the APBS. As a member of the Andean Community of Nations (CAN), Ecuador grants and receives exemptions from tariffs (*i.e.*, reduced *ad valorem* tariffs and no application of the APBS) for products from the other CAN countries.

Through Comex Resolution 009-2023, Comex (Ecuador's Foreign Trade Committee) granted a 50 percent reduction of the import tariff rate for 5,801 vehicles to the affiliates of Ecuador's transportation federations for three years.

Ecuador still imposes a mixed tariff (composed of an *ad valorem* tariff and a specific tariff) on approximately 360 products, including textiles and shoes. In some cases, the mixed tariff appears to result in a 40 percent tariff rate.

Agricultural Products

Ecuador's continued use of the APBS affects many U.S. agricultural exports by subjecting them to a variable levy or surcharge (on top of an *ad valorem* tariff) that increases as world prices decrease. Comex Resolution 008-2023 temporarily reduced tariffs applied to rice products for human consumption to zero

percent and suspended the application of the APBS, up to a total quota of 63,246 tons, until December 31, 2023.

Non-Tariff Barriers

Preshipment Inspection and Import Bans

Comex Resolution 009-2022 has been amended several times. The resolution included a revised list of products that require preshipment control documentation, a list of prohibited imports, and a list of subheadings subject to prior control documentation for products imported under quota within the framework of current trade agreements. The resolution also eliminated preshipment control documents for 601 tariff lines.

Import Licensing

Products subject to a non-automatic import license requirement include certain polymers.

Products subject to an automatic import license requirement include remanufactured parts of aviation engines; blocks and cylinder heads; cylinder liners, connecting rods, pistons, rings, carburetors, and their parts; valves, crankcases, injectors and other parts for fuel systems; and piston pins, among others.

Import Licensing for Agriculture Products

Comex and the Ecuadorian Ministry of Agriculture (MAG) impose a mandatory, cumbersome process for allocating import licenses for 55 agricultural tariff lines, including dairy, potatoes (including frozen french fries), beef, pork, chicken, turkey, soybean meal, beans, sorghum, and corn. After consulting with the domestic private sector consultative committees, Ecuador allocates single import licenses on a per-shipment basis.

Due to the difficulty of obtaining import permits, the licensing policy incentivizes domestic sourcing of products at the expense of imported products. For these products, an importer's total annual import allowance cannot surpass an amount determined by the MAG. For most products subject to the licensing system, MAG also requires that interested parties provide sales and consumption forecasts before it will authorize imports. In the case of wheat, corn, soybean meal, and pork, the MAG requires proof of local purchases to assign amounts for import licenses.

While Ecuador subjects all food and agricultural imports to the import licensing regime, beef, pork, and dairy imports face further impediments because an importer's total allowance for these products cannot surpass a volume predetermined by the MAG, in some cases in consultation with domestic producers of the same commodities. The review process for import licensing applications is often lengthy and lacks transparency. In cases where import licenses are not approved, the Ecuadorian Government does not typically notify companies or provide a formal explanation for the denial. Permits are limited to a single shipment, meaning that importers are required to repeat a lengthy and arduous application process each time they seek to import these products in a given year.

TECHNICAL BARRIERS TO TRADE

Medical Devices

In June 2021, Ecuador implemented a technical regulation that established a Unique Traceability Code (CUT) for medical devices. The CUT differs from the globally harmonized Unique Device Identification guidance documents developed by the International Medical Device Regulators Forum. Ecuador made several notifications to the WTO regarding this measure, beginning in January 2021. U.S. industry provided technical comments to Ecuador through the domestic consultation process and through the U.S. Enquiry Point in September 2021. The U.S. Government held bilateral meetings with Ecuador in the last quarter of 2021. The regulation provides for a 42-month grace period for implementation, until November 2024.

GOVERNMENT PROCUREMENT

Government procurement in Ecuador can be cumbersome and nontransparent. Government institutions reportedly delay payments without explanation despite adequate provision of goods and services and proper work orders and receipts. The lack of transparency poses a risk that procuring entities will administer a procurement to the advantage of a preferred supplier. Ecuador's Public Procurement Law establishes exceptions for procurements made according to special rules established by presidential decrees, such as those for exploration and exploitation of hydrocarbons, for emergency situations, and for national security contracts. Article 34 of the Public Procurement Law also allows public enterprises to follow special procurement rules, provided the National Public Procurement Service issues an open-ended authorization for purchases considered within "the nature of the enterprise."

Ecuador is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

Government-to-Government Contracts with the Ministry of Defense

The Ecuadorian Ministry of Defense (MOD) invites foreign companies to participate in military purchasing processes through their respective countries' embassies in Quito. According to Article 50 of the Regulation for the Procurement of Goods for National Defense, foreign embassies must submit a letter to MOD that authorizes technology transfer for these contracts. Currently, U.S. companies are unable to compete for these government-to-government contracts due to an inability to comply with Article 50 of the Regulation for the Procurement of Goods for National Defense.

INTELLECTUAL PROPERTY PROTECTION

Ecuador remained on the Watch List in the [2023 Special 301 Report](#). Among other issues, enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak, including online and in physical markets.

In addition, the 2016 Code of the Social Economy of Knowledge, Creativity, and Innovation (COESCCI), also known as the Ingenuity Code, contains legislation covering multiple IP matters. In December 2020, Ecuador published the final regulations implementing the COESCCI. The regulations, however, do not fully address concerns raised by the United States and stakeholders on issues related to copyright exceptions and limitations, patentable subject matter, and geographical indications. Ecuador's National Intellectual Property Service continues to consider amendments to the COESCCI and to review feedback from stakeholders, though it has not communicated a timeframe for revisions.

The United States continues to engage with Ecuador on IP issues, including with respect to revisions to COESCCI and its implementing regulations, through the Special 301 process and the TIC.

SERVICES BARRIERS

Advertising

Ecuador's Organic Communications Law (LOC) and its implementing regulations have traditionally banned all foreign-produced advertisements in Ecuador. Advertisements were only considered "national" if a majority of the production company's shareholders were citizens or legal residents of Ecuador and if at least 80 percent of those contributing to an advertisement's production were Ecuadorian citizens or legal residents. In August 2023, the Ecuadorian Government published a new regulation that clarifies that the LOC considers "national" advertisements to include those produced in a country with which Ecuador has signed an integration treaty. The definition of an integration treaty is not spelled out in the regulation, but private sector companies have interpreted the change to be a relaxation of LOC rules on advertisements. The requirement that 80 percent of those contributing to an advertisement's production be Ecuadorian citizens or legal residents remains in place.

INVESTMENT BARRIERS

In May 2017, Ecuador's National Assembly voted to terminate 12 of the country's Bilateral Investment Treaties (BITs), including the United States–Ecuador BIT. The United States–Ecuador BIT was terminated on May 18, 2018, but the sunset provisions of the Agreement protect U.S. investments predating May 18, 2018, for 10 years following the date of termination.

Capital Exit Tax

The Ecuadorian Government levies a capital exit tax (ISD) on any form of currency outflow in cash, debit and credit cards, checks, and Internet payment methods. In 2021, the Ecuadorian Government committed to the gradual phaseout of the 5 percent ISD over four years. The President issued Executive Decree 182 in August 2021, eliminating the ISD for the aviation industry as a first step. In January 2023, the President issued Executive Decree 643, which committed to gradually reducing the ISD to 2 percent by December 2023. Subsequently, the government paused ISD reduction at 3.5 percent in 2023 due to fiscal challenges. As a result of the National Assembly's February 2024 approval of the Organic Law to Confront the Internal Armed Conflict, the ISD returns to 5 percent as of April 1, 2024.

Other Investment Barriers

Ecuador's Energy and Mines Ministry (MEM) has identified illegal mining as a significant deterrent to foreign investment. The Ecuadorian Government is undertaking efforts to combat illegal mining but lacks adequate resources. The U.S. Government has ongoing initiatives to train Ecuadoran authorities to identify and deter illegal mining.

Since 2018, Ecuador's mining cadastre (registry of mining concessions) has been closed, creating a barrier for new mining investments. However, even with a closed cadastre, the national mining company, ENAMI EP, can still request mining concessions from MEM. MEM aims to update its mining tender process and model agreements, together with U.S. Government technical assistance, to meet international standards of transparency and bankability.

SUBSIDIES

The Ecuadorian Government offers tax benefits to some exporters through the 2019 Law on Tax Simplification and Progressivity. These include benefits for income taxes, value-added taxes, and excise taxes dependent on the sector and size of the exporter.

EGYPT

TRADE AGREEMENTS

The United States–Egypt Trade and Investment Framework Agreement

The United States and Egypt signed a Trade and Investment Framework Agreement (TIFA) on July 1, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Egypt.

IMPORT POLICIES

Tariffs

Egypt's average Most-Favored-Nation (MFN) applied tariff rate was 19 percent in 2023. Egypt's average MFN applied tariff rate was 65.1 percent for agricultural products and 11.6 percent for non-agricultural products in 2023. Egypt has bound 99.4 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 36.9 percent.

On June 9, 2022, Egypt lowered tariffs under Decree No. 218/2022 on over 150 categories of imported products, including pharmaceuticals and natural gas-powered automobiles, with most reductions aimed at capital goods and inputs for agriculture and industry. These lowered tariff levels remained in place in 2023. Tariffs on agricultural equipment, fertilizer, and seeds have dropped from 5 percent to 2 percent. Tariffs on industrial vehicles, such as aircraft, tractors, railcars, and ships, have fallen from 40 percent to 2 percent, and the duty on natural gas-powered automobiles has fallen from 30 percent to 2 percent.

Egypt's tariff on passenger cars with engines of 1600 cubic centimeters (cc) or less is 40 percent, and its tariff on cars with engines of greater than 1600 cc is 135 percent. Tariffs on a number of processed and high-value food products, including poultry, meat, apples, pears, cherries, and almonds, range from 20 percent to 30 percent. Alcoholic beverages for use in the tourism sector have a 300 percent tariff plus a 40 percent sales tax. The tariffs on alcoholic beverages for use outside the tourism sector range from 1,200 percent on beer and 1,800 percent on wine to 3,000 percent on sparkling wine and spirits.

On October 11, 2023, Prime Minister Decree No. 3912/2023 exempted 12 basic food commodities from customs tariffs for a period of six months to combat high consumer prices. The list includes poultry products (chicken, ducks, geese, and turkey); dairy products (milk, butter, and cheese); tea; fats; oils; sugar; and pasta. The decree also applies to any fodder or active pharmaceutical ingredients of the above-mentioned items.

On June 3, 2023, the Egyptian Ministry of Finance issued a statement indicating that importers are now required to make an advance payment of 1 percent of the estimated taxes and fees due on imported goods, instead of the 30 percent payment previously required. Importers will pay the balance in addition to the customs tariffs when the goods arrive in Egypt.

Non-Tariff Barriers

Import Restrictions

In 2003, Egypt imposed restrictions on poultry, limiting imports to whole and frozen poultry. The executive regulations to Egypt's Import and Export Law (Ministry of Trade and Industry Decree 770/2005) suspended the importation of chicken limbs and offal, which acted as a *de facto* ban on U.S. chicken leg quarter exports to Egypt. In 2022, Egypt began allowing shipments of chicken leg quarters from the United States on a limited basis. The United States pushed to expand access for poultry at the December 2022 TIFA meeting in Cairo and continues to make this request.

Import Licensing

The National Food Safety Authority (NFSA) must register and approve all nutritional supplements, specialty foods, and dietary foods according to NFSA Decision No. 1/2018 on the Rules Governing the Registration and Handling of Foods for Special Dietary Uses. Importers must apply for a license to import specialty food products and renew the license every five years. License renewals can cost up to \$1,000 per renewal, depending on the product. In December 2021, the NFSA issued Decree No. 11/2021, which more than doubled the cost of conducting an inspection of imported food.

Customs Barriers and Trade Facilitation

Egypt's Customs Authority continues to employ reference pricing when assessing duties. Egypt's Customs Valuation Committee often engages in lengthy deliberations without coming to a final decision on customs valuation appeals filed by U.S. businesses. Egyptian Ministerial Decree No. 86/2023 established a committee to plan for and implement an advance ruling system, following significant engagement by the U.S. Government through the TIFA dialogue and in other bilateral and multilateral fora. The U.S. Government is working closely with Egypt's Customs Authority on the implementation of an advance ruling system, including on the draft regulation.

Egyptian Ministerial Decrees No. 283/2023 and No. 284/2023 implemented a new integrated risk management system for inspecting imported non-food industrial goods. Egyptian Ministerial Decree No. 347/2023 introduced amended customs procedures to facilitate transit trade.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicles

U.S. vehicle and automotive parts exports face significant barriers in Egypt. In 2012, Egypt became a Contracting Party to the United Nations Economic Commission for Europe (UNECE) 1958 Agreement. As of June 2014, Egypt has applied European Union regional emissions and UNECE safety standards for vehicles and automotive parts, thereby blocking imports of U.S. vehicles that meet comparable U.S. regulatory emissions and safety standards. Egyptian law also prohibits the importation of used vehicles for commercial purposes, pursuant to Ministerial Decree No. 580/1998 and Annex 2 to Ministerial Decree No. 770/2005.

Egypt does not recognize U.S. Federal Motor Vehicle Safety Standards (FMVSS), even though U.S. standards achieve comparable regulatory goals. As a result, exports of these goods to Egypt have declined significantly since 2015. The United States has raised this issue in TIFA Council meetings. The U.S. Agency for International Development, in collaboration with the U.S. Department of Commerce, conducted a regulatory environmental assessment in June 2022 and is communicating with U.S. and Egyptian stakeholders to come up with a recommended approach to address these issues that could be accepted by both the United States and Egypt. At the most recent TIFA Council meeting in December 2022, Egypt indicated its willingness to consider recognition of the FMVSS. The United States and Egypt held technical consultations and discussions in May 2023 and February 2024 to assist Egypt in working through its standards concerns.

Halal Import Requirements

In August 2021, the Government of Egypt announced that it would extend the scope of its halal certification requirements to include dairy and other agricultural products in addition to the existing requirement for imports of poultry and meat products. It also announced that IS EG Halal, a private U.S. company, would be the sole certifying body approved to certify imports into Egypt as halal. In December 2021, Egypt notified this measure to the WTO Committee on Technical Barriers to Trade (TBT Committee) with an implementation date of January 29, 2022; however, following U.S. and other WTO Members' requests, Egypt has postponed implementation multiple times, most recently until January 1, 2025. The lack of transparency and the uncertainty created by these new requirements has contributed to a drop in U.S. dairy exports to Egypt. In 2022, the volume of U.S. dairy exports dropped 54 percent to 16 million tons. In 2023, it dropped another 25 percent. The U.S. Government has engaged in bilateral and multilateral fora with Egypt to request that Egypt publish an implementing regulation for these new requirements, allow U.S. and other halal certification bodies (HCBs) to continue certifying product destined for Egypt, and to suspend any new requirements until additional transparency and flexibility are in place.

The United States continues to assess the situation and actively engage with Egypt regarding these matters, including through the TIFA dialogue and in other bilateral and multilateral fora.

SANITARY AND PHYTOSANITARY BARRIERS

Seed Potatoes

The U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) has submitted four market access requests for U.S. seed potato importation to Egypt since 2008. The United States remains unable to export seed potatoes to Egypt because the Central Administration for Plant Quarantine (CAPQ) at the Ministry of Agriculture and APHIS have not been able to come to an agreement on the results and mitigation measures of a pest risk assessment completed by the CAPQ. The CAPQ requirements are based on Egyptian Ministerial Decree No. 562/2019, which does not allow measures equivalent to those proposed by APHIS. According to APHIS, several of the proposed mitigation measures are not science- or risk-based. Despite several rounds of bilateral technical meetings and exchanges of correspondence in 2019 and 2021, U.S. seed potatoes remain barred from Egypt. Egypt has been importing in vitro micro tubers from the United States, potentially signaling an interest in growing U.S. seed potato varieties.

INTELLECTUAL PROPERTY PROTECTION

Egypt remained on the Watch List in the [2023 Special 301 Report](#). Egypt has made some efforts to strengthen intellectual property (IP) protection and enforcement, including by adopting a new national IP strategy, passing Law No. 163/2023 in August 2023 to establish the Egyptian Agency for Intellectual

Property, and adopting a new system that facilitates information sharing among customs offices on potential counterfeiting. Despite these improvements, concerns remain. Egypt continues to lack deterrent-level penalties for IP violations and *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border. Egypt's lack of up-to-date, publicly available general patent and trademark examination guides online remains an obstacle for the growth of U.S. IP exports to Egypt. Stakeholders have raised concerns regarding the lack of an effective mechanism for the early resolution of potential patent disputes and the mandatory requirement to record trademark licenses. Additionally, Egypt is not currently a member of the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty or the WIPO Copyright Treaty.

SERVICES BARRIERS

Express Delivery Services

The Egyptian National Post Organization (ENPO) must grant special authorization to foreign-owned private courier and express delivery service suppliers seeking to operate in Egypt. Although express delivery services constitute a separate market, the ENPO requires private foreign express delivery operators to pay a postal agency fee of 10 percent of annual revenue on shipments of less than 20 kilograms (approximately 44 pounds.). The ENPO imposes an additional fee of 5 Egyptian pounds (approximately \$0.16) on private couriers and express delivery services for all shipments under 5 kilograms (approximately 11 pounds.). Civil Aviation Decree 607/2015 requires all courier and express delivery services to have at least 51 percent Egyptian ownership.

Financial Services

No legal barriers prohibit foreign banks from establishing branches in Egypt. In May 2023, the Central Bank of Egypt granted a license under the Central Bank and Banking Act (Law 194/2020) to London-based Standard Chartered Bank to establish a branch in Egypt, the first new commercial banking license issued to a foreign bank since 1979. Three state-owned banks (Banque Misr, Banque du Caire, and the National Bank of Egypt) control approximately 60 percent of the banking sector's total assets.

BARRIERS TO DIGITAL TRADE

Egypt's Personal Data Protection Act, Law No. 151/2020, requires licenses for cross-border data transfers. The United States is monitoring the implementation of this law and its draft regulations, which are expected to be implemented by the Data Protection Authority. The Data Protection Authority had not been established as of December 2023. The United States will continue to engage with Egypt regarding best practices for privacy and data security through various bilateral and multilateral fora.

INVESTMENT BARRIERS

Egypt implemented investment Law No. 72/2017 in 2017 to address longstanding complaints of foreign investors. Although the law allows foreign investors to operate sole proprietorships and partnerships, it continues to limit the number of non-nationals working at any business to 10 percent of the workforce, or up to 20 percent of the workforce if it is not possible to find Egyptian citizens with the necessary qualifications. Egypt restricts foreign equity in construction and transport services to 49 percent.

On October 29, 2023, Egypt issued Law No. 173/2023 in 2023 amending the Importers Registry Law No. 121/1982 of 1982, lifting the existing 51 percent minimum Egyptian ownership requirement for importers of record. It also made Egyptian companies with foreign ownership eligible to receive an importation

license for a 10-year term, subject to meeting other qualifying conditions for the license such as minimum capital reserves or sales revenue.

On April 11, 2023, Egyptian Ministerial Decree No. 141/2023 established the Supreme Council for Investment, replacing the Investment Council established in 2016. On July 25, 2023, Egypt passed Law No. 160/2023, which amends Law No. 72/2017. Law No. 160/2023 introduced new investment incentives and expanded the Golden License program—a platform that streamlines permits and approvals required to establish a business.

EL SALVADOR

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, El Salvador applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, U.S. non-agricultural goods enter El Salvador duty free.

In addition, nearly all U.S. agricultural exports enter El Salvador duty free under the CAFTA–DR. El Salvador eliminated its remaining tariffs on rice, yellow corn, and chicken leg quarters on January 1, 2023, and is scheduled to eliminate remaining tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phaseout period, with the duty-free quantities expanding during that period. El Salvador is required under the CAFTA–DR to make TRQs available on January 1 of each year. El Salvador monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

Taxes

El Salvador, under its general alcoholic beverage law, assesses a specific excise tax on distilled spirits that is applied on a per-liter of alcohol basis, with four specific rates (\$0.0325 per liter, \$0.05 per liter, \$0.09 per liter, and \$0.16 per liter). The lowest rate applies only to aguardiente, a locally bottled spirit made from cane sugar. Whiskey, which is exclusively imported, is assessed at the highest rate. Distinctions between types of distilled spirits result in lower tax rates on domestically produced spirits compared to imported products.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

U.S. companies have expressed concerns regarding the inconsistent and discretionary application of customs regulations and procedures, resulting in unpredictable delays and administrative fines. For example, exporting from a duty-free zone is unduly cumbersome, with a requirement that representatives of the receiving company and the shipping company be physically present for the exchange of documents and release of materials. Additionally, U.S. companies have indicated that El Salvador's procedures for

applying for an advance ruling are difficult to find online, making it hard to get advance assurance of how Salvadoran customs will treat a good upon importation. Additionally, the customs valuation process for imports of express shipments is not clear.

The United States continues to monitor customs practices and offer technical assistance.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

El Salvador requires a Certificate of Free Sale to register food products. The Ministry of Health agreed in 2019 to accept the U.S. Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) Form 9060-5 Meat and Poultry Export Certificate of Wholesomeness for meat and meat products in lieu of the Certificate of Free-Sale. However, the Ministry of Agriculture (MAG) requires an original FSIS 9060-5 certificate. Obtaining the original health certificate for the purpose of food product registration is problematic because this document only accompanies actual shipments of meat or processed meat products. Since these shipments cannot occur until the food product is registered, exporters cannot obtain certificates for the purpose of product registration. Additionally, under the CAFTA–DR, El Salvador granted equivalence to the U.S. sanitary inspection system for beef, pork, and poultry and poultry products, which may make the health certificate requirement unnecessary or duplicative for U.S. exports. Unnecessary and duplicative import requirements provide no discernable food safety benefits and, if the duplicative requirements result in higher prices, also can make U.S. products less competitive in the local marketplace. The United States continues to monitor these import requirements. The United States has begun offering comprehensive technical assistance to support El Salvador’s efforts to streamline its border processes.

Sanitary and Phytosanitary Barriers

Animal product exporting facilities are subject to MAG inspection and certification every three years. Because the CAFTA–DR provides equivalence for the U.S. beef, pork, and poultry inspection systems, the inspection and certification requirements apply to only U.S. animal products not covered by the CAFTA–DR, such as pet food and pet food additives or probiotics.

Extensive laboratory tests are mandatory for all new imported food products, including samples, even for those low-risk products that are permitted into other markets without testing. To register product samples, the Ministry of Health requires large quantities of the product for testing, including samples of each available flavor of the same product. The Ministry of Health, in consultation with U.S. Government officials, is reviewing laboratory testing requirements to determine to what extent additional flexibility would be permissible under the existing health code.

The Salvadoran Government requires that grain shipments be fumigated at importers’ expense unless they are accompanied by a USDA Animal Plant and Health Inspection Service (APHIS) certificate stating that the grain is free of weed seeds, including *Tilletia barclayana* (a rice fungus). Because no chemical treatment is both practical and effective against this plant pathogen, APHIS cannot issue these certificates. El Salvador has not notified the World Trade Organization (WTO) of this requirement.

GOVERNMENT PROCUREMENT

U.S. companies have expressed concerns about Salvadoran Government agencies not providing sufficient advance notice, as required under the CAFTA–DR, to foster wide participation in bidding procedures, particularly complex infrastructure works or public-private partnership projects.

On March 23, 2023, the Public Procurement Law for government entities and municipalities took effect, replacing the Public Administration and Procurement Contracting Law that had been in force since 2000. The new legislation establishes the National Directorate of Public Procurement, an autonomous entity charged with dictating policies and regulations for government purchases and overseeing contract execution. The legislation has a framework for new purchasing methods, such as competitive bidding for contracts over \$87,600, price comparison for contracts under \$87,600, and electronic product catalogues for framework agreements for purchases under \$87,600, among others. However, strategic infrastructure projects, municipal projects executed under the Directorate of Municipal Works, and purchases of subsidiaries of state-owned companies are exempt. Some implementing regulations remained pending as of December 2023.

El Salvador has been operating under a State of Emergency since March 2022. Initially intended to be in effect for 30 days, the State of Emergency has been extended every month since April 2022. One consequence of the State of Emergency is that it allows the Executive branch to enter negotiations and make direct purchases of goods and services without adhering to the Public Procurement Law. Legal experts and businesses have expressed concerns that excluding purchases from bidding procedures for as long as the State of Emergency is in place will further undermine transparency.

El Salvador is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

To implement its CAFTA–DR obligations, El Salvador undertook legislative reforms providing for stronger intellectual property (IP) protection and enforcement. However, several concerns remain, including trafficking in counterfeit products, music and video piracy, and the unlicensed use of software. The United States remains concerned about the adequacy of implementing regulations to protect against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The effectiveness of the IP system to address patent issues expeditiously in connection with applications to market pharmaceutical products is unclear. The United States continues to engage El Salvador to ensure protections for geographical indications do not negatively impact the existing rights and market access of U.S. stakeholders. The United States will continue to monitor El Salvador’s implementation of its IP obligations under the CAFTA–DR.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

On August 17, 2021, the Legislative Assembly passed amendments to the Credit History Law. The amendments introduce data localization requirements mandating credit bureaus and economic agents that report on credit history to store data and their backup exclusively in El Salvador and grant unrestricted access to the Central Bank and the Superintendence of the Financial System. U.S. stakeholders have

expressed concerns that these requirements could compromise consumer data privacy and protection. The United States continues to engage El Salvador on this issue.

ETHIOPIA

IMPORT POLICIES

Tariffs and Taxes

In September 2021, the Government of Ethiopia lifted taxes and tariffs on the importation of wheat, rice, sugar, and edible oil to address rising inflation.

Tariffs

Ethiopia's average Most-Favored-Nation (MFN) applied tariff rate was 17 percent in 2021 (latest data available). Ethiopia's MFN applied tariff rate averaged 22.5 percent for agricultural products and 16.1 percent for non-agricultural products in 2021 (latest data available). Ethiopia implemented tariff reductions for certain raw materials, intermediate goods, and capital goods to promote the growth of the manufacturing sector in 2021. Ethiopia is not a member of the World Trade Organization (WTO) and so has no bound tariff rates.

Non-Tariff Barriers

Import Bans and Import Restrictions

Ethiopia prohibits imports of used clothing and used or refurbished medical equipment intended for resale. Imports of other goods intended for resale or commercial purposes are permitted, provided payment transactions are carried out through Ethiopian banks.

Import Licensing

In July 2022, the Government of Ethiopia decentralized the import licensing process and delegated the authority to issue import licenses to regional state trade bureaus. Most regions have operationalized the new online import licensing process, although the new process remains unavailable in some regions because of structural issues such as poor Internet access. In addition to obtaining an import business license, importers must obtain an import registration number before bringing products into the country. Imports of food or drug items must receive additional certification from the Ethiopian Food and Drug Administration without regard to the risk posed by the food or drug product. Trading companies must submit a proposal to the Ministry of Trade and Regional Integration or regional authorities to obtain a currency exchange permit certificate, which includes obtaining a letter of credit for the total value of an import transaction and applying for an import permit, before placing an order. Even with a letter of credit, import permits are not always granted and several months—up to a year or longer—can pass before an importer is allocated foreign exchange.

SANITARY AND PHYTOSANITARY BARRIERS

In preparation for the African Continental Free Trade Area, the Government of Ethiopia is exerting considerable effort to harmonize its national sanitary and phytosanitary (SPS) standards with standards used in African Regional Economic Communities, such as the Common Market for Eastern and Southern Africa (COMESA) and the Intergovernmental Authority on Development (IGAD). When a national standard is not available for a specific product, Ethiopia defers to the Codex Alimentarius Commission standards. Furthermore, Ethiopia is investing in the expansion of national and regional laboratories, quarantine

stations, and standards for quality assurance. SPS-related barriers that impede international trade in Ethiopia are associated with cumbersome requirements for registration and approval of imported products, such as processed foods, planting seeds, fertilizer, and plant protection products.

In September 2022, the Ethiopian Environmental Protection Authority issued an environmental clearance for genetically modified maize, which is a drought-tolerant and insect-resistant variety of maize. If approved for commercial cultivation, the maize would be the first genetically modified food crop in Ethiopia. Stakeholders report that the approval process for commercial imports of genetically modified grains and oilseeds for food and feed remains overly burdensome.

GOVERNMENT PROCUREMENT

Some Ethiopian Government tenders are open to foreign participation and tender announcements are usually public, but many major procurements do not go through a transparent tendering process. Obstacles to foreign participation in government procurement tenders include complicated and inadequately established procedures, repeated cancellation of published requests for proposals, capacity gaps on the part of procurement agencies, delays in decision-making, lack of public information, and the need for personal connections to compete effectively. Furthermore, since 2018, several dozen government procurement officials across a variety of Ethiopian Government agencies have been arrested for corruption as part of a broader reform effort.

On February 16, 2022, four Ethiopian federal institutions started to process their procurement electronically—the first step by Ethiopia to institute electronic government procurement aimed at increased transparency. In 2023, the system expanded to 74 federal agencies, including those responsible for agriculture, technology, health, and education.

Ethiopia is not a Member of the WTO and, therefore, it is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property (IP) protection and enforcement remain a serious concern in Ethiopia. Ethiopia is a member of the World Intellectual Property Organization (WIPO) and has demonstrated an interest in strengthening its IP regime. Ethiopia is not a member of most major international IP treaties, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Trademark infringement, especially in the hospitality and retail sectors, continues to be an issue. Because enforcement capacity and coordination among Ethiopian Government agencies is lacking, IP enforcement is inconsistent. The Ethiopian Intellectual Property Authority is responsible for the administration and arbitration of IP cases, but actions to combat the sale of pirated goods remain inadequate.

SERVICES BARRIERS

Financial Services

Ethiopia prohibits foreign investment in the financial services industry, including banking and insurance, with an exception for foreign nationals of Ethiopian origin. Few international banks maintain representative offices, and all trade financing is required by law to go through an Ethiopian bank. This creates significant challenges for foreign investors with accounts outside Ethiopia. In September 2023, the National Bank of Ethiopia (NBE) for the first time allowed some foreign direct investors to open accounts not in Ethiopia that can be used to service external debts, pay for foreign insurance and warranty claims, meet financial

obligations to foreign contractors, and cover other foreign capital and operational expenses. In November 2023, a U.S.-backed leasing company, which was the only foreign-owned financial services company operating in Ethiopia, closed in response to a multiyear dispute with the Government of Ethiopia over its prohibitions in 2021 of U.S. dollar-dominated lease agreements. As of December 31, 2023, the NBE continued work on draft legislation that, once approved by the legislature, would open the financial sector to foreign investment.

INVESTMENT BARRIERS

Many formal and informal barriers impede foreign investment in Ethiopia. The 2020 Investment Law allows foreign investors to invest in any area except those that are clearly reserved for domestic investors. The law reserves banking, insurance, microfinance, electricity transmission and distribution, and retail and wholesale trade for domestic investors. Foreign investors can jointly invest as minority stakeholders with domestic investors in areas such as freight forwarding and shipping, domestic air transportation services, cross-country public transport services, advertisement and promotion, and accounting and auditing services. For joint ventures with state-owned enterprises (SOEs), some investors report informal requirements of up to 30 percent domestic content in goods or technology, or both.

STATE-OWNED ENTERPRISES

Although the Government of Ethiopia has launched processes to fully or partially privatize some SOEs—most notably under the Homegrown Economic Reform Plan—SOEs continue to dominate major sectors of the economy. These include the telecommunications, power, banking, insurance, air transport, certain agricultural processing, industrial parks, and shipping industries. Many SOEs maintain a monopoly over their respective sectors, which allows the Government of Ethiopia to dictate prevailing rates for many goods and services. U.S. investors complain of the lack of a level playing field when it comes to SOEs. The Government of Ethiopia passed a law in 2019 that prohibits SOEs from accessing new loans and instructs them to focus on completing outstanding projects. SOEs, however, have considerable advantages over private firms, such as expedited customs clearance processing, priority access to financing and foreign currency from the Commercial Bank of Ethiopia, preferences in government tenders and land acquisition, and marketing assistance. In December 2021, the Government of Ethiopia established Ethiopian Investment Holdings, a sovereign wealth fund, to prepare over 40 SOEs for full or partial privatization. The Government of Ethiopia has offered to sell eight state-owned sugar enterprises and a 45 percent stake in Ethio Telecom.

Transport and logistics are predominantly conducted by SOEs in Ethiopia, and monopolistic market conditions in multimodal transport operations and inadequate infrastructure inhibit private sector logistics companies. Consequently, logistics costs comprise approximately 22 percent to 27 percent of final costs for many products and shipping and freight costs are approximately 60 percent higher than in neighboring countries. Under the framework of a comprehensive logistics strategy, the Government of Ethiopia has slated the logistics sector for liberalization and Ethiopian Railways officials report the border crossing process between Ethiopia and Djibouti by train has been streamlined.

OTHER BARRIERS

Bribery and Corruption

Ethiopian and foreign businesses routinely encounter corruption in tax collection, customs clearance, and land administration. Some U.S. businesses operating in Ethiopia reported that they were frequently solicited for bribes to secure business contracts. Tax administration in Ethiopia is corrupt and inefficient,

and the Ethiopian Government supplements revenues by levying higher taxes on foreign investors and businesses and limiting their ability to appeal tax levies. U.S. and other foreign companies complain they are unfairly targeted for tax collection compared with local companies and are presented with spurious tax bills. In November 2022, the Government of Ethiopia recognized corruption as a threat to national security and an obstacle to doing business and formed a new National Anti-Corruption Committee led by the head of the National Intelligence and Security Service. Between June 2022 and June 2023, the Ministry of Justice Anti-Corruption Directorate heard 628 corruption cases.

Commercial Code Enforcement

In 2021, Ethiopia reformed its Commercial Code for the first time in 62 years, aiming to bring its commercial law in line with international best practices and address business community concerns. Implementation of the new code across ministries is ongoing, which is expected to lessen the difficulty of doing business in Ethiopia by facilitating trade license registration and renewal, providing registration exemptions for some companies, and allowing new and different types of businesses to form and operate in Ethiopia. Some members of the business community have expressed concern about inconsistent enforcement of the new code.

Foreign Currency Controls

The NBE administers a strict foreign currency control regime. Ethiopia's foreign currency shortage and the extreme difficulty in obtaining foreign currency from legal sources hamper the ability of manufacturers to import raw materials and semifinished goods and restricts the repatriation of profits, despite laws allowing foreign investors to remit profits and dividends. All imports, exports, and outgoing foreign payments require a foreign exchange permit. In August 2023, the NBE imposed regulations requiring exporters and commercial banks to surrender 50 percent of foreign currency obtained from export transactions to the NBE. Exporters, however, may retain 40 percent in foreign currency and 10 percent must be exchanged at a commercial bank to the equivalent amount in Ethiopian birr, the national currency.

Difficulty obtaining foreign currency for inputs and repatriating profits has been cited by U.S. companies as a major impediment to foreign investment. Larger private firms, SOEs, businesses that import goods prioritized by the Ethiopian Government's development plan, manufacturers in prioritized export sectors, and importers of emergency food generally have priority access to foreign currency. Investors in non-priority sectors and politically less well-connected importers, particularly smaller new-to-market firms, can face long delays in arranging trade-related payments and, on occasion, may be denied foreign currency.

A critical shortage of foreign currency caused the Government of Ethiopia on April 8, 2022, to issue a directive allowing franco-valuta imports, a scheme that facilitates the importation of essential food commodities—wheat, rice, sugar, edible oils, and instant baby milk—by permitting the use of foreign currency from official sources, including personal foreign currency supplies and foreign accounts. In November 2022, the NBE imposed a requirement that importers use franco-valuta provisions to provide information about the source of their foreign currency.

EUROPEAN UNION

OVERVIEW

The United States and the Member States of the European Union (EU) share the largest economic relationship in the world. Trade and investment flows between the United States and the EU are a key pillar of prosperity on both sides of the Atlantic and generate substantial economic opportunities.

Goods and services produced by the United States nonetheless face persistent barriers entering and maintaining access to certain sectors of the EU market, which limits the opportunity of U.S. workers and businesses to benefit from transatlantic trade. This chapter of the National Trade Estimate (NTE) Report highlights the most significant of these barriers, some of which have persisted despite repeated efforts at resolution through bilateral consultations, World Trade Organization (WTO) committee meetings, or WTO dispute settlement. Certain barriers have been highlighted in the annual NTE Report for many years.

IMPORT POLICIES

Tariffs

The EU's average Most-Favored-Nation (MFN) applied tariff rate was 5.1 percent in 2022 (latest data available). The EU's average MFN applied tariff rate was 11.4 percent for agricultural products and 4.1 percent for non-agricultural products in 2022 (latest data available). The EU has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 5.1 percent.

Although the EU's tariffs are generally low for non-agricultural goods, some EU tariffs are high, such as rates of up to 26 percent for fish and seafood, 22 percent for trucks, 14 percent for bicycles, 10 percent for passenger vehicles, 12 percent for processed wood products, and 6.5 percent for fertilizers and plastics.

Meursing Table Tariff Codes

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the "Meursing" table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular composition of each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

Non-Tariff Barriers

Import Licensing – Bananas

Following years of disputes, beginning under the General Agreement on Tariffs and Trade (GATT) and later involving litigation under WTO dispute settlement proceedings, the United States and other countries in 2010 reached agreements with the EU to resolve complaints about successive EU banana import regimes. Beginning in 2013, a U.S. stakeholder expressed concerns to the U.S. Government about actions taken since 2010 by Italian customs authorities to collect retroactive payment of customs duties due to the authorities' unilateral re-interpretation of the validity of certain EU banana import licenses under pre-2006 EU

regulations. In 2013, the Italian Supreme Court, on jurisdictional grounds, ruled against the Italian Government and ordered authorities to repay the collected duties to the U.S. stakeholder. However, as of December 31, 2023, the duties had not been completely repaid, and Italian customs authorities, claiming to have resolved the jurisdictional issues cited by the Italian Supreme Court, continue to re-issue some of the previous retroactive duty assessments against the stakeholder.

Customs Barriers and Trade Facilitation

Notwithstanding the existence of customs legislation that governs all Member States, the EU does not administer its laws through a single customs administration. Rather, there are separate agencies responsible for the administration of EU customs law in each Member State. It is thus difficult for the EU to ensure that its rules and decisions on classification, valuation, origin, and customs procedures are applied uniformly throughout the Member States, and U.S. exports suffer from the uneven and inconsistent application of these requirements.

The Binding Tariff Information program provided for by EU-level law, but administered at the Member State level, does provide for advance rulings on tariff classification and country of origin. However, EU rules do not require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues. In some cases where the customs agency of a Member State administers EU law differently from, or disagrees with, the Binding Tariff Information issued by, another Member State, the matter may be referred to the Customs Code Committee (CCC). The CCC consists of Member State representatives and is chaired by a European Commission representative. Although a stated goal for the CCC is to help reconcile differences among Member States and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited. The CCC and other EU-level institutions do not provide transparency in decision-making or opportunities for participation by traders, which might make them more effective tools for achieving the uniform administration and application of EU customs law.

In addition, the EU lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided in the tribunals of each Member State, and the rules regarding these reviews vary from Member State to Member State. A trader encountering differing treatment in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the Court of Justice of the European Union (CJEU). Although the judgments of the CJEU apply throughout the EU, referral of a question to the CJEU is generally discretionary, may take many years, and may not afford sufficient redress. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is frequently cumbersome and time-consuming. The United States has raised concerns regarding the uniform administration of EU customs law with the EU in various forums, including in the WTO Dispute Settlement Body (DSB).

The European Commission has sought to modernize and simplify customs rules and processes. The Union Customs Code (UCC), adopted by the European Commission in 2013, entered into force in 2016. While the UCC contains a number of procedural changes, the key element of a harmonized information technology infrastructure has yet to be completed. Member States continue to use different data templates. In 2019, the expected completion date for full implementation of harmonized customs data systems was extended from the end of 2020 to the end of 2025.

The United States will continue to monitor the UCC implementation process, focusing on its impact on the consistency of customs treatment under EU customs law.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Transparency and Notification

U.S. exporters face a proliferation of technical barriers to trade (TBT) in the EU, attributable in part to aspects of the EU's regulatory processes, which prescribe conditions for the consideration and adoption of regulations and related decisions without adequate notification or the opportunity to incorporate meaningful public comments from trading partners. The United States regularly raises concerns, both in bilateral engagement and in the WTO Committee on Technical Barriers to Trade (WTO TBT Committee), that EU notifications often take place at a procedural stage when it is too late to revise the measure to take into consideration any substantive concerns raised by other WTO Members. Furthermore, notifications of proposed measures often lack specificity, or incorporate by reference the publication of future, European-unique standards that do not yet exist, so that non-European producers do not have a meaningful opportunity to engage or offer informed comments.

For example, under the EU's regulatory processes for Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH, Regulation (EC) 1907/2006) and Classification, Labeling, and Packaging (CLP, Regulation (EC) 1272/2008), proposed restrictions are typically notified to the WTO only after scientific review and regulatory impact committees have convened and the European Commission's domestic consultations have concluded. These domestic consultations are not always transparent to non-EU stakeholders, which can limit their ability to provide comment and for those comments to be taken into consideration. In other cases, measures undergo significant changes during the negotiations among the Council of the European Union (European Council), European Commission, and European Parliament, absent additional consultations with stakeholders, notifications, or impact assessments. Finally, failure to notify measures with adequate comment periods is also observed at the Member State level, including in the case of recent Irish alcohol labeling regulations. Improvement and greater consistency in EU and Member State notification of measures could have a significant effect on trade contributing to a more predictable market environment.

European Standardization and Conformity Assessment Procedures

The EU's exclusionary approach to standards-related measures, including its conformity assessment framework, and its efforts to encourage governments around the world to adopt its restrictive approach, imposes significant burdens on U.S. workers and exporters. In particular, the EU's approach impedes market access for products that do not conform to European regional standards (ENs), including products that comply with international standards that are not harmonized with ENs, even though these international standards may meet or exceed the EU regulatory requirements. Products regulated by the EU must conform to these EU-specific regional standards in order to benefit from a presumption of conformity with the EU's essential regulatory requirements. U.S. workers and exporters thus face additional burdens in accessing the EU market not faced by domestic producers in the EU and often not faced by EU exporters when accessing the U.S. market.

ENs can only be developed through three European Standards Organizations (ESOs), as directed by the European Commission through a standardization request. The three ESOs are the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). Within these designated ESOs, the CEN

and CENELEC technical committees draft harmonized ENs. Both generally exclude non-EU nationals from participating in their standard-drafting process. In the limited instances where non-EU nationals do participate, they are not allowed to vote.

On February 2, 2022, the EU published the European Standardization Strategy, which, *inter alia*, amends Regulation (EU) 1025/2012 on European Standardization Organizations to require that the ESOs restrict the involvement of non-EU interests in the development of harmonized EN standards. The change primarily affects the development of standards at the ETSI, which specializes in information and communications technologies and had been the only ESO to provide for direct participation by foreign firms. In addition, new policies implemented by the European Commission, such as a refusal to reference underlying standards developed outside of Europe and new restrictions imposed on participation in expert advisory groups (including the newly created High Level Forum on European Standardization), suggest a sustained effort to exclude foreign participants, undermine the acceptance of international standards developed in the United States, and project European regional standards abroad. The United States is concerned that the European Standardization Strategy and other exclusionary steps indicate that the EU is moving further from cooperation with trading partners in standardization, and barriers in the transatlantic market will thus be exacerbated rather than ameliorated. The United States has relayed its concerns to the EU through the United States–European Union Trade and Technology Council.

As part of its free trade agreements, the EU seeks commitments affirming that only a standard issued by a subset of specific standards-developing organizations, none of which are domiciled in the United States, be considered an international standard (e.g., the EU–Japan Economic Partnership Agreement, Article 7.6). This practice accords preferential treatment to organizations in which the EU carries an outsized influence (e.g., the World Forum for Harmonization of Vehicle Regulations within the framework of the United Nations Economic Commission for Europe) or with which the ESOs have existing cooperation agreements (e.g., the International Organization for Standardization (ISO) and the International Electrotechnical Commission). This approach is narrower than what is provided for under the WTO TBT Agreement and related decisions of the WTO TBT Committee, which recognize international standards as those developed in accordance with certain principles, and without reference to particular institutions or methods of organization.

The United States also has serious concerns regarding the EU’s conformity assessment framework, set out in Regulation (EC) 765/2008 and Decision 768/2008/EC. Regulation (EC) 765/2008 requires each Member State to appoint a single national accreditation body that can accredit conformity assessment bodies and prohibits competition among Member States’ national accreditation bodies. Further, the EU’s interpretation of Decision 768/2008/EC sets out that conformity assessment bodies must be located in the EU in order to test to EU regulations. This geographic restriction denies U.S.-domiciled conformity assessment bodies the opportunity to certify products for the EU market outside of existing mutual recognition agreements. It also raises significant market access concerns for U.S. producers whose products have been tested or certified by conformity assessment bodies located outside the EU. Without any associated improvement in quality or safety, the EU conformity assessment approach increases time to market and raises costs for exporters.

Chemical Regulations

The EU’s proposed Chemicals Strategy for Sustainability and the planned updates to the REACH and CLP present a number of significant barriers for U.S. exporters. Stakeholders have raised concerns that, as part of the registration process under REACH, they must provide data that is not relevant to the specific hazards and proposed uses of a registered substance. Amendments to the classification of chemicals under the CLP often appear arbitrary, driven by a process that does not allow adequate time for stakeholder comment, even when the proposed changes differ significantly from the globally harmonized classifications followed by

industry and other economies. As with other sectors, the United States is also concerned that the EU's reliance on a "precautionary" or "hazard-based" approach to regulation of products can result in severe limitations on the use of products without reference to scientific assessment of the actual risks of exposure in a specific use. Additionally, Member States' application of REACH appears to be inconsistent and lacks transparency, which can result in requirements that are more onerous for U.S. exporters than they are for EU businesses and products that are already in the EU market.

Classification, Labeling, and Packaging Hazard Classes

The United States has voiced concerns regarding the draft European Commission Delegated Regulation (EU) 2023/707 of December 19, 2022 (amending Regulation (EC) 1272/2008) regarding hazard classes and criteria for the classification, labeling and packaging of substances and mixtures, noting that the new CLP classification and labeling requirements will diverge from the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The United States has encouraged the EU not to preempt a scientific review by the Organization for Economic Cooperation and Development (OECD) of new labeling requirements and to remain harmonized with the GHS. The EU is expected to issue guidance on these new classification and labeling requirements in 2024, with the new requirements going into effect in May 2025 for new substances and November 2026 for substances already on the market.

Per- and Polyfluoroalkyl Substances

In 2023, the European Chemicals Agency published a proposed restriction that would largely eliminate the production and use of per- and polyfluoroalkyl substances (PFAS). The United States is concerned that the EU did not consider the implications of the ban for several critical uses, such as in the production of some renewable energy products, for which there are, as yet, no feasible alternatives to PFAS. Additionally, the proposal could impact the implementation of global treaties to reduce ozone depletion and global warming, such as the Kigali Amendment to the Montreal Protocol, by restricting climate friendly alternatives to existing substances.

Fluorinated Greenhouse Gases

An update to the 2014 Fluorinated Greenhouse Gas (F-Gas) Regulation (EU) 2024/573, which was adopted in February 2024, would accelerate implementation of a blanket ban on all fluorinated gases. The decision on a blanket ban was taken before determining if there are viable alternatives for these gases, which were created as substitutes for ozone-depleting substances. The United States is concerned that the F-gas policies overlook the contributions of these gases to the avoidance of global warming. The United States continued to raise concerns regarding the EU's approach both bilaterally and at the WTO TBT Committee, particularly in light of the negative impact on global climate targets.

(Additional concerns with the EU policies in regard to F-Gas are discussed in the Other Barriers section of this NTE Report chapter.)

Packaging and Packing Waste Regulation

On November 30, 2022, the European Commission published its proposal for a Packaging and Packaging Waste Regulation to replace an existing directive in an effort to harmonize Member State packaging and packaging waste regulations. The update is a part of the Green Deal's Circular Economy Action Plan announced in 2020 and is intended to reduce overpackaging, promote the reusability and recyclability of packaging, and reduce the complexity of packaging materials. Trilogue negotiations on the regulation are expected to start in early 2024. The United States continues to engage the EU as the legislation progresses

to ensure that the final version adopted does indeed promote harmonized rules across Member States and continues to seek additional clarification necessary to help stakeholders comply with the requirements.

Deforestation-Free Supply Chain Regulation

On June 29, 2023, the EU issued a deforestation-free supply chain regulation (Regulation (EU) 2023/1115), which has an 18-month transition period until it enters into application on December 30, 2024. Several U.S. stakeholders have argued this is insufficient time for compliance. The regulation aims to curb deforestation and forest degradation linked to European consumption and production of beef, coffee, cocoa, palm oil, soy, wood, rubber, and their derived products (e.g., charcoal, furniture, tires, paper, leather), with potential expansion to other products and ecosystems. U.S. stakeholders have raised concerns that due diligence and traceability requirements in the regulation may not be possible for companies to meet. To date, the EU has refused to notify the regulation to WTO Members or to provide an opportunity for WTO Members and other stakeholders to comment on the regulation. Fourteen WTO Members (the United States, Argentina, Australia, Brazil, Canada, Colombia, Guatemala, India, Indonesia, New Zealand, Panama, Paraguay, Peru, and the Russian Federation) raised concerns with the regulation at the November 2023 WTO TBT Committee meeting. The United States continues to seek WTO notification of the measure and to engage the EU on its implementation. In 2023, U.S. exports of products covered by the EU's deforestation-free regulation exceeded \$8 billion.

Eco-design for Sustainable Products Regulation and the Digital Product Passport

On December 5, 2023, EU institutions reached agreement on a regulation to establish an eco-design framework for sustainable products that will require industry to meet new sustainability requirements. Articles 7 through 14 of the regulation require industry to develop and implement a new digital label (known as a Digital Product Passport, or DPP) to track lifecycle information and other aspects of a product in order to inform consumers and help public authorities to better perform checks and controls. Some U.S. stakeholders are concerned that the DPP requirements set unrealistic implementation timelines and do not include sufficient safeguards to prevent the unauthorized disclosure of confidential business information. The United States made multiple requests to the EU during 2023 to notify the measure to the WTO to allow trading partners the opportunity to provide feedback. To date, the EU has refused to notify the measure.

Green Claims Directive

In March 2023, the EU released the proposal for a directive on substantiation and communication of explicit environmental claims ("Green Claims Directive," notified to the WTO in May 2023) to combat misleading environmental claims ("greenwashing"). The United States has been engaging with the European Commission to ensure that the directive is clear and specific as to the elements needed to substantiate environmental claims, including documentation requirements and implementation periods for the measure's conformity assessment procedures and labeling requirements related to product characteristics. The United States is also seeking to collaborate with the EU to achieve greater alignment on the recognition of eco-label schemes and measures to combat greenwashing.

(Sanitary and phytosanitary concerns with the European Green Deal are discussed in the Sanitary and Phytosanitary Barriers section of this NTE Report chapter.)

Renewable Energy Directive

The EU Renewable Energy Directive (RED) ((EC) 2009/28) requires that biofuels and biofuel feedstocks obtain a "Proof of Sustainability" certification to qualify for tax incentives and national use targets. RED

also establishes a methodology and accounting system by which Member States may record and calculate required greenhouse gas emission savings as compared to a baseline for fossil fuels.

In 2018, the European Commission adopted a new renewable energy directive (RED II) for the period 2021 to 2030. RED II entered into force on January 1, 2021 and introduces sustainability requirements for forestry biomass (wood pellets). As part of the Fit for 55 package, the European Commission began revisions of RED II in 2022, and the final revisions were published on October 31, 2023. The revisions to RED II increased the EU's binding renewable target for 2030 to a minimum of 42.5 percent, up from the current 32 percent target. However, the sustainability criteria for biofuels and biomass was not fundamentally changed, which may limit U.S. exports of biofuels and biomass that would otherwise provide viable renewable sources for the EU's renewable energy targets. The United States exported approximately \$443 million in wood pellets to the EU in 2022 (latest data available).

Pesticide Maximum Residue Limits for Environmental Objectives

On February 15, 2023, the EU published Commission Regulation (EU) 2023/334 to reduce maximum residue limits (MRLs) for clothianidin and thiamethoxam to the limit of determination, in an effort to protect pollinators, particularly bees, in countries outside of the EU. The measure would effectively bar all imports of products to the EU that contain any detectable residue of the two widely used pesticides after March 7, 2026.

The United States shares the EU's concerns about pollinator health and is actively working to protect bees and other pollinators in the United States. However, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees, and that the safe use of the two pesticides may be determined based on local, national, or regional contexts by the appropriate competent authorities. The United States has also raised concerns with the EU that the use of MRLs as an environmental safety management tool could undermine the development and use of international standards for food safety. Given the critical importance of the pesticides identified in the regulation, the measure appears to pose a significant obstacle to international trade and production of agricultural products. The European Commission intends to consider additional substances under a similar approach. In 2022 and 2023, the United States raised this issue with the EU at the WTO TBT Committee, WTO Committee on Sanitary and Phytosanitary Measures (WTO SPS Committee), and WTO Council for Trade in Goods. The United States continues to encourage the EU to pursue a collaborative approach to protect pollinators worldwide.

(Other MRL concerns with the European Union are discussed in the Sanitary and Phytosanitary Barriers section of this NTE Report chapter.)

Medical Devices and In-Vitro Diagnostics Regulation

The United States continues to be concerned about the implementation of the Medical Device Regulation (MDR) and the In-Vitro Medical Device Regulation (IVDR), especially the shortage of notified bodies available to assess medical devices and in-vitro medical devices. The ongoing lack of capacity to conduct conformity assessment has led to longer review times, and it is still difficult for some companies to obtain access to reviews. The lengthy review times and lack of access impact the ability of companies to keep legacy devices on the EU market and to bring new devices to healthcare providers and patients.

The United States engaged the EU in 2022 through the WTO TBT Committee and bilateral discussions around those meetings to seek updates on the implementation of the MDR and IVDR, including the number of qualified notified bodies to perform conformity assessment requirements. On January 6, 2023, the European Commission published a proposal to amend the MDR and allow for staggered and conditional

extension of a transition period to the new rules until 2027 or 2028, according to the risk class of the devices. In addition, the proposal will extend validity of certificates and cancel the “sell-off” date, which will allow devices placed on the market before or during the transition period to continue to be made available absent time limitations. On March 20, 2023, Regulation (EU) 2023/607 amending the MDR and IVDR was published in the EU Official Journal with immediate effect.

Wine Labeling

In January 2023, the EU issued a draft European Commission Delegated Regulation (EU) 2019/33 outlining new rules for the indication and designation of ingredients for wine. The regulation was adopted in May 2023 and introduced a compulsory nutrition declaration and list of ingredients to be displayed on the label of wine products sold on the EU market beginning December 8, 2023. The regulation permits producers to provide mandatory lists of ingredients and nutritional information, excluding allergens and energy content, via an electronic label accessed through a quick-response (QR) code on the physical label. In November 2023, the EU issued guidance, which added the requirement for QR codes to be accompanied by a textual heading (*e.g.*, ingredients). U.S. industry supports the use of electronic labels to provide additional information for consumers; however, industry has raised concerns that textual headings may require them to develop country-specific headings for various Member States, contrary to the nature of the EU as a single market. U.S. industry has requested that the EU consider an alternative modality in place of a textual heading for QR codes. In 2023, the United States raised this issue with the EU bilaterally as part of the United States–European Union Wine Dialogue and on the margins of the WTO TBT Committee. In 2023, the United States exported more than \$186 million in wine to the EU.

Traditional Terms on Wine

The EU continues to restrict the use of “traditional terms,” such as “tawny,” “ruby,” and “chateau,” on labels on imported wine. This impedes U.S. wine exports to the EU, including U.S. wines that include these traditional terms as part of their trademarks. U.S. wines sold under a trademark that includes one of the traditional terms can only be marketed in the EU if the trademark was registered before May 2002.

The EU has not taken any visible steps to address the concerns of the United States and has consistently refused to provide a timeline for review of the applications for the use of terms submitted by U.S. industry.

Alcohol Labeling

In May 2023, Ireland introduced a Public Health (Alcohol) (Labelling) regulation, which sets unique health labeling requirements for alcohol being sold in the Irish market. The regulation mandates that all alcohol beverages display warnings on product packaging informing consumers about the risk of consuming alcohol when pregnant and the risk of liver disease and fatal cancers from alcohol consumption. While supportive of the goals of the regulation, in June and November 2023, the United States raised procedural concerns about the regulation in the WTO TBT Committee. Ireland responded extending the transition period and by permitting importers to affix stickers with the required information to imported products.

Sanitary and Phytosanitary Barriers

The United States remains concerned about a number of measures the EU maintains ostensibly for the purposes of food safety and protecting human, animal, or plant life or health. Specifically, the United States is concerned that these measures may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health, not based on science, or maintained without sufficient scientific evidence.

Farm to Fork Strategy

As part of the European Green Deal, described in the Technical Barriers to Trade section of this Chapter, the European Commission published its Farm to Fork (F2F) Strategy in May 2020 that included targets and policy proposals for enhancing food and agricultural sustainability by 2030. Among other things, these targets aim to reduce pesticide and fertilizer use by farmers and antimicrobial use in livestock, and to change land use in agriculture by transitioning farmland into organic production or taking other farmland out of production.

The EU has stated it will seek to “obtain ambitious commitments from third countries in key areas,” and is increasingly attempting to expand the reach of this policy beyond the EU. The targets must be converted into legislative proposals, and the European Parliament and European Council have begun to shape and amend these proposals as part of the EU legislative process between 2021 and 2024. The EU Ministers of Agriculture adopted conclusions on the F2F Strategy in October 2020, endorsing goals while registering a request that farming models other than organics be considered and that any new legislation be based on “scientifically-sound ex-ante impact assessments.”

The United States shares the EU’s goals for more sustainable food systems and recognizes the importance of considering the economic, social, and environmental dimensions of sustainability. However, it remains to be seen how the EU will implement the broader objectives of the F2F through these interrelated initiatives, which appear to blend SPS issues with potential TBT requirements like labeling or certification schemes. U.S. stakeholders are concerned that EU implementing regulations may focus on promoting EU production practices that are not appropriate, effective, or efficient in other parts of the world and, if required, could unnecessarily restrict trade or require farmers in the United States and other countries outside the EU to produce crops in less sustainable ways than they otherwise would have, as a precondition for gaining access to the EU market.

Hormones and Beta-Agonists

The EU maintains various measures that impose bans and restrictions on meat produced using hormones, beta-agonists, and other growth promotants, despite scientific evidence that such meat is safe for consumers. U.S. producers cannot export meat or meat products to the EU unless they participate in a costly and burdensome verification program to ensure that hormones, beta-agonists, or other growth promotants have not been used in their production.

For example, the EU continues to ban the use of the beta-agonist ractopamine, which promotes leanness in animals raised for meat. The EU maintains this ban even though international standards promulgated by Codex Alimentarius Commission (Codex) have established an MRL for the safe trade in products produced with ractopamine. The Codex MRL was established following a scientific study by the United Nations Food and Agriculture Organization/World Health Organization Joint Expert Committee on Food Additives that found ractopamine at the specified MRL does not have an adverse impact on human health.

In 2019, as part of a compromise solution to the U.S.–EU hormone beef dispute, the United States and the EU concluded an agreement that established a duty-free tariff-rate quota (TRQ) for the United States. The agreement went into effect on January 1, 2020, and provided American ranchers an initial TRQ of 18,500 metric tons annually, valued at approximately \$220 million. Over seven years, the TRQ will grow to 35,000 metric tons annually, valued at approximately \$420 million.

Antimicrobial Resistance and the Restrictions on the Use of Veterinary Medicinal Products

In December 2018, the EU published Regulation (EU) 2019/6 on veterinary medicinal products that seeks to address antimicrobial resistance by more strictly defining the criteria for use of antimicrobial products in animal medicine. Regulation (EU) 2019/6 also identifies a list of products that will be exclusively reserved for human medicine and no longer permitted in agricultural production. Article 118 of the regulation expands these restrictions to operators in third countries, who will be required to ensure that animal products exported to the EU and intended for human consumption do not originate from animals that have been treated with specified antimicrobial medicines reserved for human use or utilized for growth promotion. To date, the EU has failed to provide a scientific justification for these restrictions.

The official implementation date for Regulation (EU) 2019/6 was set for January 28, 2022, but the EU is still finalizing the legislation necessary to implement the regulation. In March 2021, the EU published an amendment to the official controls Regulation (EU) 2017/625 that clarified the legal mechanism for verification of compliance with Article 118 of the regulation. In October 2021, the EU published European Commission Delegated Regulation (EU) 2021/1760 that fixed the criteria used to establish the list of antibiotics exclusively preserved for human medicine. The European Commission adopted the European Medicines Agency's (EMA) advice as European Commission Implementing Regulation (EU) 2022/1255, which was published in the EU Official Journal on July 20, 2022. In May 2023, the EU published Commission Delegated Regulation (EU) 2023/905, which formalizes the prohibition foreseen in Regulation (EU) 2019/6 on the use of certain antimicrobials to food-producing animals and derivative products imported from non-EU countries. The European Commission is drafting two implementing regulations to enforce Regulation (EU) 2023/905, which will include a list of approved third countries and the requirement of an official health certificate attestation for the export of covered products. U.S. stakeholders are concerned about the potential impacts of the as yet unfinalized implementing regulation's attestation requirements on U.S. exports of animal products to the EU once it enters into force. Stakeholders have raised concerns about other provisions that are not based on science or risk and instead promote the adoption of EU practices by third countries rather than recognizing the alternative ways that different authorities can arrive at the same level of product safety. U.S. stakeholders are also concerned about the EU's prohibition on the use of non-medically important antimicrobials to promote growth and increase yield, as this prohibition does not appear to have a scientific justification and specific food safety concerns have not been identified. The United States continues to engage the EU regarding management of antimicrobial resistance and encourage science-based approaches.

Agricultural Biotechnology

Decades of data and experience demonstrate the safety of genetically engineered (GE) crops, in addition to the benefits of their use in reducing carbon emissions, pesticide use, and impact on non-target organisms, while increasing soil health, crop yields, and farmers' incomes. Despite these benefits, the lack of predictability, excessive data requirements, and delays in the EU's approval process for GE crops have prevented products from being exported to the EU, even though these products have been approved and grown safely in the United States for many years.

The United States continues to reiterate concerns with delays in the EU's biotechnology approval procedures and to engage the EU in efforts to normalize trade in these products, including through semiannual consultations in accordance with the 2008 decision by the United States and the EU to suspend Article 22.6 arbitration proceedings associated with the WTO dispute settlement proceeding against the European Communities (the EU predecessor entity) regarding the approval of biotechnology products. In 2023, the EU issued eight approvals and five renewals for GE crops, compared to six approvals and one renewal in 2022. While these new authorizations are welcomed, the EU's average approval time for new GE crops in 2023 was approximately six years. In contrast, the EU's own legally prescribed approval time

for such products is 12 months (6 months for the review with the European Food Safety Authority (EFSA) and 6 months for the political committee process known as comitology).

As of December 31, 2023, the United States was tracking approximately 30 agricultural biotechnology product applications (including renewals) submitted to the EU, including with respect to corn, soybean, rapeseed, and cotton. Of those applications, 29 were under scientific review by the EFSA and 6 await action by the European Commission through comitology. Delays in both of these stages contribute to increasingly lengthy EU approval timelines. For example, EFSA continues to demand unnecessary studies while conducting risk assessments, which result in unpredictable delays in issuing final opinions. In comitology, repeated findings of “no opinion” by the relevant Standing Committee on Plants, Animals, Food and Feed also delay the EU from making decisions on GE approvals, by requiring products to go through an additional assessment by an Appeal Committee before receiving a final approval. The United States continues to engage the EU on delays of this nature and urge the EU to address other barriers to trade in biotechnology products. For example, the EU has yet to establish a practical low-level presence policy and instead maintains a 0.1 percent limit for unapproved biotechnology traits in feed shipments, which is not commercially feasible and disrupts trade in products that have otherwise passed U.S. safety assessments.

Member State Measures on Agriculture Biotechnology

In March 2015, the EU adopted a directive allowing Member States to ban the cultivation of GE plants in their respective territories for non-scientific reasons (Directive (EU) 2015/412). Under the transitional measures, Member States had until October 2015 to request exemption from the geographical scope of the authorizations already granted or that were under regulatory review for EU cultivation approval. Eighteen Member States “opted-out” of GE crop cultivation for all or part of their territories, and none of the five Member States (the Czech Republic, Portugal, Romania, Slovakia, and Spain) that grew GE corn opted out. However, as of 2023, only Portugal and Spain commercially cultivated GE corn.

Seventeen Member States have opted out of cultivation using biotechnology seeds. The 17 Member States that requested exclusion of their entire territory from the geographical scope of biotechnology applications are Austria, Bulgaria, Croatia, Cyprus, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, and Slovenia. Additionally, one region in Belgium, Wallonia, has also opted out of cultivation. All of these Member States and regions have decided to ban the cultivation of Monsanto 810 corn (MON810) and the seven varieties of corn that were submitted for EU-wide approval in 2015 (apart from Denmark and Luxembourg, which have only banned MON810 and three of the seven varieties of corn that were submitted for EU-wide approval).

EU Fumigation Requirements for Hardwood Lumber and Logs

The EU previously banned the use of methyl bromide to fumigate logs and wood chips imports. Fumigation with sulfuryl fluoride is considered an equally effective substitute and is used throughout the EU, including for EU log exports. While the EU approved the use of sulfuryl fluoride for certain U.S. log exports in 2023, the decision on its use for U.S. pine wood chips remains pending scientific review, which leaves U.S. exporters of pine wood chips without a commercially viable fumigation option. Heat treatment, which is the EU alternative to fumigation, is not scalable in many instances. The United States will continue to engage with the EU on this issue to identify a path forward.

Pathogen Reduction Treatments

The EU maintains measures that prohibit the use of any substance other than water to remove contamination from animal products unless the substance has been approved by the European Commission. These measures significantly affect U.S. exports of beef, pork, and poultry to the EU because the European

Commission has failed to approve several pathogen reduction treatments (PRTs) that have been approved for use in the United States. PRTs are rinses used to kill microbial pathogens that commonly exist on meat after slaughter. The PRTs at issue have been approved by U.S. Department of Agriculture (USDA) after establishing their safety on the basis of scientific evidence.

In March 2017, the National Pork Producers Council submitted an application to the European Commission for the approval of two organic acids, lactic and acetic, for use on pork. The application was submitted to EFSA by the European Commission in September 2017. EFSA published its evaluation in December 2018, confirming the safety of the use of acetic acid and lactic acid in pork processing. As of December 31, 2023, the European Commission has taken no action for the approval of pork PRTs.

The United States maintains that the use of PRTs is a critical tool during meat processing that helps further the safety of products being placed on the market. The United States has engaged the EU to share scientific data regarding the safe use of PRTs and will continue to engage the EU regarding the approval of PRTs for beef, pork, and poultry as an effective tool to improve food safety.

Certification Requirements

Since January 2022, the EU has published at least seven versions of the health certificate it requires for U.S. agricultural exports of fish, meat, dairy, eggs, processed products, and animal byproducts. U.S. exporters are concerned about exporting products of animal and animal origin to the EU market and to third-country markets that require transit through the EU because of the unpredictability of health certificate requirements. Differing interpretations of requirements among Member States adds to this uncertainty. The EU is currently contemplating the addition of attestations related to use of antimicrobials and animal welfare, which may further complicate this issue.

It appears that EU health certification requirements and subsequent modifications are not necessary for the protection of human or animal health and burden to the movement of goods. The certification requirements also are enforced irrespective of whether these goods are destined for commercial sale in the EU or transiting through the EU. The EU's requirements often appear to have been established without scientific evidence, a risk assessment, or consideration of Codex guidance on certifications, the latter of which recommend that official certificates require only the minimum amount of information necessary to meet the objectives of the country's food safety system. Moreover, the EU's changes to certificates are increasingly frequent, complex, and instituted through updates to multiple EU implementing or delegated regulations, making compliance difficult for manufacturers, exporters, foreign competent authorities, and EU importers. Certificates based on the standardized templates published in EU regulations are a condition for trade, but it is increasingly difficult for U.S. regulators to issue the required EU certificates. Differences in interpretation of EU legislation by Member State authorities also create legal instability and often result in trade disruptions, creating additional burden for U.S. exporters.

The United States continues to engage the EU bilaterally to resolve concerns regarding the EU's certification requirements.

Titanium Dioxide

In November 2021, the European Commission published European Commission Implementing Regulation (EU) 2021/2090 in the EU Official Journal denying the authorization of titanium dioxide (E171) as a feed additive for all animal species. Following this action, Regulation (EU) 2022/63 banned titanium dioxide (E171) as a food additive in the EU as of August 7, 2022. The regulation includes a commitment to review the necessity to maintain or delete titanium dioxide from the EU list of food additives for exclusive use as a color in medicinal products. The European Commission has tasked the EMA with reviewing the situation

by April 2024. The regulation calls on the pharmaceutical industry to accelerate research and development for alternatives to titanium dioxide in both new and previously authorized products. The EMA has published information for pharmaceutical companies and is monitoring industry efforts.

Animal Byproducts, Including Tallow

The EU considers all animal byproducts sourced from animals raised under conditions not essentially identical to those in the EU to be hazardous materials. Since 2002, the EU has made modifications to its regulations and implementation practices governing animal byproducts that have resulted in the treatment of U.S. products being considered hazardous. The current EU interpretation of the animal byproducts regulations could potentially prevent most exports of U.S. animal byproducts. Several Member State border inspection posts have already blocked consignments of various technical blood products.

The United States has requested that tallow be allowed entry into the EU for any purpose without verification other than that the tallow and derivatives made from the tallow contain no more than a maximum level of insoluble impurities consistent with the internationally recognized standard for trade in tallow and with World Organisation for Animal Health (WOAH) recommendations.

Live Cattle

Live cattle from the United States are not authorized to be exported to the EU, or transited through the EU en route to third countries, due to EU certification requirements for several bovine diseases. U.S. exports remain blocked because the United States and EU have not agreed on the conditions and format for an export certificate. The EU implemented new animal health laws in 2021, and the USDA Animal and Plant Health Inspection Service (APHIS) continues to explore alternative solutions, particularly with regard to a mutually acceptable animal health certificate, to resolve the issue of market access to the EU for live cattle.

Trade in Raw and Processed Shellfish

In February 2022, the EU determined the U.S. food safety system for raw bivalve mollusks (shellfish) to be equivalent to the EU's food safety system for these products. At the same time, the U.S. Department of Health and Human Services Food and Drug Administration (FDA) found two EU Member States to be operating a food safety system for shellfish to be equivalent to the U.S. food safety system. Trade was reopened for two U.S. states (Massachusetts and Washington) and opened for two EU Member States (Spain and the Netherlands), with an agreed mechanism for expediting the consideration of additional U.S. states and EU Member States. In April 2022, the United States sent dossiers for Connecticut, Maine, and Rhode Island seeking to export raw product to the EU. Although the EU committed to expedited reviews of U.S. state dossiers, as of December 31, 2023, the EU had only considered Connecticut's dossier and has not completed its review. The EU has not begun its review of the other two dossiers.

Processed shellfish from the United States is not currently authorized to be exported to the EU. The EU requires a determination of equivalence for processed and raw shellfish, a level of control for a processed product that has not been supported by science-based risk assessment. The European Directorate-General for Health and Food Safety (DG SANTE) conducted an audit in November 2022, which evaluated whether U.S. controls to deliver and certify processed bivalve shellfish were compliant with U.S. food safety requirements and regulations. Following the audit, the U.S. FDA and U.S. Department of Commerce National Oceanic and Atmospheric Administration (NOAA) identified sections of the audit report that were incorrect or inaccurate and required editing to reflect a correct understanding of the U.S. national control system for processed bivalve shellfish. Technical discussions between FDA, NOAA, and DG SANTE are ongoing.

Specified Risk Materials Certification Requirement

The EU has a different definition of specified risk materials (SRM) from the United States for the animal tissues most at risk of harboring the transmissible spongiform encephalopathies (BSE). The EU requires that materials exported to the EU meet the EU's SRM definition and be derived from carcasses of animals that can be confirmed as never having been outside of regions that the EU considers to be of negligible risk for BSE. Although WOAHA has recognized the United States as having negligible risk, the source cattle for U.S. ruminant origin animal byproduct exports may not necessarily come from negligible risk countries. The EU SRM requirement unnecessarily impedes U.S. exports of ruminant origin animal byproducts considered safe in the United States and would potentially limit the market for ovine/caprine byproducts were other market impediments removed.

The SRM requirement otherwise has not been an issue for bovine meat for human consumption, because the special EU-required production controls in the non-hormone-treated cattle program already provide the necessary verifications regarding the history of the animal. The EU's "born and raised" BSE requirement is based on its non-recognition of WOAHA animal disease status for the United States and is related to animal health versus the origin of the products. Consistent with the recommendations of WOAHA, it is the BSE status of the country of export that should determine whether SRMs have to be removed. The United States continues to raise this issue in appropriate fora, including bilateral technical working groups, and has requested the removal of the EU's requirement for all relevant U.S. commodities.

Hazard-based Cutoff Criteria for Agricultural Chemicals

Active substances can only be approved for use in crop protection products in the EU if they fulfill the approval criteria established in Regulation (EC) 1107/2009. Under this regulation, the EU's determination includes hazard-based "cutoff" criteria that exclude certain categories of products from consideration for normal authorization for use in the EU. In instances where an active substance triggers the cut-off criteria, the EU regulatory process allows for an active substance to remain unapproved, regardless of risk of exposure. For such products, the EU does not complete a risk assessment. Rather, the EU discontinues authorization for a particular product at the time of re-approval, as has happened for an increasing number of substances. The EU has also been taking a "hazard-based approach" to new products, declaring them to be ineligible for authorization based solely on the intrinsic properties of the product, without taking important risk factors such as level of exposure or dosage into account. The United States is concerned that an increasing number of safe and widely-used substances are not being reapproved or having reasonable import tolerances set for their use, due to these arbitrary cut-off criteria when current registrations expire.

Categorization of Compounds as Endocrine Disruptors

One category of crop protection products subject to the hazard-based approach set out in Regulation (EC) 1107/2009 are substances classified as endocrine disruptors (EDs). EDs are naturally occurring or man-made substances that may mimic or interfere with hormone functions. The United States evaluates possible endocrine effects associated with the use of certain chemicals to ensure protection of public health and the environment. In contrast, the EU established an approach to regulating these compounds that appears not to be based on scientific principles or is maintained without scientific evidence, thereby restricting trade without improving public health.

The scope of trade effects of Regulation (EC) 1107/2009 is broad and overlaps with that of the other hazard criteria and environmental criteria the EU uses in regulating pesticides. The EU obscures its hazard-based decisions with onerous data requirements that allow the European Commission to claim an inability to measure risk. The United States continues to monitor this issue and raise concerns in international and bilateral fora.

Pesticide Maximum Residue Limits

Maximum residue limits and import tolerances are established under legislation, Regulation (EC) 396/2005, which, unlike Regulation (EC) 1107/2009, is risk-based rather than hazard-based. However, for active substances that are not approved due to the EU's cut-off criteria under Regulation (EC) 1107/2009, the EU may withdraw MRLs established under Regulation (EC) 396/2005, and reduce import tolerances to the default level of 0.01 mg/kg. The EU conducted an evaluation of existing legislation on plant protection products and pesticide residues through the Regulatory Fitness and Performance process. At this time, the EU has no intention to further align Regulation (EC) 396/2005 with the hazard-based principles of Regulation (EC) 1107/2009. As the number of substances ineligible for reauthorization by the EU increases, and as the EU reduces the corresponding MRLs and import tolerances to the default level, the significant negative effect on agricultural production and trade is likely to increase.

The EU regulations also establish transitional periods to allow producers to adjust to changes in EU MRLs, although the transition periods established by the EU are generally not long enough to avoid trade disruption. For many products, there may be a gap of several years between pesticide application and when a final product is offered for sale, creating a situation where products that are compliant with EU MRLs at the time of production do not have time to clear the channels of trade. EU products, on the other hand, appear to remain available for sale as long as they are produced prior to MRLs changing.

The United States has raised concerns over the EU's policy approaches for years and continues to engage on these issues in the WTO SPS Committee. The United States is also monitoring the EU's actions with regard to evaluating and establishing import tolerances for active substances, which have the potential to create further trade disruptions when MRLs are set at levels that are lower than necessary to protect human health and are not viable. According to U.S. industry estimates, U.S. exports valued at over \$5 billion and global trade amounting to \$75 billion are at risk of significant harm. Discontinuing the use of critical substances without a proper science-based risk assessment, and withdrawing or lowering MRLs to levels that are not commensurate with the findings of risk assessments, would have serious adverse effects on agricultural productivity and global markets.

Glyphosate Renewal

The EU requires that the approval of the active substance of a pesticide (*i.e.*, the substance that works against pests or plant diseases) be periodically renewed. Glyphosate, the herbicide used in certain plant protection products, had been approved by the EU as an active substance until December 15, 2023. In July 2023, the EFSA found no critical areas of concern for human, animal, and environmental health from the use of glyphosate in agriculture. Based on the EFSA assessment, on November 28, 2023, the European Commission adopted Implementing Regulation (EU) 2023/2660 to renew the approval of glyphosate for 10 years, until December 15, 2033, following the absence of a qualified majority vote required to approve or reject the renewal from Member States in the Standing Committee on Plants, Animals, Food and Feed and the Appeals Committee.

Following approval of an active substance in the EU, Member States control the authorization of formulated products containing that substance. Member States have various regulations limiting the use of products containing glyphosate. Despite the recent EU renewal of approval of glyphosate in November 2023, some Member States continue to ban glyphosate partially or entirely, including Austria, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. Member State bans affect the use of the substance within that country's national borders but do not affect any glyphosate MRLs, as all pesticide MRLs are determined at the EU level.

GOVERNMENT PROCUREMENT

Government procurement is governed by the EU public procurement directives. The directive on procurement in the utilities sector covers purchases in the water, transportation, energy, and postal sectors. The EU content requirement applies to foreign suppliers of goods and services in water (the production, transport, and distribution of drinking water), energy (gas and heat), urban transport (urban rail, automated systems, trams, buses), and postal services.

The EU is a Party to the WTO Agreement on Government Procurement (GPA).

Member State Measures on Public Procurement

Lack of transparency in certain Member State public procurement processes continues to be a barrier to the participation of U.S. firms. U.S. firms have also voiced concerns over onerous documentation requirements and implicit biases in favor of local vendors and other suppliers based on lowest cost instead of the full lifecycle of the procurement. Additional Member State-specific trade barriers to U.S. stakeholder participation in public procurement processes are discussed below.

- *Croatia*: U.S. companies have complained about instances in which technical specifications and scoring in public procurement tenders appear to favor a specific bidder, typically a local or other Member State supplier, thus impacting the participation of competitive U.S. firms.
- *Greece*: U.S. firms have complained that Greece often requires suppliers to source services and production locally or partner with Greek manufacturers as a condition for the awarding of some defense contracts. Additional complaints center on onerous certification and documentation requirements for foreign firms.
- *Hungary*: In April 2022, the European Commission launched a budget conditionality mechanism against Hungary over the “systemic irregularities, deficiencies and weaknesses” in its public procurement procedures. U.S. companies express serious concerns that public procurements in Hungary are not transparent and tend to favor either local or other non-EU countries, including China.
- *Lithuania and Portugal*: U.S. firms have raised concerns over Lithuania’s and Portugal’s use of “lowest cost” criteria as the primary determination for awarding contracts. Although EU law allows for consideration of factors such as quality, company reputation, and prior experience in the decision-making criteria, “lowest cost” bidding continues to be a common practice in these two countries.
- *Slovakia*: The excessive length and complexity of tender verification and appeal procedures remains an impediment to the widest possible participation of potential bidders. Lock-in contracts, in which the Slovakian Government commits to procure a basic service and subsequently expands the contract to include additional services, continue to hamper the access of U.S. firms to public procurement, especially with regard to information technology services.
- *Slovenia*: U.S. firms report instances of tendering documentation that provide unfair advantages to favored vendors, typically an EU Member State company, and opacity in the bid evaluation process as major impediments. Slovenia’s quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases, has received multiple complaints. The NRC has the authority to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal.

In the instances where U.S. companies alleged improprieties in the procurement process, Slovenian authorities directed them to the NRC, which is not required to justify its decisions.

Cybersecurity

Proposed EU Cybersecurity Certification Scheme for Cloud Services

The EU is considering a new certification scheme for cloud services (EUCS). Once finalized, the EUCS is expected to be mandatory for certain public sector and possibly select private sector cloud services. The EU covers cloud services in their GPA schedule and is required to offer non-discriminatory access to U.S. and other GPA suppliers for covered procurements. The United States has presented its concerns about these policies in the WTO Committee on Government Procurement.

Member State Measures on Cloud Services

- *France:* France's national digital security agency, Agence Nationale de la Securite des Systemes d'Information (ANSSI), maintains a security certification scheme for cloud services, commonly referred to as SecNumCloud. In May 2021, the French Government issued a strategy for the use of cloud computing by the state (Trusted Cloud strategy), requiring that government agencies and commercial entities considered "critical" must select only cloud services vendors with a SecNumCloud certification to handle their highly sensitive data. As part of this strategy, ANSSI published in March 2022 a revision to the SecNumCloud certification requirements. This revision requires that any cloud provider that handles "highly sensitive" data must be at least 61 percent EU-owned and "immune" from non-EU laws. France's Prime Minister signed an official circular on May 31, 2023, defining "sensitive data" to which SecNumCloud certification requirements apply. The vague definition of "sensitive data" could lead foreign cloud services suppliers to be increasingly precluded from providing cloud services to French public authorities. There are also concerns that in the future the French private sector would adopt a SecNumCloud certification requirement, which could further hamper foreign cloud service providers from providing services in France.
- *Czech Republic:* The Czech Cyber and Information Security Agency (NUKIB) published a "Strategic Analysis of Cloud Services" in December 2022, which advised Czech public and private sector organizations on security considerations related to selecting a cloud service provider. The analysis, which consists of non-binding recommendations rather than directives, acknowledged that U.S. cloud service companies are preferable to China-based competitors from a security perspective. However, U.S. stakeholders have expressed concern that the analysis refers to the potential transfer of data to the U.S. Government but omits key information (e.g., the analysis fails to mention that the controls in the United States over government access to data are more stringent than the controls in many EU Member States). As a result, it could mislead readers with regard to the risk of their data being handed over to the U.S. Government.
- *Hungary:* State and local government bodies and organizations are only allowed to process data in systems operated in the territory of Hungary. Electronic information systems can only be hosted in EU Member States for organizations providing services deemed as critical, which include energy, transportation, agriculture, and health industries.

INTELLECTUAL PROPERTY PROTECTION

As part of the European Commission's Digital Single Market Strategy, the Directive on Copyright in the Digital Single Market (Copyright Directive) went into effect in June 2019, with the stated goal of addressing legal uncertainty for both rights holders and users with regard to certain uses of copyright-protected works and other subject matter in the digital environment. Member States were required to transpose it by June 7, 2021, but as of December 31, 2023, Poland and Portugal still had not transposed the Copyright Directive in full. The United States continues to follow copyright issues in the EU and its Member States, including legislative developments relating to the transposition of the Copyright Directive into national laws, and will continue to engage with various EU entities as appropriate to address U.S. stakeholder equities.

The Digital Services Act (DSA) initially went into effect on November 16, 2022, and is intended to regulate certain online services, including through rules for how content is shared online. U.S. stakeholders have expressed concerns that the DSA's adoption of a framework for limitations of liability included modifications to the eligibility threshold and conditions that had been set in the E-Commerce Directive, which may adversely impact their intellectual property (IP) rights, in particular for copyright and trademarks.

The European Commission proposed a Data Act in February 2022 with the goal of maximizing the value of data and promoting innovation by increasing the transfer of data that is stored within devices and applications. The Data Act requires the disclosure and making available of data that may be protected by the data holder's or a third party's trade secrets, copyright, or other IP. The final text of the Data Act was published in the EU Official Journal on December 22, 2023, and it entered into force on January 11, 2024.

The European Commission proposed an Artificial Intelligence (AI) Act in April 2021 with the aim of providing a risk-based approach to regulating the development, deployment, and use of AI-driven products, services, and systems. Drafts of the AI Act neglect to provide strong, consistent, and transparent protection schemes for innovative and proprietary information embedded in the source code when the source code is required to be disclosed to the authorities.

In response to the CJEU's judgment in Recorded Artists Actors Performers (RAPP), the European Commission is exploring the possibility of publishing a draft amendment to the Rental and Lending Directive to require or permit material reciprocity for equitable remuneration collected for the performance and communication of sound recordings. The CJEU held that all sound recording producers and performers from contracting parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) are entitled to equitable remuneration. U.S. stakeholders are concerned that such a legislative change reversing the CJEU holding will result in EU Member States withholding full payment of royalties to U.S. producers and performers.

The United States remains very concerned by the EU's overbroad protection of geographical indications (GIs), which adversely impacts both protection of U.S. trademarks and market access for U.S. products that use common names in the EU and third country markets. For example, Regulation (EU) 1151/2012 contains numerous problematic provisions governing the scope of protection and enforcement of Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs), including expansive rules about evocation, extension, co-existence, and translation, among others. These troubling provisions not only adversely affect trademark rights and the ability to use common names, but also undermine access to the EU market for U.S. rights holders and producers. In addition, the EU has granted GI protection to thousands of terms that limits use in the EU market to only certain EU producers, and the use of any term that even "evokes" a GI is also blocked. Despite this level of protection afforded to products sold within the EU, it appears that some producers in Member States continue to produce products featuring terms that

are protected as GIs in other Member States and then export these products outside the EU. The EU has also granted GI protection to the cheese names danbo and havarti, widely traded cheeses that are covered by international standards under Codex. Several countries, including the United States, opposed GI protection of these common names both during the EU's opposition period and at the WTO, but the European Commission granted the protection over that opposition and without sufficient explanation to interested parties.

Regulation (EU) 1151/2012 also serves as the basis for the EU's international GI agenda, which includes requiring EU trading partners to protect and enforce specific EU GIs in their markets, often with only limited due process requirements to safeguard existing producers, right holders, consumers, importers, and other interested parties. Regulation (EU) 1151/2012 replaced the former GI regulation for food products, Council Regulation (EC) 510/2006, which was adopted in response to WTO DSB findings in a successful challenge brought by the United States (and a related case brought by Australia) that asserted that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB findings also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the Agreement on Trade-Related Aspects of International Property Rights (TRIPS). Regulation 1151/2012 sped up the registration procedure for registering GIs, reduced the opposition period from six to three months, and expanded the types of products capable of being registered as a GI.

The United States continues to have concerns about the EU's GI regulations and proposals, and monitors carefully their implementation and effects on bilateral trade. As to new GI proposals in 2023, the United States is concerned about the proposed revision of the GI system for agricultural products, foodstuffs, wines, and spirit drinks. The United States is also concerned about Regulation (EU) 2023/2411, which goes into effect from December 1, 2025, and expands the scope of GI protection to craft and industrial products. The United States also does not believe that the EU should bargain for specific GI recognition in its bilateral trade agreements in return for market access, because such IP rights should be evaluated independently on their merits, based on the unique circumstances of each jurisdiction. Similarly, the United States is concerned by the EU's attempts to restrict common terms for wine in third country markets. The United States is carefully monitoring the EU's GI regulations and proposals as well as the implementation and effects of these regulations and proposals on bilateral trade.

The United States remains very concerned by the conduct and outcome of the 2015 WIPO negotiations to expand the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs. Of particular concern to the United States was the manner of engagement in these negotiations by the European Commission and by several Member States, including the Czech Republic, France, Greece, Italy, and Portugal, which took precedent-setting steps to deny the United States and the vast majority of WIPO countries full negotiating rights and depart from longstanding WIPO practice regarding consensus-based decision-making. Likewise, the resulting text—the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications—raises numerous and serious legal and commercial concerns, including with respect to the degree of inconsistency with the trademark systems of many WIPO countries, and could have significant negative commercial consequences for trademark holders and U.S. exporters that use common terms. The EU became a party to this Agreement in November 2019. The Agreement entered into force in February 2020.

Member State Measures on Intellectual Property

Although Member States generally maintain high levels of IP protection and enforcement, the United States remains concerned about the IP practices of several countries. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IP protection and enforcement, including through the annual Special 301 review process. The United States is particularly concerned about counterfeit pharmaceuticals and personal protective equipment.

- *Austria:* With regard to trade secrets, U.S. companies reported gaps in criminal liability, insufficient specialization of judges, low criminal penalties, and procedural obstacles that limit the Austrian Government's efforts to effectively combat trade secret theft and misappropriation. In July 2023, Austria took steps to address these concerns, and amended its Unfair Competition Statutes and its Criminal Code to establish higher criminal penalties for trade secret theft and strengthen its criminal procedures as they relate to such theft.
- *Bulgaria:* Enforcement concerns in Bulgaria include inadequate prosecution efforts, lengthy procedures, and insufficient criminal penalties, particularly in the area of online piracy. Stakeholders have raised concerns as to notorious online pirate sites reportedly hosted in Bulgaria. As a result, USTR listed Bulgaria in the [2023 Special 301 Report](#) Watch List. As part of this process, USTR has been conducting an [Out-of-Cycle Review](#) of Bulgaria to assess progress in IP enforcement. In August 2023, Bulgaria amended its Criminal Code in an effort to enhance its ability to investigate and prosecute digital piracy cases. The United States will monitor whether implementation of this legislation results in an improved rate of criminal prosecutions in Bulgaria.
- *Germany:* When Germany implemented the Copyright Directive in 2021, it introduced new requirements for online platforms regarding the filtering of user uploads to prevent the automatic blocking of potentially copyright-protected content for uses that are presumably authorized by law. Some U.S. stakeholders are concerned that Germany also introduced an overly broad copyright presumption that makes it difficult for creators to enforce their copyrights in music and videos that are used in the background of short-form content that is often posted on social media. U.S. stakeholders also voiced concerns that Germany's legal framework for technological protection measures remain inadequate and that Germany's private copy exception is too broad. The United States will monitor how implementation impacts U.S. stakeholders.
- *Poland:* Stakeholders continue to identify copyright piracy online as a significant concern in Poland and noted inconsistent enforcement on the part of law enforcement and backlogs in the Polish courts. Stakeholders also are concerned about illegal camcording and easy access to counterfeit products.
- *Romania:* Online piracy remains a concern with some notorious online pirate sites reportedly hosted or registered in Romania. Low penalties for IP violations impede investigations and do not offer any meaningful deterrent to further IP crimes, so law enforcement choose to bundle significant cases under tax evasion penal files. Romania lacks an effective and timely mechanism for rights holders to submit takedown requests against online markets and hosting platforms for infringing material. Adequate resources, including additional training for law enforcement, are needed to enhance enforcement quality. Although Romania has made progress on addressing long-standing IP protection and enforcement concerns, the United States continues to closely follow IP-related developments in the country.

SERVICES BARRIERS

Telecommunications Services

Regulation on Privacy and Electronic Communications

In January 2017, the European Commission proposed a new Regulation on Privacy and Electronic Communications, which would replace the e-Privacy Directive of 2002. The proposed regulation would

expand the scope of the existing directive, which applies to traditional telecommunications services providers, to include over-the-top Internet-enabled services. U.S. suppliers have expressed concerns that, although the proposed regulation is supposed to align the specific rules for telecommunications services with the General Data Protection Regulation (GDPR), it may actually lead to additional and potentially conflicting requirements. In late 2017, the European Parliament adopted its final amendments to the proposed regulation, and in February 2021, the European Council announced that it had finalized its version, clearing the way for trilogue negotiations to begin. Those negotiations have proceeded slowly and are ongoing.

Audiovisual Services

In November 2018, amendments to the 2007 Audiovisual Media Services Directive (AVMSD) were adopted to reflect developments in the audiovisual and video-on-demand markets. Member States were given 21 months to transpose the amendments into national legislation. On November 23, 2021, the European Commission launched proceedings against 23 Member States for failure to transpose the AVMSD into national law. As of December 31, 2023, proceedings were still ongoing for Ireland, which has a case before the CJEU. The European Commission also has open proceedings against Slovenia, Croatia, France, and Estonia.

The original AVMSD established minimum content quotas for broadcasting that had to be enforced by all Member States. Member State requirements were permitted to exceed this minimum quota for EU content, and several have done so. However, the original AVMSD did not set any strict content quotas for on-demand services, although it still required Member States to ensure that on-demand services encourage production of, and access to, “EU works.”

The 2018 amendments include provisions that impose on Internet-based video-on-demand providers a minimum 30 percent threshold for EU content in their catalogs and require that they give prominence to EU content in their offerings. The new AVMSD also provides Member States the option of requiring on-demand service providers not based in their territory, but whose targeted audience is in their territory, to contribute financially to EU works, based on revenues generated in that Member State. In addition, the new rules extend the scope of the AVMSD to video-sharing platforms that tag and organize content.

Member State Measures on Audiovisual Services

A number of Member States maintain measures that affect trade in audiovisual services. A summary of some of the more significant national practices follows.

- *Austria:* Austria transposed the AVMSD into federal law in January 2021. Austria has a 30 percent quota for European works, as defined in the measure, in Video-on-Demand (VOD) catalogues and requires European works to be highlighted and labelled as such. At least 10 percent of transmission time, or 10 percent of the programming budget is to be dedicated to independent work.
- *Belgium:* In the Wallonia-Brussels Federation, video-on-demand services must invest a percentage of revenue into regional audiovisual works or pay a levy to the region’s Cinema and Audiovisual Centre. In March 2023, the Belgian French Community notified a draft decree to the European Commission that would increase the mandatory contribution for the largest service suppliers from the current 2.2 percent of revenue to 9.5 percent.
- *France:* France’s implementing legislation, approved by the European Commission in 1992, requires that 60 percent of television programming in France be of EU origin, thus exceeding the AVMSD threshold. In addition, 40 percent of the programming devoted to EU origin must include

original French-language content. These quotas apply to both regular and prime-time programming slots, and the definition of prime time differs from network to network. The French Government issued an order in December 2020, and an additional six decrees in December 2021, transposing the AVMSD into French law.

Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMSD minimum) and 30 percent to 35 percent French-language content, but channels and services are required to increase their investment in the production of French-language content. France's Audiovisual and Digital Communication Regulatory Authority oversees implementation of the quotas.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film in such a way as to account for more than 30 percent of the multiplex's weekly shows.

- *Italy:* The Italian Consolidated Audiovisual Media Services Act requires that 50 percent of eligible broadcast hours be European works, as defined in the measure, and that commercial television channel devote 16.6 percent of eligible hours to Italian works and public broadcasters devote 25 percent of eligible hours to Italian works. In addition, domestic video-on-demand services must ensure that 30 percent of their catalogues are for European works produced within the past five years. Fifteen percent of a subscription video-on demand service's catalogue must be dedicated to Italian works produced by independent producers within the past five years. Non-linear video-on-demand providers subject to Italian jurisdiction must also give prominence to EU works.

Under the Italian law, commercial broadcasters must annually invest 12.5 percent of their revenues in the production of independent European works. Half of this money is reserved for Italian works. Foreign and domestic video-in-demand providers must devote 17 percent of their annual net revenues generated in Italy to the production of European independent works. This quota increased to 18 percent in 2023 and will increase to 20 percent in 2024. Fifty percent of the investment obligation must be reserved for Italian works produced by independent Italian producers.

- *Poland:* Television broadcasters must dedicate at least 33 percent of their broadcasting time (excluding time allocated to information services, advertisements, telemarketing, sports broadcasts, and game shows) to programs originally produced in the Polish language, at least 50 percent of their broadcasting time to programs of EU origin, and at least 10 percent of their broadcasting time to programs by EU independent producers. On-demand services must promote content of EU origin, especially content originally produced in Polish, and dedicate at least 20 percent of their catalog to EU content.
- *Spain:* For every three days that a film from a non-EU country is screened, one EU film must be shown in movie theaters. This ratio is reduced to every four days if the cinema screens a film in an official language of Spain other than Spanish and keeps showing the film in that language throughout the day. In addition, broadcasters and on-demand services must invest 5 percent of their revenues in the production of EU and Spanish works, and 60 percent of this allocation should be directed towards productions in any of Spain's official languages. This also applies to digital terrestrial television.

Professional Services

Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, Hungary, Latvia, Lithuania, and Malta require EU or European Economic Area (EEA) nationality or citizenship for full admission to the bar, which is necessary for the practice of EU and Member State law. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Financial Services

The European Commission has taken the position that its directive on statutory auditing prohibits Member States from considering professional experience of foreign auditors acquired outside of the EU when considering whether to grant statutory auditing rights. The United States will continue to advocate for Member States to take into account the experience of U.S. certified public accountants acquired outside of the EU.

BARRIERS TO DIGITAL TRADE

Digital Services Taxation

The United States and EU Member States are among the 137 member jurisdictions to have joined the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce digital services taxes (DSTs) in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the United Kingdom issued a [joint statement](#) “on a transitional approach to existing Unilateral Measures while implementing Pillar 1.” According to the statement, DST liability that accrues to Austria, France, Italy, Spain, or the United Kingdom during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods with respect to each country and committed not to take further trade actions against each country with respect to existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the October 21 joint statement was extended to June 30, 2024, according to a [joint statement](#) issued on February 15, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor the implementation of the political agreement and the transitional approach as provided in the joint statement.

Network Usage Fees

On May 2, 2022, the European Telecommunications Network Operators Association (ETNO) released a report urging the European Commission to adopt new regulation that would require large Internet-enabled service suppliers to pay network usage fees to European telecommunications network operators in order to recoup costs they claim telecommunications network operators bear due to carrying high-bandwidth content. Both the European Commission’s Executive Vice President for A Europe Fit for the Digital Age and the European Commissioner for Internal Market have expressed some support for ETNO’s concerns and have indicated that they want to examine how content providers could help finance telecommunications infrastructure. However, a number of other stakeholders, including some Member States, have raised concerns with the ETNO proposal. On October 7, 2022, the Body of European Regulators for Electronic Communications (BEREC) adopted a report that concluded the ETNO proposal was unnecessary and “could be of significant harm to the Internet ecosystem.”

On February 23, 2023, the European Commission launched a public consultation on the EU's connectivity sector and telecommunications infrastructure. On May 19, 2023, U.S. Department of Commerce submitted formal comments raising concerns with mandating direct payments from content and application suppliers to telecommunications network operators. The U.S. filing also explains the U.S. approach to financing the deployment of high-speed broadband service and closing the digital divide including expanding connectivity to rural and other underserved areas. On October 10, 2023, the European Commission published the results of this consultation, concluding that no plan for network usage fees would proceed given the feedback from stakeholders. Instead, the European Commission announced they would undertake a broader approach, aiming to develop a white paper on a broader scoped "Digital Networks Act" in the first quarter of 2024 and file a proposal before the summer of 2025.

INVESTMENT BARRIERS

With few exceptions, EU law generally requires that any company established under the law of one Member State must receive national treatment in all other Member States, regardless of the company's ultimate ownership. Laws and regulations pertaining to the initial entry of foreign (*i.e.*, non-EU) investors, however, are largely still in the purview of individual Member States. As discussed below, the policies and practices of Member States can have a significant impact on U.S. investment.

Member State Measures on Investment

- *Croatia*: While Croatia generally affords foreign investors the same treatment as domestic investors, Croatian law restricts non-EU foreign ownership and control in certain sectors, such as inland waterways transport, maritime transport, rail transport, air to ground handling, freight-forwarding, publishing, ski instruction, and primary mandated healthcare.
- *Cyprus*: Cypriot law imposes restrictions on non-EU foreign ownership in certain sectors and activities. For example, only EU citizens have the right to register as construction contractors in Cyprus, and non-EU investors are not allowed to own a majority stake in a local construction company.
- *Hungary*: In 2020, the Hungarian Parliament passed a law requiring the reporting of foreign investments to the government in certain sectors, including transportation, healthcare, energy, tourism, defense, finance, and information technology. The Hungarian Government will grant approvals on the basis of the impact of the notified investment on the public interest, public safety, or public order, among other factors. This process is separate from Hungary's national security-based investment screening mechanism, which was established in 2018. Although this legislation was originally set to expire on December 31, 2022, it was extended in December 2021 without a date of expiry. Stakeholders report that there are key differences between the two investment screening mechanisms, including their scopes, definitions, implementing ministries, and review procedures, which lead to complexities and delays with investing in Hungary.
- *Italy*: U.S. companies have complained that unclear processes and lengthy delays have hindered their ability to apply for and obtain licenses for energy exploration and satellite services. Once licenses have been obtained, U.S. companies have faced legal and bureaucratic hurdles that have hindered their ability to get concessions.
- *Latvia*: U.S. investors have reported that the judicial system in Latvia can present significant challenges, particularly in regard to insolvency proceedings that often take several years to resolve.

There also have been reports of abuse by both insolvency administrators and bad-faith creditors who have used insolvency proceedings to seize control of assets and companies and to extract unwarranted settlements and fees. U.S. stakeholders also continue to voice similar concerns about civil cases.

In 2017, Latvia enacted amendments to its Law on Land Privatization in Rural Areas that, among other things, prohibit foreigners who do not possess a working knowledge of the Latvian language from purchasing agricultural land. In June 2020, the CJEU found that the law violated European law. Despite the CJEU decision, Latvia has taken no action to change the law.

- *Poland:* U.S. investors report that the Polish tax system continues to be a problem because of its complexity, unpredictability, and generally short time periods between the announcement and entry into force of legislation.

Polish law limits non-EU citizens to 49 percent ownership of companies operating in air transport, radio and television broadcasting, and airport and seaport operations. In addition, the Polish Government has expressed a desire to increase the percentage of domestic ownership in some industries such as media, banking, and retail, which have large holdings by foreign companies, and has employed sectoral taxes and other measures to advance this aim.

- *Portugal:* While Portugal generally affords foreign investors the same treatment as domestic investors, Portuguese law limits foreign ownership of companies engaged in the production, transmission, and distribution of electricity; the production of gas; the pipeline transportation of fuels; wholesale services of electricity; retailing services of electricity and non-bottled gas; and, services incidental to electricity and natural gas distribution. Concessions in the electricity and gas sectors are assigned only to companies with their headquarters and effective management in Portugal.

SUBSIDIES

Various financial transactions and equity arrangements in the EU raise questions about the role of state funding in supporting or subsidizing private or quasi-private organizations, including in the manufacture of civil aircraft.

Government Support for Airbus

In October 2019, after 15 years of litigation, the WTO authorized the United States to take \$7.5 billion in trade countermeasures in the dispute against the EU, France, Germany, Spain, and the United Kingdom regarding their illegal subsidies for the Airbus consortium.

On June 15, 2021, the United States and the EU announced a cooperative framework to address the large civil aircraft disputes. The cooperative framework suspended each side's tariffs related to this dispute for five years. The United States and the EU also agreed to principles for government support in this sector, including their shared intent that any financing for the production or development of large civil aircraft be on market terms. The United States and EU further agreed to collaborate on jointly analyzing and addressing non-market practices of third countries that may harm our large civil aircraft industries.

Over many years, France, Germany, Spain, and, to a much lesser extent, Belgium, have provided subsidies to Airbus-affiliated national companies to aid in the development, production, and marketing of Airbus's large civil aircraft. These governments have financed from 33 percent to 100 percent of the development

costs (launch aid) for all Airbus aircraft models. They have also provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, marketing assistance, and research and development funding, and have applied political and economic pressure on purchasing governments. The cooperative framework affirms the EU's intent to provide future funding only on market terms.

In addition to these subsidies, the EU maintains aeronautics research programs that are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. EU Member State governments have spent hundreds of millions of euros to create infrastructure for Airbus programs.

The United States will monitor any government financing of Airbus closely.

Subsidies for Fruit and Vegetables

The EU Common Market Organization (CMO) provides a framework for market measures under the EU's Common Agricultural Policy, including for measures related to the promotion of fruit and vegetables. Implementing rules covering fresh and processed products are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives.

In 2015, a new basic payment scheme and greening payments were introduced, replacing the single payment scheme. Direct payments also are paid to support certain processing sectors, including, for example, peaches for juicing in Greece. The general lack of transparency around the distribution of EU subsidies at the Member State level in the fruit and vegetable industry raises questions about whether the payments are decoupled from production, and U.S. producers remain concerned about potential hidden subsidies. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

OTHER BARRIERS

Pharmaceutical Products

On April 26, 2023, the European Commission published a proposal to revise the EU's general pharmaceutical legislation. The proposal included a new directive and a new regulation relating to medicinal products for human use intended to address, in part, regulatory protection for innovative medicines and create more favorable procedures for marketing authorization. This would provide incentives for companies to launch simultaneously across the EU. However, the conditions attached to the incentives include factors that may not be fully within outside the control of companies, such as processing times for marketing authorization and reimbursement determinations in each EU Member State. The European Commission also published on October 24, 2023, a "Communication on Addressing medicine shortages in the EU," which adopted a set of actions to address critical shortages of medicines and enhance the security of their supply in the EU. The United States is monitoring both developments.

Member State Measures on Pharmaceutical Products

U.S. pharmaceutical stakeholders have expressed concerns about several EU Member State policies affecting market access for pharmaceutical products, including non-transparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement. These policies have been identified in several Member States as described below. Stakeholders have also expressed concerns over inconsistent and lengthy time periods for pricing and reimbursement decisions. U.S. industry stakeholders

have grown increasingly concerned about policies that are being formulated with little opportunity for engagement. In addition, changes to EMA policy regarding disclosures of clinical trial data, including potential disclosure of confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization, are also of concern to stakeholders. The United States continues to engage with the EU and individual Member States on these matters.

- *Austria:* U.S. pharmaceutical companies continue to express concerns about reimbursement pricing decisions by the statutory insurance providers association that are non-transparent and not preceded by a meaningful opportunity for stakeholder engagement.
- *Belgium:* U.S. industry stakeholders report that domestically manufactured medicines are permitted a price premium of up to 10 percent on the manufacturing cost component when calculating their manufacturer's selling price. Imported products are only eligible for up to a five percent price premium. Meanwhile, initiatives intended to lead to faster market access for new innovative drugs have been slowly, and incompletely, implemented.
- *Czech Republic:* Although the Czech Republic's system for determining pharmaceutical pricing and reimbursement for innovation remains challenging for U.S. companies, many report the situation has improved after new legislation came into effect in early 2022. Still, U.S. companies continue to express concerns regarding non-transparent and lengthy reimbursement processes.
- *France:* U.S. stakeholders have expressed concerns that the process of gaining market access for drugs in France is slower than elsewhere in the EU, resulting from delays in reimbursement approvals of as much as 19 months after marketing authorization, compared to the no more than 16 months required by EU law. A drug is effectively not on the market until it receives reimbursement approval.
- *Greece:* U.S. pharmaceutical industry stakeholders have continued to raise major concerns about the lack of transparency or opportunities for meaningful stakeholder input into the application of policies. Stakeholders have also raised concerns about lengthy reimbursement timelines and inconsistent application of pricing and reimbursement processes.
- *Hungary:* U.S. pharmaceutical industry stakeholders express concerns regarding delays in decision-making and reimbursement and lengthy processes for making changes to the list of drugs approved for reimbursement. U.S. pharmaceutical industry stakeholders note the lack of opportunity to provide input into these pricing and reimbursement processes.
- *Ireland:* Pharmaceutical industry stakeholders, including many U.S. firms, continue to express concerns over the Irish Government's delays in reimbursement decisions. Access to new drugs and innovative medicines are subject to a lengthy decision process.
- *Italy:* U.S. healthcare industry stakeholders face an unpredictable business environment in Italy, which includes the Italian Government's highly variable implementation of complex pricing and reimbursement policies, and have raised concerns about reimbursement delays for pharmaceutical products and delayed payments for medical devices. Moreover, the average time Italian public hospitals take to pay medical device suppliers continues to exceed the maximum period permitted by EU law. U.S. industry stakeholders continue to request that the Italian Government address these issues.

- *Poland:* U.S. stakeholders have expressed concerns over the lack of opportunity for meaningful stakeholder input into Poland’s rulemaking and tendering processes, as well as the transparency of reimbursement rules for pharmaceutical products. U.S. industry stakeholders report that Poland’s pricing and reimbursement system is backlogged, taking more than 844 days on average from regulatory approval to patient access. The United States will continue to urge Poland to engage meaningfully with stakeholders with respect to their concerns.
- *Romania:* Innovative pharmaceutical producers have identified several significant challenges resulting from the Romanian Government’s failure to update, despite repeated requests, the lists of innovative pharmaceuticals that are eligible for reimbursement under the national health system, with numerous applications pending. In addition, both innovative and generic pharmaceutical companies have withdrawn drugs from the Romanian market, as the official prices set in Romania can fall below production costs.
- *Slovakia:* Notwithstanding the Slovakian Government’s adoption in 2022 of legislation designed to streamline and accelerate the approval and reimbursement of innovative medicines, U.S. pharmaceutical stakeholders report that the processes for such approval and reimbursement continue to suffer from a lack of transparency and excessive delays.
- *Spain:* U.S. pharmaceutical industry stakeholders continue to note concerns as to cost containment measures affecting the industry, including lack of clarity around criteria for reimbursement, substantial delays in reimbursement processes, and uneven patient access across autonomous regions.
- *Sweden:* U.S. pharmaceutical industry stakeholders have raised concerns about Sweden’s increasingly challenging and nontransparent environment with regard to pricing and reimbursement.

EU Fluorinated Greenhouse Gas Regulation

The F-Gas policies initially discussed in the Technical Barriers to Trade section of this NTE Report chapter place restrictions on the sale of certain refrigeration and air conditioning equipment, foams, and propellants that use fluorinated gases. In particular, using a quota system, the F-Gas policies limit and, over time, progressively restricts the quantity of hydrofluorocarbons (HFCs) available for use in the EU.

The European Union’s update to its F-Gas policies, Regulation (EU) 2024/573, went into force in March 2024 with additional restrictions relative to current 2030 targets. U.S. stakeholders have expressed concerns that the regulation’s reductions in HFC quotas and imposition of an unrealistic timeline to introduce lower Global Warming Potential (GWP) alternatives risks increasing illegal trade in HFCs. U.S. stakeholders also have expressed concerns that insufficient oversight and enforcement by the EU and many Member States of F-Gas Regulation (EU) 2024/573 will allow for widespread importation of HFCs that exceed, and otherwise are not accounted for under, the EU’s quota system. Such imports negatively affect U.S. exporters of environmentally friendly alternative refrigerants and undermine stated EU environmental objectives. U.S. stakeholders have further expressed concerns that the potentially different approaches between F-Gas Regulation (EU) 2024/573 and REACH’s forthcoming definition of PFAS could pose a compliance challenge.

The United States and stakeholders are also concerned that HFCs are trafficked without the knowledge of customs officials, either hidden or falsely declared on customs forms, or they are imported unaccounted for when already integrated in equipment containing HFCs.

EU Carbon Border Adjustment Mechanism

On October 1, 2023, the EU began implementing the transitional period for its Carbon Border Adjustment Mechanism (CBAM) regulation. Beginning in 2026, CBAM will impose a fee on embedded emissions of imports. The fee will be linked to the carbon price in the EU Emissions Trading System (ETS). While the EU's CBAM will credit imports for explicit carbon prices paid by foreign producers in their home market, U.S. exports may not be eligible for such credits since CBAM does not offer credits for regulatory and other non-price mechanisms for reducing carbon emissions.

GHANA

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ghana's average Most-Favored-Nation (MFN) applied tariff rate was 12 percent in 2022 (latest data available). Ghana's average MFN applied tariff rate was 15.9 percent for agricultural products and 11.4 percent for nonagricultural products in 2022 (latest data available). Ghana has bound 15.1 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 92.0 percent. Ghana has bound all agricultural tariffs in the WTO at an average rate of 96.6 percent—more than six times the average level of its MFN applied rates on agricultural goods. Ghana has bound some selected agricultural goods, including milk and cream, eggs, tea, wheat, and oil cake at 15 percent. Nearly 99 percent of Ghana's tariffs on industrial goods are unbound at the WTO.

Consistent with the Economic Community of West African States (ECOWAS) Common External Tariff (CET), Ghana applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and (5) 35 percent duty on certain goods that the Ghanaian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline. Ghana was still in the process of adopting the Harmonized Schedule 2022 changes to the CET tariff schedule as of December 2023.

The Customs (Amendment) Act, 2020 (Act 1014) increased the import duty on vehicles and parts from between 5 percent and 20 percent to 35 percent on some specified vehicles such as passenger cars, sport utility vehicles, and light commercial vehicles. Ghana applied the 35 percent tariff rate to vehicles that are less than five years old, retaining the current lower tariffs on older vehicles. Ghana has not notified this proposed tariff change to the WTO.

Taxes

Imports are subject to a variety of fees and charges in addition to tariffs. Ghana's standard value-added tax (VAT) rate of 15 percent is applied to imports. Ghana is not currently imposing its 15 percent VAT on domestically assembled automobiles, although it is applying it to imports of automobiles. The Ghana Revenue Authority announced in April 2022 that, effective immediately, it will begin collecting the 15 percent VAT from nonresident companies or persons that conduct business transactions in Ghana via the electronic transmission of data over communications networks like the Internet. It will also apply a series of other charges to those transactions, with an effective tax rate of more than 22 percent.

Like all ECOWAS countries, Ghana imposes a 1 percent ECOWAS levy on all goods originating from non-ECOWAS countries to finance the activities of the ECOWAS Commission and Community institutions. Ghana also imposes a 0.2 percent levy on imports from outside African Union (AU) Member States to fund its contribution to the AU.

Other taxes and charges have proliferated in recent years. Under the Ghana Export-Import Bank Act, 2017, Ghana imposes a 0.75 percent levy on all nonpetroleum products imported in commercial quantities.

Effective through 2024, Ghana imposes a special levy of 2 percent on all imports, except for machinery and equipment listed under Chapters 84 and 85 of the Harmonized System and some petroleum products and fertilizers.

Ghana imposes taxes on imported items such as rice, poultry, printed materials, and electricity—a 15.0 percent VAT, a 2.5 percent Ghana Education Trust Fund levy, a 2.5 percent National Health Insurance levy, and a 1.0 percent COVID-19 Health Recovery levy. In principle, these taxes are chargeable on the value of goods and services produced or provided in Ghana, but the government is largely unable to exact the taxes from domestic retailers, who rarely comply. All four of these charges are imposed on most other imported items as well as their domestically produced equivalents.

Non-Tariff Barriers

Import Bans and Import Restrictions

Ghana requires registration certificates for imports of food, cosmetics, pharmaceuticals, and agricultural goods. Since 2014, Ghana has banned the importation of tilapia and has limited the issuance of import permits for corn, poultry, and poultry products, although the government no longer enforces a domestic purchase requirement as a condition for import.

Since 2019, the Ministry of Agriculture has issued and renewed poultry import permits on an *ad hoc* basis, and the issuance and renewal application and approval processes lack transparency, leading to uncertainty for traders.

Under the Customs (Amendment) Act, 2020 (Act 1014), imports of vehicles older than 10 years are prohibited. The implementation continues to be delayed.

Ghana imposed a temporary ban on the importation of excavators to regulate their use in illegal mining, effective May 2019. Import exemptions are granted on an exceptional basis, but the issuance is often delayed.

Foreign Exchange Restrictions

On November 17, 2022, the Bank of Ghana announced the temporary withdrawal of foreign exchange support for the importation of goods classified as “non-critical” or “non-essential.” Affected goods include rice, poultry, vegetable oils, pasta, and fruit juice, as well as ceramic tiles and toothpicks. This restriction was expected to remain in place until May 2023, but as of December 2023, there had been no review and the restriction remained in place.

Ghana defends its action as part of efforts to ensure the country’s foreign exchange reserves while encouraging domestic production and consumption of import substitutes; however, Ghana is unable to meet domestic demand for poultry meat and rice with domestic production. U.S. rice and poultry exports are down significantly since Ghana first implemented its foreign exchange restrictions in 2021. In 2023, U.S. rice exports were significantly lower, under \$400,000, down from \$3.9 million during 2021. In 2023, U.S. poultry meat exports were \$57.2 million, down from \$92.6 million during 2021.

Customs Barriers and Trade Facilitation

Ghanaian customs practices and port infrastructure continue to present major obstacles to trade. Officials have introduced risk management approaches; however, the majority of imports are still subject to inspection on arrival. Anecdotal reports suggest between 60 percent and 80 percent of imports are still

subject to physical inspection or scanning, causing delays. This is well beyond Ghana's announced goal of reducing inspections to roughly 10 percent of imports, based on risk for agricultural products. Importers report erratic application of customs and other import regulations, lengthy clearance procedures, and corruption. The resulting delays can contribute to unnecessary demurrage charges and product deterioration, resulting in significant losses for importers of perishable goods.

The Customs Division of the Ghana Revenue Authority (GRA) has taken on the inspection and valuation role once occupied by five licensed destination inspection companies. This has slightly reduced delays, although the high rate of physical inspections noted above remains an impediment. Ghana has launched several initiatives since 2017 to support online information and processing of trade transactions, including the development of a National Single Window. In September 2017, Ghana introduced electronic ("paperless") cargo clearance at ports to reduce clearance times.

Although Ghana's Customs Act of 2015 (section 67) indicates that customs valuation should primarily be based on transaction value or the price actually paid or payable for goods imported into the country, in practice, stakeholders indicate that the GRA often applies a benchmark to determine customs valuation for every imported product or uses the higher of the benchmark or the transaction value. The GRA Customs Technical Services Bureau (CTSB) uses a customs valuation database that includes data from customs valuation databases of various tax authorities from other countries. The GRA CTSB subscribes to these data on an annual basis. Data from these entities, together with the GRA's own data, are then used to determine the benchmark values. Although the GRA CTSB's customs valuation may address the concern about under-invoicing goods and under-collecting duties, a system of risk management to assess transaction value trends of imported goods can identify real under-invoicing, without imposing potential inaccurate benchmarking on all goods.

Imported vehicles in Ghana are subject to a customs examination fee of 1 percent. Section 60 of the Customs Act of 2015 indicates that valuation for purposes of the tariff and other duties and charges should be based on the first purchase price, then discounted by fixed amount by age. In practice, to establish the customs value of imported vehicles, the GRA Customs Division uses a system of online vehicle identification number information and age-based value benchmarking for each vehicle. This system tends to overvalue used vehicles, in particular. Imported used vehicles more than 10 years old incur an additional charge ranging from 12.5 percent to 20.0 percent of the cost, insurance, and freight value.

Ghana ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Ghana has not yet submitted notifications related to: import, export, and transit regulations. This notification had been due to the WTO on July 22, 2022, according to Ghana's self-designated TFA implementation schedule.

Ghana has not yet notified its customs valuation legislation to the WTO and has not yet responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards

The Ghana Standards Authority (GSA) develops Ghanaian national standards and adopts international standards for most products. The GSA has over 3,356 national standards on, *inter alia*, building materials, food and agricultural products, household products, electrical goods, and pharmaceuticals. Ghana has

adopted 29 ECOWAS standards. The Ghanaian Food and Drugs Authority (FDA Ghana) is responsible for enforcing standards for food, drugs, cosmetics, and health items.

High Risk Goods

Ghana classifies some imports as “high risk goods” (HRGs) that must be inspected to ensure they meet Ghanaian or international standards. Since January 2019, the GSA ceded its responsibility of verifying a certificate of analysis or a certificate of conformance at Ghanaian ports to Bureau Veritas and Intertek. Under a process called the EasyPASS Program, either Bureau Veritas or Intertek, after satisfactory verification, issues an EasyPASS Certificate (certificate of conformity), which is used to facilitate customs clearance. While exporters pay fees ranging from 0.35 percent to 0.50 percent of the FOB to Bureau Veritas or Intertek; importers in Ghana are required to register with the GSA and pay an annual registration fee, ranging from \$20 to \$4,000, depending on the type of products they import. Upon arrival of goods at a port in Ghana, the GSA checks the validity of the EasyPASS Certificate before releasing a consignment for clearance.

The GSA classifies these HRGs into 11 broad groups (reduced from 20 in 2019 after ceding the inspection of food, cosmetics, and pharmaceutical and household chemical products to FDA Ghana), including toys, sports equipment, electrical appliances, and chemical products. Stakeholders have found this classification system vague and confusing. According to GSA officials, they classify these imports as high risk because they pose “potential hazards,” although that phrase remains undefined in law or regulation.

Food Products

FDA Ghana ensures that all food products comply with the GSA General Labelling Rules, which include food expiration and shelf-life dates. Prepackaged foods to be imported for distribution or sale for local consumption must have at least two-thirds of their shelf-life intact at the time of clearance from the port of entry. Goods that do not meet shelf-life requirements are rejected and must be re-exported or destroyed under the supervision of FDA Ghana at the expense of the importer. The United States has asked for clarification regarding the requirement’s legitimate objective.

Automobile Policy and Standards

Ghana’s Automotive Development Policy of 2019 aimed at creating a domestic automotive industry as part of Ghana’s industrialization plans. It is targeted at attracting automotive assembly manufacturers to invest in Ghana through tax incentives and other facilitation measures such as import incentives. The government was unable to implement the policy by its target deadline of May 2023 and did not propose a new timeline for implementation. The automotive policy could have a significant impact on U.S. exports to Ghana. In 2023, the United States exported \$185 million in new and used automobiles and vehicle parts to Ghana, representing 21.7 percent of U.S. total exports to Ghana.

In December 2019, Ghana also established compulsory vehicle safety and emissions standards for both imported and locally produced vehicles. Ghana’s standards were modeled broadly on the United Nations Economic Commission for Europe (UNECE) 1958 Agreement automobile standards. The GSA noted in the issued standards that it would accept and publish other applicable standards not listed as an amendment or revision after the establishment of their equivalence to the Ghana standards. Following U.S. advocacy with Ghana, the Ministry of Trade and Industry and the GSA incorporated amendments to include U.S. Federal Motor Vehicle Safety Standards self-certification and documentation from the U.S. Environmental Protection Agency. Effective January 2021, all vehicle importers are required to register with the GSA and present a motor vehicle emissions report, a road worthiness test report from an agency approved by the GSA, and a certificate of conformity. In early 2022, Ghana notified the WTO of a new set of standards, a

required vehicle safety inspection upon arrival, and other requirements specifically for used vehicles. As of December 2023, Ghana had not published a list of the accredited bodies and vehicle dealerships for certification to these new requirements.

Sanitary and Phytosanitary Barriers

Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 25 percent for pork, 25 percent for mutton, and 15 percent for poultry. Imported turkeys must have their oil glands removed. The United States continues to engage with Ghana on these import requirements and to urge Ghana to use science- and risk-based approaches to regulate these products.

GOVERNMENT PROCUREMENT

U.S. suppliers of goods and services face difficulties accessing the Ghanaian procurement market. Ghana's procurements are often awarded on a sole-source basis and lack clear timeframes and procedures. Guidelines that apply to current tenders open to international competitive bidding give a margin of preference of 7.5 percent to 20.0 percent to domestic suppliers of goods and services. In July 2020, the Ghanaian Government issued a directive to public institutions for preferential procurement of locally assembled vehicles. Despite the public procurement law, companies report that locally funded contracts lack full transparency. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements. Allegations of corruption persist in the tender processes across ministries.

Ghana is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Ghana is a member of many intellectual property (IP) treaties. Ghana has taken steps to update its IP laws, including by depositing its Instrument of Ratification of the Arusha Protocol for the Protection of New Varieties of Plants in 2023. Government officials periodically inspect import shipments and conduct raids on physical markets for counterfeit and pirated goods. However, concerns remain that IP enforcement activity is weak, and unreasonable delays in infringement proceedings discourage right holders from filing new claims in local courts. Small and medium-sized enterprises, including financial technology and payment companies, have expressed frustration with Ghana's IP environment, especially IP theft. In addition, more public education on IP is needed.

INVESTMENT BARRIERS

Ghana limits foreign participation in several sectors, including telecommunications, banking, fishing, mining, petroleum, and real estate. Foreign investors have expressed concerns about respect for contract sanctity in Ghana, including threats to abrogate contracts, unilateral changes to contract terms, and forced contract renegotiations with the government and its state-owned enterprises. The concerns have undermined confidence in Ghana's investment climate.

Mining

Pursuant to the Minerals and Mining Act, 2006, foreign investors are restricted from obtaining a small-scale mining license for mining operations of an area less than or equal to 25 acres (10 hectares). Non-

Ghanaians may apply for industrial mineral rights only for projects involving an investment of at least \$10 million.

The Minerals and Mining Act mandates compulsory local participation, through which the government acquires a 10 percent equity stake in ventures at no cost. In order to qualify for a mineral license, a non-Ghanaian company must be registered in Ghana, either as a branch office or a subsidiary incorporated under the Companies Act, 2019, or the Private Partnership Act, 2020.

Oil and Gas

The oil and gas sector is subject to a variety of state ownership and local content requirements. The 2016 Petroleum (Exploration and Production) Act mandates local participation. All entities seeking petroleum exploration and development licenses in Ghana must create a consortium in which the state-owned Ghana National Petroleum Corporation (GNPC) holds a minimum 15 percent participating carried interest and a local Ghanaian firm or individual holds a minimum 5 percent interest. The GNPC has the option to acquire an additional participating interest as determined in the petroleum agreement. The interest of the local Ghanaian firm is not transferable to a foreign company.

The Petroleum Commission issues all licenses, but exploration licenses require additional approval by Parliament. Regulations specify in-country sourcing requirements with respect to goods, services, hiring, and training associated with petroleum operations—standards that many international companies describe as unattainable. These regulations also require mandatory local equity participation for all suppliers and contractors. The Minister of Energy must approve all contracts, subcontracts, and purchase orders above \$100,000 and has the authority to alter the requirements set by law for any specific contract. The criteria for the Minister’s approval of local equity partners in commercial transactions remain unclear, which raises concerns of potential corruption and favoritism in the selection of local equity partners in government-approved concessions or contracts. Noncompliance with these regulations may result in a criminal penalty, including imprisonment for up to five years.

The Petroleum Commission applies registration fees and annual renewal fees on foreign oil and gas service providers, which, depending on a company’s annual revenue, range from \$70,000 to \$150,000, compared to fees of \$5,000 to \$30,000 for local companies.

OTHER BARRIERS

Export Ban

Since 2013, Ghana has banned the exportation of ferrous scrap metals.

In 2021, the government placed a temporary ban on the export of rice, corn, and soybeans. This ban was expected to expire on September 30, 2022; however, as of December 2023, no announcement had been made.

In May 2023, the Ghanaian Government, through the Minister of Lands and Natural Resources, announced a ban on the export of raw critical minerals ore. However, the ban had not been moved to the Parliament for a required vote as of December 2023.

GUATEMALA

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, non-agricultural goods enter Guatemala duty free.

In addition, nearly all U.S. agricultural exports enter Guatemala duty free under the CAFTA–DR. Guatemala eliminated its remaining tariffs on rice on January 1, 2023, and is scheduled to eliminate tariffs on dairy products by 2025. In 2017, Guatemala eliminated its out-of-quota tariff for fresh, frozen, and chilled chicken leg quarters five years early. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phaseout period, with the duty-free quantities expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than the reduction of the out-of-quota tariff. Guatemala is required under the CAFTA–DR to make TRQs available on January 1 of each year. Guatemala monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

Taxes

Guatemalan tax law requires that some companies that purchase imported goods and services from other companies withhold 15 percent of the value-added tax (VAT) paid and seek refunds for the VAT credit that they cannot offset after two years. This process is onerous, and timely refunds are not guaranteed.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

U.S. companies have raised concerns that Guatemala's Tax Authority (SAT) uses an inaccurate reference price database to determine the value of imported goods, erroneously applies database values as minimums rather than as a reference, and compares imports to dissimilar products in the database. Furthermore, when SAT performs investigations of declared values, the review process often results in the detention of the imported product for 20 days or more. Appeals involve a lengthy, opaque process that has lasted up to four

years. In 2022, the U.S. Government engaged with the Guatemalan Government to help introduce an automated system to provide more transparency and help clear shipments more quickly on bond.

Guatemala ratified the WTO Trade Facilitation Agreement (TFA) on March 8, 2017. Guatemala submitted its transparency notification related to providing contact information regarding enquiry points on June 20, 2023. This notification had been due to the World Trade Organization on February 1, 2020, according to Guatemala's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Guatemala requires product registration for food products (e.g., dairy products) from every importer, as well as for animal feed and pet food. Importers are required to submit necessary documents to the Ministry of Public Health and Social Assistance and receive approval before products are sold into the market, even if another importer has already registered that product. Stakeholders have raised concerns that the process is burdensome and can delay the importation process by months.

Sanitary and Phytosanitary Barriers

In response to a U.S. Government request for more transparent quarantine protocols at ports, in 2021 the Ministry of Agriculture, Livestock and Food (MAGA) published Ministerial Decree 57-2021, which establishes official quarantine protocols for plant and animal health. In addition, in response to industry complaints that quarantine inspections break the cold chain, the Intraregional Organization for Plant and Animal Health (OIRSA), to which the MAGA delegates quarantine inspection and fumigation services, now also conducts inspections within refrigerated spaces at Quetzal Port. OIRSA also authorized construction of a cold room within Santo Tomas Port, which became operational in 2023. OIRSA's continued inspection of all imported fresh produce causes delays, and the U.S. Department of Agriculture has asked the MAGA to establish a risk-based inspection system.

GOVERNMENT PROCUREMENT

Government institutions have been required to use the online government procurement system, GUATECOMPRAS, to track Government of Guatemala procurement processes since March 2004. Although GUATECOMPRAS initially improved the efficiency and transparency of government tendering processes, U.S. suppliers have expressed reluctance to bid on Guatemalan public procurement tenders because of corruption in procurement. As of December 2023, the Guatemalan Congress was considering a new government procurement law that would create 24 different procurement modalities, of which only 5 appear to be competitive. The proposed new law would also change GUATECOMPRAS to a system that could be used only as a record of historic information on government procurement. Experts have warned that the proposal would weaken the use of GUATECOMPRAS as a transparency tool.

Foreign suppliers must appoint a national representative to represent the interest of the company in Guatemala.

Guatemala is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Guatemala remained on the Watch List in the [2023 Special 301 Report](#). Although the country generally has a strong legal framework, and intellectual property (IP) protection appears to have improved, concerns remain. IP enforcement activities remain limited and appear inadequate in relation to the scope of the problem due to resource constraints and poor coordination among law enforcement agencies. The production of counterfeit apparel with little interference or deterrence from law enforcement continues to be a significant concern. Other concerns include the sale of counterfeit pharmaceuticals and government use of unlicensed software. Major cable television providers and content distributors agreed in 2018 to not renew contracts to rebroadcast U.S. network signals due to signal piracy of U.S. broadcasted networks. However, cable signal piracy remains a problem, and online piracy through Internet Protocol Television services is also a concern. The United States continues to urge Guatemala to ensure that its IP enforcement agencies receive sufficient resources and to strengthen enforcement, including with respect to criminal prosecution, administrative and border actions, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process, and will continue to monitor Guatemala's implementation of its IP obligations under the CAFTA–DR.

SERVICES BARRIERS

Professional Services

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Additionally, public notaries must be Guatemalan nationals.

INVESTMENT BARRIERS

A number of U.S. companies operating in Guatemala complain that complex and unclear laws and regulations and inconsistent judicial decisions effectively operate as barriers to investment.

LABOR

The U.S. labor enforcement case brought against Guatemala under Article 16.2.1(a) of the CAFTA–DR was formally concluded in 2017 with the issuance of the panel's final report. Nevertheless, labor concerns—including with respect to the right of association, the right to organize and bargain collectively, and acceptable conditions of work—persist in the port, agriculture, apparel, and agricultural processing sectors and the U.S. Government continues to engage Guatemala.

OTHER BARRIERS

Bribery and Corruption

The CAFTA–DR contains public sector anti-bribery commitments and anticorruption measures in government contracting, designed to ensure that U.S. firms are guaranteed a fair and transparent process to sell goods and services to a wide range of government entities.

U.S. stakeholders have expressed concerns that corruption in Guatemala constrains successful investment. The Ministry of Governance in Guatemala, which is responsible for security at ports, airports, and land

borders in Guatemala, operates through three police task force units known as DIPAFRONT (Ports, Airports, and Land Border Division), SGAIA (Anti-narcotics Analysis General Sub direction), and UCC (Container Control Unit). These units started operations in the middle of the pandemic, independently from the other operating authorities at ports, such as the MAGA and Guatemala's Customs authority, which have memoranda of understanding to carry out joint inspections. In response to a U.S. Coast Guard requirement, 100 percent of Guatemalan exports to the United States need to pass inspection by at least one of the three units. The Government of Guatemala is also subjecting imports to inspections by these authorities, and importers complain that inspectors are afforded unchecked discretion about which shipments to inspect and that inspections are not integrated into existing inspection processes, resulting in additional delays at already busy ports. As DIPAFRONT, SGAIA, and UCC have their own independent inspection ramps, importers report corruption at multiple steps to avoid shipments being sent through the secondary ramp.

GULF COOPERATION COUNCIL

The Gulf Cooperation Council (GCC) is comprised of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE).

TRADE AGREEMENTS

The United States–Bahrain Free Trade Agreement

The United States–Bahrain Free Trade Agreement (FTA) entered into force on August 1, 2006. Under the FTA, as of January 1, 2015, Bahrain provides duty-free access to all U.S. exports.

The United States–Kuwait Trade and Investment Framework Agreement

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Kuwait.

The United States–Oman Free Trade Agreement

The United States–Oman FTA entered into force on January 1, 2009. Under this Agreement, as of January 1, 2019, Oman provides duty-free access to all U.S. exports.

The United States–Qatar Trade and Investment Framework Agreement

The United States and Qatar signed a TIFA in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Qatar.

The United States–Saudi Arabia Trade and Investment Framework Agreement

The United States and Saudi Arabia signed a TIFA in July 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Saudi Arabia.

The United States–United Arab Emirates Trade and Investment Framework Agreement

The United States and the UAE signed a TIFA in March 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the UAE.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

GCC Member States apply an *ad valorem* Common External Tariff (CET) of five percent on the value of most imported products, with several commodity-specific exceptions.

Kuwait's exceptions include 417 basic foodstuffs, agricultural, medical, and pharmaceutical items that are exempt from customs duties.

Qatar's exceptions include more than 600 goods, wheat, flour, rice, feed grains, and powdered milk that are exempt from customs duties. Certain products, including alcohol, are subject to a 100 percent tariff. Urea and ammonia are subject to a 30 percent tariff, and steel to a 20 percent tariff.

Saudi Arabia's applied tariff rates range from 6.5 percent to 40.0 percent on goods that compete with domestic industries. In June 2022, the Zakat, Saudi Arabia's tax and customs authority, increased customs duties on 99 products, primarily foodstuffs, beverages, and industrial and agricultural products. The increased tariff rates range from 5.5 percent to 25.0 percent. Since July 2021, preferential market access under the GCC tariff agreements no longer applies to goods made in free trade zones or using Israeli inputs.

The UAE's exceptions include 811 items that are exempt from customs duties, including imports by philanthropic societies and the diplomatic corps, military goods, personal goods, used household items, gifts, and returned goods.

Taxes

In 2016, GCC Member States agreed to introduce common GCC excise taxes on products including carbonated drinks (50 percent). U.S. beverage producers report that the excise tax structure for carbonated drinks, which also applies to sugar-free carbonated beverages but exempts GCC manufactured sugary juices, disadvantages U.S. products, and fails to address public health concerns.

Kuwait introduced legislation to implement the common GCC excise taxes in the National Assembly in 2018. It remains under debate.

Qatar implemented the common GCC excise taxes in January 2019, as well as an excise tax for "special purpose goods," which includes alcohol and pork (100 percent).

The UAE implemented the common GCC excise taxes in October 2017.

U.S. industry continues to seek reimbursement for claims related to the UAE's value-added tax (VAT) on goods and services dating back to January 2019. U.S. defense contractors are exempt from the five percent VAT on goods and services provided to the U.S. military in the UAE, as stipulated in the bilateral Defense Cooperation Agreement. The UAE has stated it will provide a one-time retroactive reimbursement once all U.S. defense contractors have provided their comprehensive updates to the UAE Federal Tax Authority database. Per the Federal Tax Authority database, all future reimbursements will be made quarterly according to a bilaterally approved list that will be updated annually.

Non-Tariff Barriers

Import Bans and Restrictions

Kuwait prohibits the importation of a range of goods, including used medical equipment and automobiles that are more than ten years old.

Saudi Arabia prohibits the importation of 37 categories of products, including alcohol and pork products.

The UAE restricts the importation of a number of products including alcoholic beverages and products, industrial methyl alcohol, methylated and medicated spirits, pork products, medicinal substances, and agricultural pesticides. The UAE bans the importation of all waste-derived fuel.

Import Licensing

Kuwait maintains an import licensing regime for a wide variety of products. Importers of products subject to import licensing must be citizens of Kuwait or be Kuwait-based brokers and are required to register with the Ministry of Commerce and Industry.

In Oman, importers of food and agricultural commodities are required to obtain an import permit prior to shipping the product from the country of origin. Companies must obtain a special license for the importation of certain products, including alcohol, livestock, and poultry. The process of obtaining a license can be complicated, significantly adding to the time it takes to import goods.

Qatar requires an import license for the importation of most products. The Qatari Government issues import licenses to Qatari citizens, Qatari partners in limited liability companies, and to foreign-owned entities operating in Qatar that are registered with the Ministry of Commerce and Industry. On occasion, Qatar has established special import procedures through government-owned companies to address increases in demand. Only authorized local agents of foreign firms are allowed to import goods produced by the firms they represent. In the telecommunications sector, commercially registered companies in Qatar can import telecommunications equipment by obtaining an Import Authorization License from the Communications Regulatory Authority. The Qatar Distribution Company, a subsidiary of the national air carrier Qatar Airways, has sole authority to import pork and alcohol.

Saudi Arabia requires special approval for the importation of 23 categories of restricted products, including agricultural seeds and wireless equipment.

In the UAE, only UAE-registered companies can obtain licenses to import goods. This licensing requirement does not apply to goods imported into free trade zones. Importation of certain goods for personal consumption also does not require an import license.

Import Documentation Requirements

Kuwait requires a health certificate from the country of origin for imported cosmetics and pharmaceuticals that is certified by the Kuwaiti Public Authority for Food and Nutrition or the Ministry of Health. Some customs officials have refused to accept certificates of free sale from U.S. state governments, increasing delays in obtaining document approvals.

In order to clear goods from customs zones at air and seaports in Qatar, importers must submit a detailed customs declaration, a bill of lading, a certificate of origin, a *pro forma* invoice, and an import license. The Qatari Embassy, a Qatari consulate, or the Qatari Chamber of Commerce in the United States must authenticate import documentation for U.S.-origin imports. This “consularization” process, or authentication requirement, is the kind of unnecessary burden that the United States seeks to eliminate. Industry representatives have complained about the limited transparency of changes to Qatar’s customs procedures. Qatar’s customs authority charges a fine of one percent on the shipment value if the invoice is not legalized by the Qatari chamber of commerce in the country of origin of the exported products. Imported agricultural products require different certificates depending on the category of the product. Meat, fish, eggs, livestock, live poultry, grains, animal feed, and planting seeds require an original health certificate. All processed or shelf-stable foods exported from the United States to Qatar require a U.S. Department of Health and Human Services Food and Drug Administration (FDA) Certificate to a Foreign Government: Food for Human Consumption.

The UAE requires that documentation for all non-agricultural products imported from the United States be authenticated by the Embassy of the UAE in the United States, including delivery orders from the shipping

or line agents, original supplier commercial invoices, certificates of origin, and packing lists. Stakeholders report that this “consularization” requirement is burdensome and costly.

Customs Barriers and Trade Facilitation

Kuwait notified its customs valuation legislation to the World Trade Organization (WTO) in December 2017, but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Kuwait ratified the WTO Trade Facilitation Agreement (TFA) in April 2018. Kuwait notified the self-designation of its implementation dates for each TFA commitment on September 25, 2023. These definitive dates for implementation had been due to the WTO on August 19, 2028. Kuwait has not yet submitted four transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; (3) customs contact points for the exchange of information; and, (4) details on the operation of the single window. The first two notifications had been due to the WTO on February 22, 2017 and the remaining two notifications had been due to the WTO on June 30, 2022, according to Kuwait’s self-designated TFA implementation schedule.

Kuwait does not use a risk management system for clearing food shipments for import, instead requiring customs authorities to inspect every food shipment into Kuwait before it is cleared for entry. This process can add several days to the delivery time, reduce the longevity of the food, and increase costs.

Companies importing U.S. goods into Oman occasionally report difficulties in demonstrating eligibility for preferential tariff treatment under the FTA for goods that enter Oman over land via the UAE. The Royal Oman Police Customs Directorate inconsistently applies requirements for origin marking, segregation of FTA cargo, and other documentation.

Qatar ratified the WTO TFA in June 2017. Qatar has not yet submitted four transparency notifications required by the TFA related to: (1) import, export, and transit regulations; (2) details on the operation of the single window; (3) the use of customs brokers; and, (4) customs contact points for the exchange of information. These notifications had been due to the WTO on February 22, 2017, according to Qatar’s self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Over the years, Saudi Arabia has revised technical regulations for a variety of products to reflect a preference for standards developed by the International Organization for Standardization and the International Electrotechnical Commission. Saudi Arabia has been increasingly reluctant to accept other international standards that may meet or exceed Saudi Arabia’s regulatory objectives, including those developed by U.S.-domiciled organizations through open, transparent, and consensus-based processes. Saudi Arabia’s refusal to accept these other international standards, which are often used by U.S. manufacturers, creates significant market access restrictions for certain industrial and consumer products exported from the United States, including protective footwear, automobiles, electrical equipment, and appliances.

The United States continues to encourage Saudi Arabia to develop and implement effective mechanisms for stakeholder consultation in regulatory decision-making to help ensure that interested parties have

opportunities to provide comments on draft regulations and to provide reasonable time for those comments to be considered. U.S. manufacturers have noted the importance of such consultations as Saudi Arabia develops and implements Corporate Average Fuel Economy (CAFE) regulations, as well as new energy efficiency regulations for a variety of consumer and industrial products, including air conditioners, electrical appliances, lighting, electrical motors, energy usage intensity, tires, and insulation.

Automobiles

U.S. automakers have raised concerns over growing regulatory fragmentation in the GCC. While the Gulf Standardization Organization (GSO) is supposed to set standards for the entire GCC market, individual GCC Member States have instituted unique standards for automobiles that deviate from GCC automobile standards. The United States will be monitoring this issue across GCC Member States going forward.

While Saudi Arabia has historically accepted automobiles built to conform to either U.S. Federal Motor Vehicle Safety Standards or United Nations Economic Commission for Europe (UNECE) 1958 Agreement regulations, Saudi Arabia has taken steps toward solely adopting UNECE regulations. For example, Saudi Arabia adopted a UNECE low rolling resistance tire regulation that effectively excludes tires needed for certain U.S. sport utility vehicles (SUVs) and pickup trucks sold in the Middle East. Saudi Arabia's new electric vehicle certification likewise is based only on UNECE regulations. While Saudi Arabia has largely adopted U.S. CAFE standards, the country's draft CAFE regulation does not contain certain flexibilities used in the U.S. program, which may ultimately lead to reduced sales of certain vehicle types in Saudi Arabia, one of the largest export markets for U.S. automakers.

U.S. automakers also raised concerns about implementation challenges of the UAE Emergency Call (eCall) and Digital Audio Broadcasting (DAB+) requirements. The UAE requires full integration of DAB+ radio, an expensive feature, but the UAE does not have any active DAB+ broadcast stations. The UAE also has its own electric vehicle regulations, which are not consistent with regulations developed by the GSO.

Conformity Assessment Procedures for Hazardous Substances – Electrical Goods

In March 2018, GCC Member States notified the WTO of a draft GSO technical regulation that would establish the rules for the conformity assessment of certain hazardous substances in electrical goods. The measure deviates significantly from common international practice, which typically requires a supplier's declaration of conformity requiring pre-market third-party conformity assessment, and certification from a list of approved accredited bodies. The draft regulation also requires each type of good to be registered annually with the GSO. The United States raised concerns that the proposed GCC regulatory requirements establish procedural requirements that are far more burdensome and costly than other markets regulating the same goods and may dissuade U.S. producers of these products from exporting to the region. The draft regulation has not yet entered into force, and does not make clear whether all of the GCC Member States would accept a single test result or how the measure would be transposed and applied across all Member States.

Saudi Arabia notified to the WTO its draft Technical Regulation for the Restrictions of Hazardous Substances (RoHS) in December 2020, and subsequently published a revised version in the Official Gazette in July 2021. The regulation took effect for small household electrical items on July 4, 2022; implementation for other covered products will follow at scheduled intervals. A revised version of the regulation, published on July 29, 2022, offered additional flexibilities but does not fully address concerns outlined in detailed comments from the U.S. Government and U.S. industry, or similar comments from other trading partners and global industry.

In 2023, the United States sought additional information from Saudi Arabia regarding the precise scope of the regulation, guidance on the process for testing whole equipment and critical components of a product, and clarity on the requirement for suppliers to attach information that may include sensitive intellectual property as a part of their technical file of supporting documentation. Subsequent guidance issued for the regulation has provided some flexibility in the ability of producers to satisfy certification requirements by submitting an SDoC, though it remains unclear whether these flexibilities will be afforded to all importers or only to manufacturers and their legal representatives.

Conformity Assessment and Marking Requirements

The Emirates Conformity Assessment Scheme (ECAS) monitors industry compliance with UAE standards for goods to be sold in the country. The ECAS, initially notified to the WTO in 2004, applies to items such as textiles, building materials, energy drinks, dairy, juice, honey, and organic products. In addition, obtaining the Emirates Quality Mark (EQM) is mandatory for bottled drinking water, natural mineral water, and ice for human consumption. The application of ECAS and EQM to these items duplicates the regulatory system overseen by the MOCCA.

In 2018, Saudi Arabia implemented the Saudi Product Safety Program and launched an online certification and conformity assessment process (Saber) for all imported goods entering Saudi Arabia. Saber covers both regulated and unregulated products. Importers of regulated products must use Saber to initiate a certification request. If the product receives a Product Certificate of Conformity (PCoC), the importer is then issued a Shipment Certificate of Conformity (SCoC). Products requiring PCoCs include, but are not limited to: detergents, building materials, paints, vehicle spare parts, lubricant oils, toys, and textiles. For unregulated products, the importer must use Saber to self-declare whether the product meets a voluntary standard and that the good can be imported into the Saudi market. Following this self-declaration, the importer will be issued a Requester Declaration (S-DoC). An increasing number of U.S. companies have expressed concerns with the new Saber platform, including undue delays, and inconsistencies in product testing fees and clearance processes. The United States has also asked for clarification from Saudi Arabia how the program relates to GCC conformity assessment requirements.

Halal Regulations

In 2020, GCC Member States notified the WTO of a draft GSO technical regulation establishing halal requirements and certification for animal feed. The U.S. animal feed, beef, and poultry industries have raised concerns that the technical regulation places additional requirements on U.S. suppliers without offering additional assurance of compliance. The United States has raised concerns with GCC Member States, noting the unprecedented and potentially trade restrictive nature of the measure.

In October 2022, Qatar expanded application of its halal certification requirement to animal feed, slaughterhouses, handling, packaging, storing, and food additives.

Saudi Arabia suspended imports of U.S. poultry in June 2018 after enforcing halal regulations that ban stunning of poultry prior to slaughter. U.S. officials have informed the Saudi Food and Drug Authority (SFDA) that the U.S. production system and government regulations ensure that poultry is alive prior to the slaughter process and explained the scientific basis how the stunning process immobilizes birds to ensure that the slaughtering process is humane and effective. In 2019, several other trading partners with similar production practices resumed exports to Saudi Arabia, while imports from the United States remain prohibited. Saudi Arabia also maintains halal feed restrictions for imports of meat products from the United States, including a ban on animal protein in cattle feed and restrictions on the feeding of beef tallow to cattle, which limit U.S. beef exports to Saudi Arabia.

In November 2022, the UAE updated halal slaughtering requirements to allow for poultry stunning that does not directly result in death of the animal.

Energy Drinks

In January 2016, GCC Member States notified to the WTO a draft GSO technical regulation for energy drinks, which was revised in March 2022. The U.S. Government and private sector stakeholders raised concerns through bilateral and multilateral fora regarding the draft regulation. These concerns include the proposed marketing-based definition for energy drinks and labeling requirements regarding recommended consumption. Industry stakeholders still report that caffeine-content limitations unduly target energy drinks in GCC Member States. In many cases, such limitations do not apply to other drink products that contain similar or even higher levels of caffeine, such as tea, brewed coffee and other ready-to-drink coffee products.

In September 2021, Bahrain began to implement Executive Regulations for the Public Health Law on Energy Drinks. These regulations: (1) prohibit the sale of energy drinks to individuals under the age of 18 and require all locations selling such products to display a prominent notice of this prohibition; (2) prohibit the sale of such products in restaurants, cafeterias, educational facilities, and health facilities; (3) require prior licensing in order to advertise such products through any form of media; and, (4) ban free samples of such products. In addition, manufacturers are required to include a warning label on energy drinks noting that the product is not suitable for: pregnant and nursing women; individuals allergic to caffeine or other ingredients contained in the product; individuals suffering from heart problems, high blood pressure or diabetes; athletes engaged in exercise; or individuals under 18 years of age.

The United States has submitted comments and held bilateral discussions with Bahrain regarding questions and concerns over the regulations, including the timetable for implementation and the criteria and rationale for some of the requirements. The United States has also raised concerns that Bahrain had accelerated the implementation of the final measure without providing the necessary comment period and without notifying the final measure to the WTO, as required by the WTO Agreement on Technical Barriers to Trade. Bahrain has signaled that it will replace these current regulations with the GCC regulation once that measure is finalized.

Dairy Regulations

In June 2019, Qatar's Ministry of Public Health released a Council of Ministers' circular on both imported and domestically-produced dairy products that implemented limited shelf-life requirements on long life milk and white cheeses. Qatar did not notify the WTO of this regulation prior to implementation. The U.S. Government pressed Qatar on concerning aspects of its regulation in bilateral discussions and at meetings of the WTO Committee on Technical Barriers to Trade. On August 22, 2021, the Ministry issued an update to the June 2019 regulation that expanded its scope, increasing the concerns of the U.S. dairy industry. Qatar again failed to notify the WTO of the new regulation prior to its implementation. The U.S. Government and private sector stakeholders continue to raise concerns with Qatar on this regulation, including the transparency of its implementation and the food safety and food quality rationale of the measure.

Sanitary and Phytosanitary Barriers

Zoning and Compartmentalization

The World Organisation for Animal Health (WOAH) standards on zoning and compartmentalization provide recommendations for safe international trade between countries. Despite following WOAH

guidelines for zoning or compartmentalization in most cases, Saudi Arabia does not recognize the existence of United States zones or compartments in the event that highly pathogenic avian influenza occurs within the United States. The United States continues to press Saudi Arabia to act consistently with WOA guidelines.

MRL Approximation

Saudi Arabia generally follows the Codex Alimentarius Commission (Codex) for maximum residue limits (MRL) for pesticides applicable to grains and horticultural products. However, in the absence of a Codex MRL limit, Saudi Arabia applies MRLs based on EU regulations that are not necessarily based on science-based decision-making and, as a result, could impede U.S. trade.

Facility Listing Requirements

In 2021, Saudi Arabia notified the WTO of new requirements related to pre-export approval for multiple products, including animal and dairy products, grains, and processed vegetables. Saudi Arabia implemented the requirements for honey and seafood products on November 20, 2021, but has not indicated a concrete timeline for implementing facility requirements for other products. This regulation requires an overseas audit, and Saudi Arabia expects the interested establishments and countries to potentially pay related travel expenses. The U.S. competent authorities, which include the U.S. FDA and the U.S. Department of Agriculture Food Safety and Inspection Service, have worked with SFDA to confirm approved U.S. facilities. Discussions between SFDA and the U.S. competent authorities are ongoing.

Agricultural Biotechnology

In May 2020, the UAE issued Federal Law No. 9 regarding the biosafety of agricultural biotechnology products. The law prohibits the import, export, re-export, transit, production, and circulation of any agricultural products with biotechnology content of equal to or higher than 0.9 percent. For agricultural products with biotechnology content less than this threshold, a permit is required. UAE Resolution No. 84 of 2022 regarding the executive bylaws for Federal Law No. 9 of 2020 regarding the biological safety of genetically engineered commodities and their products places several restrictions, requirements, and specifications for the import, transport, circulation, and re-export of such products.

Certification

In 2021, Saudi Arabia began implementation of new regulations that require trading partners to adopt model certificates. The United States has requested Saudi authorities to accept comparable certifications currently issued by the U.S. competent authorities but as of December 2023 they had not yet done so.

Titanium Dioxide

In May 2022, GCC Member States notified to the WTO an amendment to the GSO technical regulations on Additives Permitted for Use in Foodstuffs that bans the use of titanium dioxide as a food additive, in line with EU food additive regulations. Titanium dioxide is an adopted food additive that is included in the Codex General Standard for Food Additives (GSFA). As such, it may be used in specified foods under the conditions of good manufacturing practices as outlined in the Codex GSFA. The FDA continues to allow for the safe use of titanium dioxide as a color additive in foods, subject to certain restrictions, including that the quantity of titanium dioxide does not exceed one percent in weight of the food. In November 2023, the Joint FAO/WHO Expert Committee on Food Additives (JECFA), administered jointly by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), confirmed a reevaluation of titanium dioxide and concluded that there is no safety concern or risk associated

with the use of the substance as food additive. The United States has requested that the GCC Member States allow the use of titanium dioxide based on Codex, justified by science and consistent with the recent JECFA conclusion.

GOVERNMENT PROCUREMENT

The United States–Bahrain FTA contains disciplines on government procurement. The FTA requires covered entities in Bahrain to conduct procurements covered by the agreement in a fair, transparent, and nondiscriminatory manner. Some U.S. companies report that they have faced prolonged issues with the tendering process related to GCC-funded projects.

Bahrain is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2008.

Kuwait's Public Tenders Law No. 49 of 2016 regulates government procurement and requires that any procurement with a value greater than KD 75,000 (approximately \$250,000) be conducted through the Central Agency for Public Tenders. Certain contracts from the Kuwait Petroleum Corporation that exceed KD 5 million (approximately \$16.5 million) are exempt. Ministry of Interior, Defense, National Guard, and core (*i.e.*, drilling and extraction) Kuwait Petroleum Corporation contracts are also exempted. Kuwait provides a 15 percent price preference for domestic and GCC goods, and requires foreign contractors to purchase at least 30 percent of their inputs domestically and to subcontract at least 30 percent of the work to domestic contractors where available.

Kuwait is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

The United States–Oman FTA requires covered government entities in Oman to conduct procurements covered by the Agreement in a fair, transparent, and nondiscriminatory manner. Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals, as per its in-country value requirements. However, Oman may not apply such price preferences to bids offering goods and services from the United States in procurements covered by the United States–Oman FTA.

For most major tenders, Oman invites bids from international firms or firms pre-selected by project consultants, but stakeholders report that in recent years Oman has favored local community contractors and Omani small and medium-sized enterprises (SMEs). Suppliers are requested to be physically present at the opening of tenders and interested persons may view the process on Oman's Tender Board website. Some U.S. companies report that award decisions are delayed, sometimes for years, or that the tendering is reopened with modified specifications and short deadlines.

Oman is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2001.

Qatar's Cabinet Decision 16/2019 stipulates that non-Qatari companies participating in tenders must utilize local goods and services for at least 30 percent of a tender's value, including local raw materials, locally-manufactured goods, transportation services, security, guarding and catering services, or any other local services provided. Cabinet Decision 11/2022 additionally favors local SMEs, by exempting them from providing bonds when bidding for government tenders, and incentivizing greater support for the local economy, by encouraging government clients to consider bidders' in-country value ratios when evaluating bid prices. Participation in government tenders with a value of QAR 5,000,000 or less (equivalent to

approximately \$1.37 million) is limited to local SME contractors, suppliers, and merchants registered with the Qatar Chamber of Commerce.

Qatar is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

Saudi Arabia requires foreign contractors to subcontract 30 percent of the value of any government procurement, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted when no Saudi-owned company can provide the goods or services necessary to fulfill the requirements of a tender. The Saudi Government is in the process of reforming its procurement processes and policies. In addition to offsets, the Saudi Government promotes purchases of goods and services in Saudi Arabia and increasing the percentage of Saudi nationals employed by foreign firms—a policy known as “Saudization.” The Saudi Government currently requires offsets in investments of up to 40 percent of a program’s value for defense contracts, depending on the value of the contract. Saudi Arabia provides a 10 percent price preference for GCC goods used in procurements in which foreign suppliers participate.

Saudi Arabia revised its Government Tenders and Procurement Law in April 2020. The law regulates the contractual relationship between a public or government entity and contractors. U.S. companies have reported that the procurement systems lack transparency. In 2018, the Ministry of Finance launched the Electronic Government Procurement System (Etimad Portal) to consolidate and facilitate the procurement process for the public sector. The General Authority for Military Industries manages Saudi Arabia’s armaments procurement activities.

U.S. companies have reported long delays and difficulties in Saudi Arabia in receiving payments for procurement contracts with national and regional government entities, with some delays lasting more than two years. Delays increased significantly in late 2015, when declining oil revenues prompted the Saudi Government to freeze payments to major contractors, accruing tens of billions of dollars in arrears and leading some companies to lay off workers. Since late 2020, Saudi Arabia has prioritized timelier payments to contractors and uses the Etimad Portal to facilitate payments. U.S. companies continue to report significant payment delays but report that the overall amounts owed to them in 2023 are less than what was owed in 2022.

In November 2022, Saudi Arabia announced its Economic Participation Policy, which requires foreign companies participating in local tenders above SAR100 million to demonstrate an economic contribution to the Kingdom of at least 35 percent of the tender’s total value.

In 2021, Saudi Arabia announced that by January 1, 2024 all international companies must establish a regional headquarters (RHQ) in Saudi Arabia or be barred from bidding on government contracts. Companies bidding on contracts with a cumulative annual value of less than \$266,000 are exempt from this requirement. Key concerns for U.S. companies regarding the RHQ policy include: the absence of a regulatory/legislative text outlining the policy parameters; a lack of clarity on the rights and obligations associated with the RHQ; and a lack of clarity or predictability on the tax regime for RHQs. International companies can obtain RHQ licenses through the Ministry of Investment’s (MISA) “Invest Saudi” website. To be considered an RHQ, a company’s Saudi branch must conduct strategic and management functions including budgeting, business planning, regional strategy reviews, regional market monitoring and operational and financial reporting. An RHQ must have a minimum of 15 full-time employees within its first year of operation, including at least three senior executives. The Saudi Government may award contracts to sole-source technology or intellectual property providers without RHQs. A non-RHQ company can also be awarded a tender if its bid is at least 25 percent less than an RHQ company’s proposal. Contracts for projects outside of Saudi Arabia are not subject to the RHQ policy. It remains unclear whether other

Saudi government entities that do not utilize the Etimad Portal, such as the General Authority for Military Industries, will apply the RHQ policy to their contracting decisions. According to the MISA, the RHQ policy will apply to a company that submits a bid but had not signed a procurement contract by January 1, 2024. The United States has been actively engaged on this issue and continues to press for more clarity regarding this regulation.

In September 2019, the Saudi Government issued a royal decree prohibiting government agencies from granting contracts to foreign consultancy firms, except in circumstances where there are no qualified Saudi alternatives. However, because the royal decree does not define the criteria for exemptions, and does not clarify whether local branches of foreign-owned firms are covered by the prohibition, it remains subject to interpretation. As of 2023, MISA will issue consultancy licenses on a case-by-case basis.

Saudi Arabia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since December 2007.

U.S. companies have raised concerns regarding a lack of transparency in the UAE's government procurement processes, in addition to lengthy delays and burdensome procedures to receive payment.

In March 2022, the UAE Ministry of Economy announced a revised UAE National Program for Emirati SMEs, which gives an advantage to Emirati-owned SMEs by providing them with several new incentives and preferential services, including: registration for federal government procurement tenders, provision of a range of business services from telecommunications to internal audits, and easier access to funding.

Foreign defense contractors active in the UAE market continue to raise concerns about satisfying contractual obligations to enter into an agreement under the Tawazun Economic Program—referred to as an offset agreement by defense contractors. Despite recent reforms to the program, satisfying offset requirements in the UAE remains a challenge for U.S. defense contractors.

In July 2020, the UAE established a national In Country Value (ICV) Program to expand local procurement preferences. In March 2021, the UAE revised the ICV Program as part of its ten-year comprehensive strategy, “Operation 300 Billion,” to promote UAE products. U.S. firms have raised concerns that the ICV Program is not transparent and that criteria change frequently. The UAE has expanded the ICV program to all seven emirates and several other government entities, bringing the total number of participants to 28 federal and local government entities. In February 2023, the Abu Dhabi National Oil Company signed agreements worth \$4.63 billion with 23 companies to locally manufacture materials and supplies for its operations.

The UAE is neither a Party to the WTO Agreement on Government Procurement (GPA) nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

As part of its FTA obligations, Bahrain continues to enact laws to improve protection and enforcement of copyrights, trademarks, patents, and plant varieties. However, Bahrain has yet to accede to the International Convention for the Protection of New Varieties of Plants (UPOV 1991), as required under the FTA. Bahrain's record on intellectual property (IP) enforcement is mixed. Over the past several years, Bahrain has launched several campaigns to block illegal broadcast signals and to prohibit the sale of decoding devices in order to combat piracy of cable and satellite television, and has launched several public awareness campaigns regarding copyright piracy. However, many counterfeit consumer goods continue to be sold openly.

In 2021, the UAE was removed from the Special 301 Watch List after resolving concerns with IP protection of pharmaceutical products, making progress on long-standing IP enforcement issues, and increasing transparency with stakeholders. In 2023, the UAE adopted legislation to combat commercial fraud with significant penalties, and enforcement authorities launched several inspection campaigns targeting counterfeit goods. However, the Deira District markets in Dubai remain in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). In addition, entertainment industry stakeholders continue to press for the establishment of a collective management organization to enable the collection of music royalty payments. Right holders also continue to ask the UAE Telecommunication and Digital Regulatory Authority to engage with domain name registrars and other intermediaries to facilitate effective enforcement actions against copyright infringement, encourage customs authorities to ban the importation of illegal set-top boxes, and put more restrictions on free or paid subscription-based services that unlawfully retransmit TV channels broadcasting copyrighted content.

SERVICES BARRIERS

Oman limits customs brokerage activities to Omani nationals. The United States has raised concerns about the consistency of this limitation with provisions of the FTA.

Financial Services

Foreign bank members of the Kuwait Banking Association may operate in Kuwait. However, foreign banks are subject to a maximum credit concentration limit equivalent to less than half of the largest local bank. Foreign banks may open representative offices but are prohibited from directing clients to borrow from external branches of their bank.

Oman does not permit representative banking offices or offshore banking.

Foreign banks established in Qatar are licensed by the Qatar Central Bank (QCB) or the Qatar Financial Centre Regulatory Authority (QFCRA). The Qatari Government permits foreign banks licensed by QFCRA to establish a physical presence and conduct most types of banking business, including provision of shariah-compliant banking services, in the Qatar Financial Centre (QFC). These banks are not allowed to offer stand-alone retail banking services outside the QFC.

Saudi Arabia limits foreign ownership in commercial banks to 60 percent of any individual bank operation, but investment banks and brokerages can be 100 percent foreign-owned.

Although the UAE Central Bank allows foreign ownership up to 40 percent in national banks, the actual foreign ownership share is far lower. Foreign banks operating onshore are not allowed to open more than eight branches. Foreign banks are subject to a unique corporate income tax at the sub-federal emirate level.

Insurance Services

The UAE only allows foreign insurance companies to operate independently as branches. Foreign equity in domestic insurance companies is limited to 49 percent.

A May 2019 resolution on regulations for reinsurance businesses requires that at least 51 percent of the capital of any insurance company incorporated in the UAE be owned by natural persons who are UAE or GCC nationals, or by legal persons fully owned by UAE or GCC nationals. However, a foreign reinsurance company may seek a license from the regulator to operate as a branch.

In September 2020, the UAE Cabinet amended Council of Ministers Resolution No. 31 of 2019 to include onerous reporting requirements for foreign-owned financial firms, including banks, insurers, and purveyors of other financial products. Companies that are majority-owned by UAE nationals are exempt from these requirements.

Telecommunications Services

Although Kuwait's telecommunications industry is technically open to private investment, in practice, the Kuwaiti Government maintains extensive ownership in the sector, and controls licensing and infrastructure development. Kuwait's telecommunications law gives authorities sweeping power to revoke licenses and block content with little judicial oversight.

Qatar restricts the provision of telecommunications services to locally-licensed entities. Ooredoo and Vodafone Qatar are Qatar's only licensed telecommunications service providers.

The UAE Government maintains majority ownership in Etisalat (e&) and du, which are the only telecommunications service suppliers, Internet service providers, and mobile phone operators in the UAE. In January 2021, both telecommunications providers raised their foreign investment cap to 49 percent, though actual foreign ownership is 8.4 percent for Etisalat and less than one percent for du.

Professional Services

Non-Omani attorneys, including U.S. attorneys practicing in Oman, are prohibited from appearing in courts of first instance. The United States has raised concerns about the consistency of this limitation with provisions of the FTA. In January 2021, Oman barred non-Omani attorneys from appearing or pleading in higher courts in Oman.

Saudi Arabia requires that entities providing certain professional services, including engineering, legal services, accounting, architecture, healthcare, dental, and veterinary services have a Saudi partner. In general, the foreign entity's equity in the joint venture cannot exceed 75 percent of the total investment. In order to avoid the equity cap, a 2017 measure requires foreign engineering consulting firms that are seeking to register a local branch or subsidiary to demonstrate that they have been incorporated for at least ten years and have operations in at least four different countries.

Distribution Services

Only Qatari individuals and domestically-licensed entities are allowed to serve as local commercial agents for foreign firms distributing products or services, except in certain sectors. The Minister of Commerce and Industry can waive the nationality requirement for commercial agents of foreign companies that have direct contracts with the Qatari Government.

UAE's Federal Law No. 11 of 2020 amended the Commercial Agency Law No. 18 of 1981 to require that all commercial agents within the UAE must be UAE nationals, a UAE public joint stock company (PJSC) that is owned at least 51 percent by UAE nationals, a UAE private entity owned by a PJSC meeting the previous requirements, or a UAE private entity that is 100 percent owned by UAE nationals. In December 2022, the UAE authorized foreign entities to sell their products directly in the UAE without an agent, if there is no agent already appointed in the UAE and the principal has not previously had any agreement registered with a commercial agent in the UAE.

BARRIERS TO DIGITAL TRADE

Oman, operating through its government majority-owned telecommunications service providers and through its Telecommunications Regulatory Authority (TRA), periodically slows or blocks access to certain over-the-top services such as Voice over Internet Protocol (VoIP) services. Oman has temporarily lifted a ban on most VoIP services since the start of the COVID-19 pandemic.

The TRA announced in September 2022 a new regulation limiting the provision of Internet voice and video internet protocol services only to companies in the educational, commercial, or medical sectors. The regulation requires service providers to obtain TRA permits and house data servers and equipment in Oman, and it limits the provision of services to corporate customers only (not individuals). The Omani Government has yet to issue clarifying details on the regulation or its implementation. In December 2019, the TRA announced a new regulation limiting the use of international roaming Subscriber Identity Module (SIM) cards for Internet of Things (IoT) devices to a maximum use period of 90 days.

The Qatari Government requires a license for telecommunications and VoIP services providers; however, it grants licenses only to companies intending to charter in Qatar. This requirement serves as a barrier for foreign or Internet-based communications service providers. Ooredoo and Vodafone Qatar are Qatar's only VoIP and telecommunications service providers, and both are majority-owned by state-controlled entities.

In March 2018, Saudi Arabia's Communications and Information Technology Commission (CITC) issued the Cloud Computing Regulatory Framework. This measure granted the CITC broad powers to require cloud and other information and communications technology service providers to install and maintain governmental filtering software on their networks, restricting Internet-based services.

In September 2021, Saudi Arabia enacted the Personal Data Protection Law (PDPL). Stakeholders have noted concerns that the PDPL includes unnecessary data transfer restrictions. The Saudi Arabian Data and Artificial Intelligence Authority (SDAIA) published an amended draft of the PDPL in December 2022 but postponed full enforcement to address feedback received during the public comment period. The SDAIA published additional draft implementing regulations in June 2023, and published the final regulations in September 2023. U.S. companies remain concerned that the PDPL did not clearly include the United States as an approved jurisdiction for data transfers; that the guidelines for compliance and harmonization of sector-specific regulations and the rules for application of "legitimate interest" in transferring data in the healthcare sector are unclear; and that Saudi Arabia did not provide a sufficient implementation period for compliance.

In January 2022, the UAE's Federal Decree No. 45 of 2021 regarding personal data protection (the Data Protection Law) came into effect. Details on implementation of the Decree will be further clarified in the executive regulations for implementing the Data Protection Law, which were still under draft as of December 2023.

Internet Services

The UAE's nationally-controlled telecommunications service suppliers, Etisalat and du, block access to many over-the-top Internet-based communications services, such as VoIP services, video communication services, and messaging services. UAE regulators have declined to intervene, effectively prohibiting market access for foreign suppliers of such services. In March 2020, UAE regulators announced the temporary availability of five applications to support distance learning and remote working amid the COVID-19 pandemic. In 2021 and 2022, UAE regulators continued allowing these applications on a temporary basis. Stakeholders raised concern that Etisalat and du consistently control access to, and quality

of, foreign Internet-based communications services, creating significant market access barriers for U.S.-based Internet services and apps. UAE regulators continue to insist that only national providers can provide these forms of communications services.

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Existing law generally mandates that businesses established in Kuwait must be majority-owned (at least 51 percent) by Kuwaiti or other GCC nationals. However, Kuwait's Foreign Direct Investment Law of 2013 permits the Kuwait Direct Investment Promotion Authority (KDIPA) to authorize, on a case-by-case basis, up to 100 percent foreign ownership in the following industries: infrastructure (water, power, wastewater treatment, and communications); insurance; information technology and software development; hospitals and pharmaceuticals; air, land, and sea freight; tourism, hotels, and entertainment; housing projects and urban development; and investment management. The KDIPA approved the first wholly-owned U.S. business in 2015, and since then has approved 37 additional U.S. companies for up to 100 percent ownership. Notwithstanding these efforts, significant barriers to foreign investment persist, including regulations prohibiting foreigners from investing in real estate, extraction of crude petroleum and natural gas, manufacture of coke oven products and fertilizers, and publishing; long delays associated with establishing new enterprises, which can take as long as 12 months; and difficulty identifying a required local sponsor and agent.

Omani Royal Decree 29/2018 of 2019 banned foreign ownership of real estate and land in certain governorates and areas that the government deems necessary to restrict. However, non-Omanis may purchase residential units in multi-storied commercial and residential buildings in certain areas of the Muscat governorate under usufruct rights (*i.e.*, the right to lease one's property to another person), with certain restrictions. Oman has allowed the establishment of real estate investment funds (REIF) to encourage new inflows of capital into Oman's property sector. The regulations permit foreign investors, as well as expatriates in Oman, to own shares in REIFs.

Qatar's Law 1/2019 on Regulating the Investment of Non-Qatari Capital in Economic Activity generally limits foreign ownership to 49 percent of an enterprise and requires majority ownership by one or more local Qatari investors. However, foreign investors may apply to the Ministry of Commerce and Industry for up to 100 percent foreign ownership. Full foreign ownership in the banking and insurance sectors and commercial agencies is prohibited unless the Qatari Cabinet grants special approval. In April 2021, the Qatari Government permitted foreign investors up to 100 percent ownership of companies listed on the Qatar Stock Exchange, including in the banking and insurance sectors, subject to compliance with the Qatar Central Bank. Foreign investment in national oil and gas companies, or companies with the right of exploration of national resources, cannot exceed 49 percent.

Saudi Arabia generally permits up to 100 percent foreign ownership in most sectors, but foreign investment is prohibited in 10 sectors, including oil exploration, drilling, and production; security and detective services; fisheries; tourist guidance services related to religious pilgrimage; and food catering services to the military. For sectors in which foreign ownership is permitted, foreign investors are generally required to satisfy several conditions, including investing more than \$50 million in the Saudi economy over five years and meeting sector-specific localization requirements. These conditions have limited the ability of foreign investors to exercise full ownership in these sectors.

Only "qualified foreign investors" (QFI) designated by Saudi Arabia's Capital Market Authority are permitted to buy directly the shares or convertible debt of an issuer listed on the local Tadawul stock

exchange, with their investments capped at 10 percent of any individual company. Cumulative foreign ownership cannot exceed 10 percent of the total Tadawul market capitalization or 49 percent of any individual company. Entities eligible for QFI status include banks, brokerages and securities firms, insurance companies, investment funds, and government and government-related entities with at least \$500 million in assets under management.

Pursuant to amendments to the UAE Commercial Companies Law in 2020, there is no longer a requirement that UAE or GCC nationals own at least 51 percent of the shares of a UAE company. In 2021, the UAE began to implement these legislative changes that allow up to 100 percent foreign ownership in more than 1,100 listed commercial and industrial business activities. However, foreign investment remains restricted for commercial agencies or companies engaged in strategic activities, including the military, banking, insurance and re-insurance, and telecommunication sectors, or certain professional activities such as consultancies.

LABOR

The United States and Bahrain have been engaged in labor consultations under Article 15.6 of the FTA since 2013 regarding Bahrain's obligations under Article 15.1. The United States formally requested consultations after the U.S. Department of Labor released a report in response to a submission from the public. The consultations concern employment discrimination and freedom of association. During 2023, the Office of the United States Trade Representative and the U.S. Department of Labor continued to engage with the Government of Bahrain in an effort to address these and related issues.

HONDURAS

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Honduras applies a harmonized external tariff on most items at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, non-agricultural goods enter Honduras duty free.

In addition, nearly all U.S. agricultural exports enter Honduras duty free under the CAFTA–DR. Honduras eliminated its remaining tariffs on rice and chicken leg quarters on January 1, 2023, and is scheduled to eliminate its remaining tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phaseout period, with the duty-free quantities expanding during that period. Honduras will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff. Honduras is required under the CAFTA–DR to make TRQs available on January 1 of each year. Honduras monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

Taxes

Honduran Customs imposes a 15 percent sales tax on pork rib imports when the product description is in English. However, if the product description is in Spanish, according to Decree 05-2014, the pork ribs are considered basic necessities and are exempt from sales tax. The U.S. Government has asked the Ministry of Finance to revise Decree 05-2014 to treat pork cuts labeled in English the same as those labeled in Spanish for dutiability purposes.

Import Licensing – Poultry and Rice

In 2023, Honduras implemented a new series of complicated licensing systems for the importation of poultry and rice. The new system includes requirements that do not explicitly limit the importation of these products but create reporting requirements to obtain the required import licenses that have created challenges for U.S. exporters. For example, U.S. exporters are required to engage with multiple Honduran Government agencies to apply for a license. After the United States repeatedly raised these concerns, Honduras made some changes to streamline and improve the process. However, importers of rice and poultry still face challenges complying with the requirements. Each administrative agency of the

Government of Honduras—Honduras Ministry of Agriculture, Animal Health and Food Safety Service (SENASA), Ministry of Economic Development, and Customs Office—has approximately eight additional steps necessary for approval. A lack of digitalization requires paper applications and physical signatures where only one Official/Minister can authorize, causing a significant bottleneck for approvals.

The new requirements for poultry are contained in Ministerial Agreement 021-2023, published in the Official Gazette on February 16, 2023, as amended in June 17, 2023, through decree modification 055-2023. The new requirements for rice are contained in Ministerial Agreement 020-2023, also published in the Official Gazette on February 16, 2023, as amended through Ministerial Agreement 104-2023, published on October 31, 2023.

SANITARY AND PHYTOSANITARY BARRIERS

Raw Materials and Additives for Food and Beverage Production

On November 3, 2020, the Sanitary Regulation Agency (ARSA) implemented a new import requirement called the Sanitary Authorization for the Import of Raw Materials and Additives for Food and Beverage Production. This import requirement is redundant with the existing import permit mandated by SENASA for cuts of meat that match ARSA's definition of raw materials for food consumption. Honduras notified this regulatory requirement to the World Trade Organization in April 2019. The U.S. Government continues to engage with ARSA.

INTELLECTUAL PROPERTY PROTECTION

The United States continues to have significant concerns regarding intellectual property (IP) protection and enforcement in Honduras, including with respect to online and software piracy, cable signal piracy, and the distribution and sale of counterfeit and pirated goods. The United States continues to urge Honduras to fully enforce its IP laws. The United States continues to monitor Honduras's implementation of its IP obligations under the CAFTA–DR.

SERVICES BARRIERS

Distribution Services

U.S. firms have reported challenges working with local distributors of products from the United States. Citing the 1977 Honduran Law on Agents, Distributors and Representatives of Domestic and Foreign Companies (Decree Law No. 549), Honduras has required foreign firms to enter into agreements with local distributors to supply local markets and allowed distributors to register as the sole distributor of certain products or brands, which has at times resulted in U.S. exports being barred from import. The application of certain requirements under Decree Law No. 549 that restricted the ability of U.S. producers to distribute U.S. products in Honduras had been eliminated with the entry into force of the CAFTA–DR. However, U.S. firms raised concerns during 2022, under the CAFTA–DR, with certain restrictions being applied to U.S. exports.

INVESTMENT BARRIERS

Honduran law places certain restrictions on foreign ownership of land within 40 kilometers of the country's coastlines and national boundaries. However, the law allows foreigners to purchase properties, with some acreage restrictions, in designated zones established by the Ministry of Tourism to construct permanent or

vacation homes. Inadequate land title procedures have led to investment disputes, including complaints of fraud and official malfeasance, harming U.S. nationals who are landowners in Honduras.

LABOR

The United States and Honduras continue to meet through their contact points, under Article 16.4.3 of the CAFTA–DR. This engagement includes reviewing Honduras’ progress toward implementing specific recommendations from the United States that resulted from a U.S. Department of Labor (DOL) report and the United States–Honduras Labor Rights Monitoring and Action Plan. The [DOL report](#), published in 2015 in response to a submission from the public under the CAFTA–DR raised significant concerns regarding labor law enforcement in Honduras, especially with respect to the right to freedom of association; the right to organize and bargain collectively; the minimum age for work and the worst forms of child labor; and acceptable conditions of work in various economic sectors, including apparel, automotive parts, and agriculture.

HONG KONG

Hong Kong, China (Hong Kong) is a separate customs territory from mainland China, and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China states that Hong Kong can enter into international agreements in commercial, economic, and certain other matters. Hong Kong is a separate and founding Member of both the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

On June 30, 2020, the Chinese Government in Beijing imposed a National Security Law (NSL) on Hong Kong. Among other provisions, Article 31 of the NSL stipulates that an incorporated or unincorporated body, which may include domestic corporations, international businesses, international non-governmental organizations, and media outlets, can be prosecuted for violating the NSL.

On July 14, 2020, following imposition of the NSL, as well as other actions taken by Beijing to undermine Hong Kong's autonomy, the U.S. President issued Executive Order (EO) 13936, reflecting a presidential determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China under the particular laws set out in the Executive Order, and that the situation with respect to Hong Kong constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. Accordingly, EO 13936 directed U.S. Government agencies to suspend or eliminate certain policy exemptions under U.S. law that had given Hong Kong differential treatment in relation to China.

INTELLECTUAL PROPERTY PROTECTION

Hong Kong generally provides strong intellectual property (IP) protection and enforcement and, for the most part, has strong IP laws in place. In June 2020, Hong Kong passed a Trade Marks Ordinance that will enable application of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol) in Hong Kong. As of December 2023, the ordinance had not yet been implemented.

Hong Kong's failure to modernize its copyright system had allowed it to become vulnerable to digital copyright piracy, particularly from streaming websites and illicit streaming devices (ISDs), with negative ramifications for businesses and innovators. In December 2022, Hong Kong adopted the final Copyright (Amendment) Ordinance 2022, which came into operation on May 1, 2023. The updated law introduces a new exclusive right for copyright owners to communicate their works to the public through any mode of electronic transmission, including streaming, and makes a violation of that right subject to criminal sanctions. At the same time, the updated law did not introduce specific provisions to combat ISDs. U.S. stakeholders stated that copyright holders still face uncertainty obtaining effective civil relief against illegal video streaming and that ISDs continue to be a concern in Hong Kong, noting the lack of criminal enforcement against sales of ISDs and the availability of ISDs on electronic-commerce platforms and in independent electronics stores in Hong Kong.

The Customs and Excise Department of Hong Kong investigates IP crimes and routinely seizes IP-infringing products arriving from mainland China and elsewhere. However, U.S. Government officials and private sector stakeholders report that counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong. These products are typically destined for both the Hong Kong market and markets outside of Hong Kong.

INDIA

TRADE AGREEMENTS

The United States–India Trade Policy Forum

The United States and India launched the Trade Policy Forum (TPF) in July 2005 and signed an agreement in March 2010 that formally established the TPF as the primary mechanism for discussions of trade and investment issues between the United States and India. The U.S. Trade Representative and the Indian Minister of Commerce and Industry (MOCI) met in New Delhi, India for the fourteenth TPF Ministerial in January 2024.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

India's average Most-Favored-Nation (MFN) applied tariff rate was 18.1 percent in 2022 (latest data available), which was the highest of any major world economy, with an average applied tariff rate of 14.7 percent for non-agricultural goods and 39.6 percent for agricultural goods.

India maintains high applied tariffs on a wide range of goods, including vegetable oils (as high as 45 percent); apples, corn, and motorcycles (50 percent); automobiles and flowers (60 percent); natural rubber (70 percent); coffee, raisins, and walnuts (100 percent); and alcoholic beverages (150 percent). In addition, India maintains very high basic customs duties (in some cases exceeding 20 percent) on drug formulations, including life-saving drugs and finished medicines listed on the World Health Organization's [list of essential medicines](#). High tariff rates also present a significant barrier to trade in other agricultural goods and processed foods (e.g., poultry, potatoes, citrus, almonds, pecans, apples, grapes, canned peaches, chocolate, cookies, frozen french fries, and other prepared foods used in fast-food restaurants).

India's World Trade Organization (WTO) bound tariff rates on agricultural products are among the highest in the world, averaging 113.1 percent and ranging as high as 300.0 percent. Given the large disparity between WTO bound and applied rates, India has considerable flexibility to change tariff rates for both agricultural and non-agricultural products at any time, creating tremendous uncertainty for U.S. workers, farmers, ranchers, and exporters. The Government of India took advantage of this tariff flexibility in the 2019/2020 budget by increasing tariffs without any notice or public consultation process on approximately 70 product categories, including those covering key U.S. exports in the agricultural, information and communication technology, medical devices, paper products, chemicals, and automotive parts sectors. In its 2020/2021 budget, India further raised tariffs for 31 product categories, including solar inverters and solar lanterns. In its 2021/2022 budget, India further raised tariff rates on imported headphones, loudspeakers, and smart meters used by power distribution companies. In addition, starting in 2014, India has repeatedly raised tariffs on certain telecommunications equipment, including network switches.

In June 2019, following the U.S. withdrawal of India's preferential tariff benefits under the unilateral Generalized System of Preferences (GSP) program due to India's failure to comply with the program's eligibility criteria, India implemented retaliatory tariffs ranging from 1.7 percent to 20 percent on 28 different products imported from the United States, including almonds, apples, walnuts, chickpeas, lentils, phosphoric acid, boric acid, diagnostic reagents, binders for foundry molds, select steel and aluminum

products, and threaded nuts. While the decision to implement these tariffs followed the U.S. withdrawal of India's GSP benefits, India had originally announced the intention to adopt the tariffs in June 2018 in retaliation against the U.S. decision to implement tariffs on U.S. imports of steel and aluminum products under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). In July 2019, the United States launched a WTO dispute settlement proceeding against India challenging the retaliatory tariffs. In June 2023, in the course of discussions related to the termination of outstanding dispute settlement proceedings between the United States and India under the WTO Agreement, India agreed to rescind certain retaliatory tariffs on the following U.S. origin products: chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents. The dispute related to India's retaliatory tariffs was terminated in July 2023. India's Ministry of Finance published a customs notification rescinding the duties effective September 2023. The United States continues to urge India to participate in multilateral efforts to address the problem of global non-market excess capacity in the steel and aluminum sectors.

Taxes

Since 2018, India has applied a 10 percent surcharge on imports, which is assessed on the value of other duties rather than the customs value of the imported product. Certain products are exempted from the surcharge pursuant to official customs notifications. India routinely changes the surcharge on a range of agricultural products. A landing fee of one percent is included in the valuation of all imported products unless exempted through separate notification.

Non-Tariff Barriers

India maintains various forms of non-tariff barriers on three categories of products: banned or prohibited items that are denied entry into India (*e.g.*, tallow, fat, and oils of animal origin); items that require an import license (*e.g.*, certain livestock products, certain chemicals, certain information technology products); and items that are importable only by government trading monopolies and are subject to cabinet approval regarding import timing and quantity (*e.g.*, pharmaceuticals, corn under a tariff-rate quota).

While the MOCI's Directorate General of Foreign Trade (DGFT) maintains a list of all three categories of prohibited or restricted items on its [website](#), India often fails to observe other transparency requirements, such as publication in the Gazette of India of the timing and quantity of restrictions and notification to relevant WTO committees.

Import Restrictions

To manage domestic oversupply, the Indian Government began imposing quantitative restrictions on imports of various pulses in 2017, based on local supply and demand conditions. In February 2022, India issued a notification to restrict the import of mung beans until March 31, 2023, but imports are now allowed without any quantitative restrictions. However, the opaque and unpredictable nature of India's application of quantitative restrictions has affected the ability of U.S. exporters to access the market. The United States continues to raise this issue, along with other trading partners, at the WTO.

India applies restrictions on boric acid imports, including arbitrary import quantity approval restrictions and other requirements that only apply to imports. Long periods of time can pass without the issuance of any import licenses. In addition, the import application specifies that non-insecticidal boric acid can only be imported directly by a domestic manufacturer, which prevents independent traders from importing boric acid for resale purposes. Meanwhile, domestic producers continue to be able to sell boric acid for non-insecticidal use, subject only to a requirement to maintain records showing they are not selling to end users who will use the product as an insecticide. India has cited state-level court cases in Kerala and Gujarat endorsing the legal rationale for applying the restriction on boric acid imports.

Import Licensing

When assessing whether import licenses are required, India distinguishes between goods that are new and those that are secondhand, remanufactured, refurbished, or reconditioned. India allows imports of secondhand capital goods by end users without an import license if the goods have a residual life of at least five years. India requires import licenses for all remanufactured goods because India does not recognize that remanufactured goods have typically been restored to original working condition and meet the technical and safety specifications applied to products made from new materials. Refurbished items must be no more than seven years old and have a remaining life span of at least five years. U.S. stakeholders have reported that obtaining an import license for remanufactured goods is onerous. Stakeholders noted excessive details are required in the license application, quantity limitations are set for specific parts, and long delays occur between the submission of an application and the grant of a license. A Chartered Engineer's Certificate is also required to import both refurbished goods and used manufactured goods.

On August 3, 2023, the Indian Government announced the immediate restriction of imports of certain information and communications technology products, including laptops, tablets, and servers classified under the Harmonized System (HS) heading 8471. Under the new requirements, which went into effect in November 2023, imports would be allowed only with a valid import license for each product. U.S. exporters have raised concerns over the lack of prior stakeholder consultations. The United States continues to monitor implementation and to raise concerns with India.

Customs Barriers and Trade Facilitation

India's tariff rates are announced with the annual budget and are modified on an *ad hoc* basis through notifications in the Gazette of India. The tariff rates are subject to numerous exemptions that vary according to the product, user, intended use, or specific export promotion program. This renders India's customs system complex and open to administrative discretion.

U.S. exporters have raised concerns regarding India's application of customs valuation criteria to import transactions. Indian customs officials sometimes reject the declared transaction value of an import, especially if it is a product for which India maintains benchmark prices, potentially raising the cost of exports beyond what is expected given India's applied tariff rates. U.S. walnut exporters have raised concerns that Indian importers are under-invoicing certain imported products, disadvantaging U.S. trade. U.S. companies have also faced extensive investigations related to their use of certain valuation methodologies when importing computer equipment. U.S. companies have reported being subject to extensive searches and seizures of imports that do not appear to be risk-based. India's customs authority generally requires extensive clearance documentation, which often leads to lengthy processing delays.

Medical Device Price Controls

India's National Pharmaceutical Pricing Authority (NPPA) caps prices of coronary stents. U.S. companies have raised concerns noting that price controls for cardiac stents do not differentiate on the basis of the cost of production or technological innovation, which dissuades U.S. companies from serving the market.

Ethanol Import Restrictions

Despite ambitious targets for blending ethanol with gasoline, India prohibits the importation of ethanol for fuel use. In addition, the DGFT restricts biofuel imports (HS 2207.20, HS 2710.20, and HS 3826) for non-fuel use to actual users. Since May 2019, the MOCI requires an import license for importing biofuels (HS

2207.20, HS 2710.20, and HS 3826). The MOCI also requires that Indian importers obtain an import license from DGFT to import ethanol for non-fuel purposes.

Agriculture Subsidies

India provides a broad range of subsidies to its large agricultural sector, including credit subsidies, debt waivers, crop insurance, and subsidies for inputs (such as fertilizer, fuel, electricity, and seeds) at both the central government and state government levels. These subsidies, which are of substantial cost to the government, lower the cost of production for India's producers and have the potential to distort the market in which imported products compete. In addition, producers of 25 agricultural products benefit from the government's Minimum Support Price (MSP) program, which utilizes one of the most production- and trade-distorting types of support, market-price support. Rice and wheat account for the largest share of products procured under the MSP program and are stockpiled and distributed through India's public stockpiling system. India's announcement of MSPs can have the effect of providing a subsidy to the entire crop by setting a price floor for India's farmers. The prices are announced before the planting season. Therefore, the MSP bolsters planting decisions, resulting in overproduction and limited demand for imports. In addition, in certain years and for specific products, states have provided additional incentives in the form of "bonuses" above the MSPs announced by the Government of India.

India's public food stockholding program is a large and complex series of programs designed to carry out multiple objectives. India's public stockholding programs are controversial because the government procures food grains and other commodities at guaranteed supported prices through MSP programs rather than at market prices. In the case of rice, in particular, India's excessive subsidization through market-price support has gone far beyond its domestic food security needs and has helped India secure its place as the top global exporter of rice, accounting for more than 40 percent of global rice exports in recent years. India has notified the World Trade Organization (WTO) that it is exceeding its WTO agricultural subsidy limits for rice for the last four years, but it claims the breach is covered under the 2013 interim WTO Ministerial Decision on Public Stockholding for Food Security Purposes. India is leading efforts at the WTO for an expanded permanent solution on public stockholding, which would allow all WTO developing country Members to use unlimited market-price support for purchases of any products associated with a public stockholding program. While WTO Members can procure unlimited quantities of food for public stockholding at market prices and the number of WTO Members utilizing market-price support for procurement is limited, India and others have framed the issue as a food security issue. In addition, in the past, India has used export subsidies to reduce government-held stocks and has permitted exports of certain agricultural commodities (*e.g.*, wheat) from government public-stockholding reserves at below the government's costs.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

The United States has discussed technical barriers to trade (TBT) matters with India through the TPF as well as at, and on the margins of, meetings of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee).

Quality Control Orders for Chemicals and Other Materials

Since 2019, India has made a number of Bureau of India Standards (BIS) standards mandatory for chemicals and petrochemicals, for quality control purposes. India requires that these products have BIS marks before

importation, which can only be issued following a site visit by an Indian inspector to the manufacturing facility. The United States has concerns that stakeholders were not consulted during the development of many of these standards, and has also asked India to clarify timelines for transition periods and license validity. For example, in January 2020, India notified the WTO about the Polyethylene Material for Moulding and Extrusion Quality Control Order (QCO). In April 2021, the Ministry of Chemicals and Fertilizers published an order establishing an initial implementation date of October 15, 2021. The polyethylene QCO introduced and mandated labeling requirements based on the Indian Standard IS 7328:2020 for polyethylene material for molding and extrusion. The QCO requires manufacturers to label the smallest bag or individual unit package delivered to the customer with a “designation code” identifying a range of information about the packaged polyethylene product, such as grades, properties, and applications. This type of package labeling for polyethylene products, if implemented, would be unique to India. In March 2021, the U.S. Government raised concerns over the polyethylene QCO at the WTO, highlighting specific concerns regarding the complexity of the labeling requirements and offered an alternative solution to meet the requirements. The Ministry of Chemicals and Fertilizers implemented the QCO on January 4, 2024 and announced on January 5 that many of the products covered by the QCOs would be exempted. For those products still subject to the QCOs, U.S. industry has asked the Indian Department of Chemicals and Petrochemicals to issue clear guidelines and instructions to the Indian customs authority for both the QCO exemptions and QCO implementation so that imports are not unnecessarily delayed.

Alcoholic Beverages

In July 2019, the Food Safety and Standards Authority of India (FSSAI) published its Food Safety Standards (Alcoholic Beverages) Amendment Regulations and notified the amendments to the WTO. The amendments revised FSSAI’s 2018 mandatory alcoholic beverage standards, which took effect in April 2019. In June 2020, the FSSAI issued a directive to operationalize certain provisions of the standards, but has not clarified the timeline for enforcement of its amended regulations. Although the FSSAI addressed several of the issues that the United States raised with India, some concerns remain, including: (1) the establishment of analytical parameters for a range of naturally-occurring components in distilled spirits; (2) minimum and maximum requirements for ethyl alcohol; (3) the lack of explicit protection for Bourbon, American Rye Whiskey, and Tennessee Whiskey as distinctive products of the United States; and (4) a lack of clarity on definitions related to brand owners, date markings, non-retail containers, and multi-unit packs.

Mandatory Domestic Testing and Certification Requirements for Equipment

In September 2017, India’s Ministry of Communications, Department of Telecommunications, published the Indian Telegraph (Amendment) Rules, which require all telegraph equipment to undergo mandatory testing and certification. Under these rules, in 2019 India implemented the Mandatory Testing and Certification for Telecom Equipment (MTCTE) procedures, which require local security testing for telecommunication products. In May 2021, India’s Telecommunication Engineering Center proposed implementing procedures for the MTCTE program and then further expanded the scope in September 2021 to require mandatory testing for 175 products. U.S. industry remains concerned with the in-country testing and certification requirements. The United States, bilaterally through the TPF and multilaterally in the WTO TBT Committee, has urged India to reconsider its domestic testing and certification requirements; to accept test results from International Laboratory Accreditation Cooperation accredited labs; and, to adopt the use of the Common Criteria Recognition Arrangement.

The United States continues to raise concerns that U.S. electronics and information and communication technology manufacturers have expressed regarding the Ministry of Electronics and Information Technology’s (MEITY) Compulsory Registration Order (CRO). The policy, which took effect in January 2014, mandates that manufacturers register their products and have them certified by laboratories accredited

by the Bureau of Indian Standards, even if the products have already been certified by accredited international laboratories. In October 2021, India increased the coverage of the CRO to 63 product categories and U.S. stakeholders report MEITY plans to continue to expand the CRO coverage. U.S. stakeholders have cited the following as continued issues: lack of government testing capacity; a cumbersome registration process; canceled registrations due to administrative reasons that are unrelated to safety; and additional compliance costs that can exceed tens of millions of dollars, including costs associated with factory-level and component-level testing.

The U.S. Government has recommended that the Indian Government recognize internationally accredited labs, harmonize labeling requirements with global practices, harmonize the validity period of test reports and certification, and eliminate retesting requirements.

Sanitary and Phytosanitary Barriers

The United States has raised concerns about the science and risk basis for India's sanitary and phytosanitary-related trade barriers to food and agricultural imports in bilateral and multilateral fora, including the TPF, the WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee), and the Codex Alimentarius Commission. The United States will continue to make use of all available fora with a view to securing the entry of U.S. agricultural products (including dairy products, alfalfa hay, dried distillers' grains, fish feed, and pet food) into the Indian market.

Agricultural Biotechnology

Products derived from modern biotechnology must be approved by the Genetic Engineering Appraisal Committee (GEAC) before importation or domestic cultivation. The Food Safety and Standards Act of 2006 includes specific provisions for regulating food products derived from genetically engineered (GE) products. India's biotechnology approval processes are slow, opaque, and subject to political influences and do not appear to take into account science-based approval processes for GE products in exporting countries. GEAC's uncertain approval process continues to hamper GE product registrations needed to facilitate trade in food and feed products.

Non-Genetically Modified and Genetically Modified-Free Certificates

In March 2021, the FSSAI implemented an order requiring a non-Genetically Modified (non-GM) origin and "Genetically Modified free" (GM-free) certificate for 24 listed products. Each consignment of these products entering India must be accompanied by (1) a non-GM origin and GM-free attestation on the phytosanitary or health certificate that contains the information specified in FSSAI's order of August 21, 2020, or (2) a non-GM origin and GM-free certificate issued by a regional (*i.e.*, state level) government authority of the exporting country. The 24 products include grains, oilseeds, fruits, and vegetable products, regardless of whether GE varieties of those crops are in commercial production or are being exported to India. India has not provided any scientific or risk-based justification for the requirement. The United States and several other countries have pressed India to rescind the requirement in comments submitted to the WTO TBT and SPS Committees, and continue to engage the Indian Government, including the FSSAI, on the order.

Certificate Requirements

In September 2022, the FSSAI issued a clarification notice to its earlier notification F. No. 1829/Health Certificate/FSSAI/Imports (2021). The notice states that the FSSAI will require a new health certificate for the import of milk and milk products, pork and pork products, and fish and fish products. The certificate contains a number of duplicate attestations already required by the Department of Animal Husbandry,

Dairying, and Fisheries, but also requires new attestations that are not relevant to food safety or based on science. India has indicated that it will continue to add additional commodities to the list of products that require the new certificate. The United States continues to engage with India on this issue.

Foreign Facilities Registration

As of February 2023, the FSSAI requires the competent authorities of exporting countries to provide a list of exporters of milk and milk products; meat and meat products, including poultry and fish; egg powder; infant food; and nutraceuticals to India in the mandated FSSAI format.

Dairy Products

India imposes onerous requirements on dairy imports. India requires dairy products intended for food be derived from animals that have not consumed feeds containing internal organs, blood meal, or tissues of ruminant origin and that exporting countries certify to these conditions. This requirement, along with the recent dairy health certificate requirements, new facility registration requirements, and high tariff rates continue to hamper market access for U.S. milk and dairy product exports to India, one of the largest dairy markets in the world. The U.S. Government continues to press the Indian Government, including through the TPF, to provide greater access to the Indian dairy market.

Distiller's Dried Grains with Solubles

India's regulatory requirements on distiller's dried grains with solubles (DDGS) remain unclear. Since 2015, the GEAC has received at least 11 applications from Indian importers to import U.S. DDGS. Local feed companies, along with the U.S. Government, continue to advocate that DDGS be exempted from further regulatory requirements, noting that DDGS are a processed product and pose no risk to the environment. In July 2018, the GEAC formed the Sub-Committee on Guidelines for Imports of Animal Feed to establish procedures for applications related to the imports of animal feeds, including DDGS. The Sub-Committee submitted recommendations for approval to the GEAC in November 2019. As of the January 2024 TPF Ministerial meeting, the GEAC has not officially confirmed that it will not regulate DDGS as living modified organisms.

In addition, unclear jurisdiction for the approval process for animal feed continues to complicate the process. For example, in December 2019, the FSSAI published Direction 1-95, announcing new requirements for commercial animal feeds and feed materials that are manufactured, imported, or distributed in India. Prior to the publication of Direction 1-95, however, the FSSAI had not regulated the manufacture, import, or distribution of either commercial animal feeds or feed ingredients in India. India may issue an administrative order to clarify the formal regulatory authority of animal feed in 2024.

Alfalfa Hay

The United States continues to pursue market access for alfalfa hay. The U.S. Department of Agriculture Animal and Plant Health Inspection Service and India's Ministry of Agriculture and Farmer's Welfare held several rounds of technical discussions to address India's import requirements. In 2021, India and the United States agreed to a framework for bilateral market access for several agricultural products, including conventional and GE alfalfa hay from the United States. In August 2022, the GEAC issued a "no objection" to imports of GE alfalfa hay from the United States, and referred the matter to the FSSAI. In October 2022, India's FSSAI raised concerns regarding the approval of GE animal feed imports, including alfalfa hay, impeding additional progress on this issue. The United States raised the issue at the 14th TPF Ministerial meeting in January 2024, and India indicated its intention to address import approvals of alfalfa hay and other feeds later in the year.

Poultry

In 2012, the United States commenced WTO dispute settlement proceedings against India's import prohibitions on various agricultural products from the United States, including poultry and poultry products, ostensibly due to concerns regarding avian influenza. The WTO panel and Appellate Body issued reports in favor of the United States. In 2016, the United States requested authorization from the WTO Dispute Settlement Body (DSB) to suspend concessions or other obligations on the grounds that India had failed to comply with the DSB recommendations within the "reasonable period of time" to which the parties agreed. The U.S. request was referred to arbitration. In April 2017, India requested the establishment of a compliance panel, asserting that it had enacted a revised avian influenza measure that complied with its WTO obligations. In September 2023, the United States and India announced an agreement to settle this dispute. As part of the agreement, India agreed to reduce tariffs on certain U.S. products, including frozen turkey, frozen duck, fresh blueberries and cranberries, frozen blueberries and cranberries, dried blueberries and cranberries, and processed blueberries and cranberries. On March 15, 2024, the parties notified a mutually agreed solution to the WTO.

Plant Health Issues

India maintains zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot, that do not appear to be based on risk assessments and that constrain U.S. grain and pulse exports. Bilateral discussions to resolve these issues, including at the senior official level, have achieved little success.

India requires methyl bromide (MB) fumigation at the port of origin as a condition for the importation of pulses. This type of fumigation is not permitted in the United States, so the United States requested that India permit entry of U.S. peas and pulses subject to inspection and fumigation at the port of arrival, to which India acquiesced. India has granted a series of extensions allowing MB fumigation on arrival but has offered no permanent solution. In April 2018, the Indian Government confirmed the extension of the fumigation-upon-arrival waiver for U.S. peas and pulses, including chickpeas, indefinitely until both parties come to an understanding on the U.S. systems-based approach. The U.S. walnut industry requested a change to India's fumigation protocol to allow sulfuryl fluoride and phosphine in place of MB. However, the United States is still awaiting official approval of such change through notification in the Indian Gazette. Similarly, the United States is seeking approval for an alternative treatment to MB fumigation for U.S.-origin in-shell pecans, recommending either a cold treatment or a hot water bath treatment for in-shell pecans. The United States is awaiting a response from the Indian Ministry of Agriculture & Farmers Welfare's Directorate of Plant Protection, Quarantine and Storage as well as approval through notification in the Indian Gazette.

GOVERNMENT PROCUREMENT

India lacks an overarching government procurement policy and, as a result, its government procurement practices and procedures vary among different ministries within the central government. India provides procurement preferences to Indian micro-, small, and medium-sized enterprises and to state-owned enterprises. In defense procurements, India's offset program requires companies to invest 30 percent or more of the acquisition cost of contracts above the threshold value in Indian-produced parts, equipment, or services, which continues to be challenging for manufacturers of high-technology equipment to meet given changing rules and limited opportunities.

In June 2020, the Department of Promotion of Industry and Internal Trade issued the Public Procurement (Preference to Make in India) Order 2020, a revision to the 2017 procurement order mandating preferences

for domestically manufactured goods. The rule was updated again in September 2020 and took immediate effect, instructing each ministry or department to draft a follow-on procurement order that favors domestic suppliers, and permitting ministries and departments to mandate percentages that could be used to benefit Indian suppliers.

The August 2020 changes to General Financial Rules section 161 state that global tender enquiries may not be accepted under \$31 million and further reductions of the minimum requirements related to domestic production cannot be implemented without permission of an appropriate authority. Furthermore, companies must use a third-party or internal auditor to certify the amount of domestic production that will be used if the value is equal to or greater than 10 crore or 100 million rupees (approximately \$1.22 million).

In September 2020, the Ministry of New and Renewable Energy released an order reserving a list of 80 products, including solar cells, modules, wind turbines, and electrical equipment for hydro and biogas for bidding only by suppliers with 50 percent or more Indian content, irrespective of the purchase value. The Ministry of Power also reserved 78 products for local procurement through a similar order published in June 2021.

In April 2020, MEITY issued a notification that entities must procure cellular mobile phones only from local suppliers meeting the domestic production requirement of 50 percent, irrespective of purchase value. A September 2020 MEITY notification specified the mechanism for calculation of domestic production for: (1) desktop PCs; (2) thin clients; (3) computer monitors; (4) laptop PCs; (5) tablets; (6) dot matrix printers; (7) contact and contactless smart cards; (8) LED products; (9) biometric access control/authentication devices; (10) biometric fingerprint sensors; (11) biometric iris sensors; (12) servers; and (13) cellular mobile phones.

India is not a party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2010.

INTELLECTUAL PROPERTY PROTECTION

India remained on the Priority Watch List in the [2023 Special 301 Report](#) due to inconsistent progress on long-standing intellectual property (IP) concerns raised in prior Special 301 Reports. The [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) includes physical and online marketplaces located in or connected to India. The United States and India continue to engage on a range of IP challenges facing U.S. companies in India with the intention of creating stronger IP protection and enforcement in India.

In the field of copyright, policy uncertainty and ineffective enforcement remain concerns. Copyright holders continue to report high levels of piracy, particularly online. Court cases and government memoranda raise concerns that a broad range of published works will not be afforded meaningful copyright protection. Amending Section 31D of the Indian Copyright Act to permit statutory licensing of interactive transmissions, as recommended by a Parliamentary committee in 2021, would have severe implications for copyright holders who make their content available online. The breadth of some licenses available under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses have raised concerns regarding the strength of copyright protection in India. Amendments to the Indian Copyright Act needed to bring India's domestic legislation into alignment with international best practices are absent. India's decision in 2021 to abolish the Intellectual Property Appellate Board (IPAB) and redirect matters previously handled by the IPAB to courts has created uncertainty around adjudication of IP cases and copyright royalty rate setting.

In the field of patents, several factors negatively affect stakeholders' perception of India's overall IP regime, investment climate, and innovation goals. As of December 2023, patent applicants continue to face long waiting periods to receive patent grants, and excessive reporting requirements. Concerns remain with respect to whether Indian authorities will treat as confidential sensitive business information that parties are required to disclose on the current "Statement of Working of Patents" (Form 27). Among other concerns, the potential threat of patent revocations and the procedural and discretionary invocation of patentability criteria under the Indian Patents Act impact companies across different sectors. In the pharmaceutical sector, the United States continues to monitor the restriction on patent-eligible subject matter in Section 3(d) of the Indian Patents Act and its impacts. Pharmaceutical stakeholders continue to raise concerns as to whether India has an effective system for protecting against unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. U.S. stakeholders also express concerns as to whether India has an effective mechanism for the early resolution of potential pharmaceutical patent disputes.

India's overall IP enforcement remains inadequate. U.S. brand owners also continue to report excessive delays in trademark opposition proceedings and a lack of quality in examination. Finally, U.S. and Indian companies have identified trade secret protection as a growing concern and expressed interest in eliminating gaps in India's trade secrets regime, such as through the adoption of trade secret legislation that comprehensively addresses these concerns.

SERVICES BARRIERS

Foreign investment in businesses in certain major services sectors, including financial services and retail, is subject to limitations on foreign equity, and foreign participation in professional services is significantly restricted. In addition, barriers to digital trade and electronic commerce, such as those imposed on electronic payment providers, have secondary effects on a wide variety of services.

Audiovisual Services

The Telecommunications Regulatory Authority's regulations on content aggregation and distribution do not allow bundling of channels or certain types of distribution partnerships. Content aggregation is commonly used internationally, as it allows niche and foreign content to be bundled and sold by domestic partners without a large local presence or sales force. These regulations cause difficulties for small and international content providers because these companies must interact with each of the 60,000 local cable operators, radio broadcasters, and television broadcasters they seek to target.

There are also some limits on foreign ownership in the audiovisual and media sectors, namely FM radio (49 percent), newspapers (26 percent), and digital media firms that upload and stream news and current affairs (26 percent).

Distribution Services

India imposes certain restrictions on foreign direct investment (FDI) in the retail industry. With respect to single-brand retail, foreign investments exceeding 51 percent are contingent on, among other things, a requirement to source at least 30 percent of the value of products sold from Indian sources. India has modified the requirements in recent years, including by allowing firms to offset the sourcing requirement by sourcing products from India for global supply chains.

India caps foreign ownership in the multi-brand retail sector at 51 percent and leaves to each Indian state the final decision on whether to authorize such FDI in its territory. In addition, where FDI is allowed, it is

subject to conditions, including: (1) a minimum investment of approximately \$100 million, at least 50 percent of which must be in “back-end infrastructure” (e.g., processing, distribution, quality control, packaging, logistics, storage, and warehousing); (2) a requirement to operate only in cities that have been identified by the relevant state government; and (3) a requirement to source at least 30 percent of the value of products sold from a subset of Indian enterprises. These conditions on foreign investment diminish the commercial incentive for multi-brand retailers seeking to invest in India’s retail sector.

India prohibits foreign investment in business-to-consumer (or “inventory-based”) electronic commerce. In February 2019, India implemented regulations that expressly prohibit subsidiaries of foreign-owned marketplace-based electronic commerce sites from selling products on their parent companies’ sites. The only exceptions for FDI in inventory-based electronic commerce are for food-product retailing and single-brand retailers that meet certain conditions, including the operation of physical stores in India.

Financial Services

Banking Services

Although India allows privately held banks to operate in the country, the banking system is dominated by state-owned banks, which account for approximately 60 percent of total market share and 67 percent of all Indian bank branches. Most privately owned banks are Indian owned, with foreign banks constituting less than 0.6 percent of the total bank branches in India. Under India’s branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis and their ability to expand is hindered by non-transparent limitations established by the Indian Government on branch office expansion. India caps foreign ownership of private banks at 74 percent and public banks at 20 percent. Foreign ownership of infrastructure companies in the securities markets (such as stock exchanges, commodity exchanges, depositories, and clearing corporations) is limited to 49 percent.

Insurance Services

India maintains an unlevel playing field in the insurance market. State-owned companies are not subject to the same law and prudential supervision as private firms and enjoy various guarantees from the government. Currently, the Indian Government maintains an explicit sovereign guarantee on every Life Insurance Corporation (LIC) policy. As a result, many customers choose to buy LIC policies over those offered by private insurers, giving LIC an unfair competitive advantage.

In March 2021, India passed the Insurance (Amendment) Bill, 2021, which removed restrictions on foreign ownership and control of Indian insurance companies and increased the maximum foreign investment allowed from 49 percent to 74 percent. While this represented progress, the law instituted new limitations, such as calling for a majority of board members to be Indian residents and, if an insurer is incorporated or domiciled outside of India, to maintain a higher solvency requirement for foreign-invested insurers. These requirements also apply to any insurer incorporated in India that has at least 33 percent of its capital owned by investors domiciled outside India or 33 percent of the members of the governing body domiciled outside India.

In 2015, the Insurance Regulatory and Development Authority of India (IRDAI) issued a revision to its regulations governing the provision of reinsurance services in India. The regulations afforded Indian reinsurers a mandatory first order of preference (or right of first refusal) for reinsurance business in India. In 2017, the Reinsurance Experts Committee unanimously recommended that IRDAI implement a waiver process for life insurance products, which it did in 2019. Non-life reinsurance remains subject to a two-step procedure where foreign firms can offer terms to cedents, but every cedent must then first offer the best terms obtained to Indian reinsurers. This results in unequal treatment for foreign reinsurers and

consolidates risk in a small number of Indian reinsurers, which is counter to global best practices of global diversification of risk.

Electronic Payment Services

The United States has continued to raise concerns relating to informal and formal policies with respect to electronic payments services that appear to favor Indian domestic suppliers over foreign suppliers. In November 2020, the National Payments Corporation of India (NPCI), a state-owned company, announced a market share limitation of 30 percent (measured by transactions) for foreign electronic payment service suppliers processing online payments made through India's United Payment Interface (UPI), which is owned and operated by NPCI. Foreign digital payment companies were given until January 2023 to ensure their market shares met the 30 percent limit. The United States also has expressed concern over plans to expand the adoption of a National Common Mobility Card (NCMC) that only uses a domestic proprietary QR code standard, which disadvantages foreign suppliers. India has not yet shared the domestic qSPARC standard, effectively prohibiting firms from participating in the roll-out of the NCMC.

Professional Services

Legal Services

Membership in the Bar Council of India (BCI), the governing body for the legal profession, is mandatory to practice law in India and is limited to Indian citizens. In 2023, the BCI notified "Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022" in the Gazette of India, creating the first step toward allowing foreign law firms to open offices in India for the practice of international and foreign-country law. Stakeholders have commented that the rules are limited in scope and ambiguous—including a clarification issued by the BCI shortly after the notification that appears to restrict international law firms to advising non-Indian clients only—which has limited the impact of the new rules on foreign firms' ability to operate in India.

Accounting Services

Foreign accounting firms face obstacles to entering the Indian accounting services sector. Only accounting firms structured as partnerships under Indian law may supply financial auditing services, and only Indian-licensed accountants may be equity partners in an Indian accounting firm.

Telecommunications Services

Satellite Services

India's Ministry of Information and Broadcasting maintains a preference for Indian satellites to provide capacity for direct-to-home (DTH) subscription television services. In practice, DTH licensees have not been permitted to contract directly with foreign satellite operators and have encountered procedural delays when they have sought to do so. Rather, DTH licensees must procure satellite capacity through Antrix, the commercial arm of the Indian Space Research Organization (ISRO), which in turn only permits foreign procurements if it does not have available capacity on Indian satellites. When ISRO does permit the use of foreign satellite capacity, the foreign satellite operator must sell the capacity to ISRO, which in turn resells the capacity to the end-user with a surcharge. The United States continues to encourage India to adopt an "open skies" satellite policy to allow consumers the flexibility to select the satellite capacity provider that best suits their business requirements and to promote market access for foreign satellite service providers.

BARRIERS TO DIGITAL TRADE

Electronic Payment Services

In 2018, the Reserve Bank of India (RBI) implemented a requirement that all payment service suppliers store all information related to electronic payments by Indian citizens on servers located in India. RBI announced this rule without advance notice or input from stakeholders. In 2019, RBI stated the requirement to store payments data locally also applied to banks operating in India. Foreign firms assert that the data storage requirement hampers the ability of service suppliers to detect fraud and ensure the security of their global networks.

Internet Services

In February 2021, the Indian Government published regulations, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules), to govern a wide range of Internet-based service providers, particularly those that operate social media, messaging, and news and entertainment content in India. The IT Rules require compliance by “significant” social media intermediaries and platforms with five million registered users or more. The IT Rules impose a number of requirements that U.S. stakeholders have identified as concerning. For example, the IT Rules impose personal criminal liability on individual employees in cases where a firm is not in compliance with the rules. The IT Rules also include imposition of impractical compliance deadlines and take-down protocols. Since 2021, U.S. firms have been subject to an increasing number of takedown requests for content and user accounts related to issues that appear politically motivated.

Digital Services Taxation

In 2017, India began assessing a six percent “equalization levy,” a withholding tax on foreign online advertising platforms, with the ostensible goal of equalizing the playing field between resident service suppliers and non-resident service suppliers. However, its provisions do not provide credit for tax paid in other countries for the service supplied in India. The Fiscal Year 2020-2021 budget included an expansion of the equalization levy, adding a two percent digital services tax (DST) on foreign electronic commerce and digital services providers.

The United States and India, along with 137 other jurisdictions, have joined the October 8, 2021, OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce DSTs in the future. On November 24, 2021, the United States and India issued [statements](#) reflecting a political agreement on a transitional approach to India’s DST during the implementation period of Pillar 1 of the Two-Pillar solution. Under this agreement and in defined circumstances, the liability from India’s DST that U.S. companies accrue in India during the interim period will be creditable against future taxes due under Pillar 1 of the OECD agreement. The period during which the credit accrues is from April 1, 2022, until the earlier of either the implementation of Pillar 1 or March 31, 2024. In return, the United States committed to terminate the Section 301 trade action on goods of India and not to impose further trade actions against India with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or March 31, 2024. In coordination with the U.S. Department of the Treasury, USTR continued to monitor the implementation of the political agreement and the transitional approach agreed to by India.

OTHER BARRIERS

Transparency

A lack of transparency continues to affect new and proposed laws and regulations, as well as a lack of uniform notice and comment procedures and inconsistent notification of these measures to the WTO. This, in turn, inhibits the ability of domestic and foreign stakeholders and foreign governments to provide input on new proposals or to adjust to new requirements. U.S. stakeholders continue to report that new requirements are issued with inadequate public notice and comment periods and/or inadequate consultation or notification at the WTO. The U.S. Government continues to raise concerns regarding uniform notice and comment procedures with the Indian Government bilaterally through the TPF and multilaterally in the WTO and other fora.

INDONESIA

TRADE AGREEMENTS

The United States–Indonesia Trade and Investment Framework Agreement

The United States and Indonesia signed a Trade and Investment Framework Agreement (TIFA) on July 16, 1996. The TIFA is the primary mechanism for discussions of trade and investment issues between the United States and Indonesia.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Indonesia's average Most-Favored-Nation (MFN) applied tariff rate was 8 percent in 2022 (latest data available). Indonesia's average MFN applied tariff rate was 8.6 percent for agricultural products and 7.9 percent for non-agricultural products in 2022 (latest data available). Indonesia has bound 96.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 37.1 percent.

Over the last decade, Indonesia has increased its applied tariff rates for a range of goods that compete with locally manufactured products, including electronic products, milling machines, chemicals, cosmetics, medicines, wine and spirits, iron wire and wire nails, and a range of agricultural products. Most Indonesian tariffs on non-agricultural goods are bound at 35.5 percent, although tariff rates exceed 35.5 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 35.5 percent.

In 2020, Indonesia issued Minister of Finance (MOF) Regulation No. 199/2019 to lower the price threshold for import duty exemptions on imported consumer goods (known as consignment goods) from \$75 to \$3. Certain types of books, bags, garments, and footwear are exempted from the regulation.

U.S. stakeholders have asserted that Indonesia continues to apply tariffs in excess of its WTO bound rates for certain categories of information and communication technology products. For example, despite having a WTO bound rate of zero percent for Harmonized System (HS) code subheading 8517, which includes switching and routing equipment, Indonesia appears to be applying a 10 percent duty for these products.

MOF Regulation No. 96/2023, effective on October 17, 2023, imposed new tariff rates on cosmetics, bicycles, watches, and other iron and steel goods. The new rates followed related regulations issued earlier in 2023. Currently, the types of products subject to Indonesia's new tariff rates are bags (15 percent to 20 percent), textile products (5 percent to 25 percent), footwear/shoes (5 percent to 30 percent), cosmetics (10 percent to 15 percent), iron and steel goods (zero percent to 20 percent), bicycles (25 percent to 40 percent), and watches (10 percent).

Taxes

U.S. stakeholders continue to express concerns about the MOF's Directorate General of Taxes' tax assessment process. Such concerns include: a non-transparent and cumbersome auditing process; heavy

finances for administrative mistakes; lengthy dispute mechanisms; and, a lack of legal precedent within the Tax Court.

MOF Regulation No. 110/2018 increased withholding tax rates for 1,147 imported products, including consumer and luxury goods. The stated objective for this policy is to decrease Indonesia's current account deficit by reducing imports of these goods.

Indonesia's current excise tax regime imposes higher excise tax rates on imported spirits than on domestic spirits. The excise tax rates for imported products are 150 percent on spirits and 90 percent on wine.

MOF Regulation No. 41/2022, effective April 1, 2022, increased the number of imported items that are subject to a prepayment of income tax at the time of import under Income Tax Article 22. The regulation adds HS codes for 716 categories of imported goods subject to income tax at a rate of 10 percent of the transaction value. The regulation lists 1,188 HS codes subject to income tax at a rate of 7.5 percent and seven HS codes with an income tax at a rate of 0.5 percent. Stakeholders have raised concerns that the process of claiming a return of excess pre-paid income tax at the time of import can take multiple years and considerable effort.

Non-Tariff Barriers

Import Licensing

Indonesian importers must comply with numerous, overlapping import licensing requirements that impede market access. The Ministry of Trade (MOT) requires all importers to obtain an import license as either an importer of goods for further distribution (API-U) or as an importer for their own manufacturing (API-P); importers are not permitted to obtain both types of licenses. An API-P import license allows companies to import finished products for market testing, after sales service purposes, or for "completing a product line", if the goods are new, consistent with the company's business license, and meet import requirements. Under Government Regulation (GR) No. 29/2021, importers must also obtain a business identification number (NIB) through the new Online Single Submission processing system intended to streamline business license issuance. An NIB can also serve as a valid import license.

MOT Regulation No. 20/2021, amended by MOT Regulation No. 25/2022, aims to synthesize all import-related regulations and serve as an "umbrella" regulation for the management of Indonesia's import policies. The regulation also sets forth a requirement that import licenses for certain commodities be issued based on their commodity balance.

Presidential Regulation No. 32/2022 further provides for a commodity balance policy. The commodity balance policy makes the issuance of import licenses subject to an Indonesian Government assessment of supply and demand for a commodity. The policy was initially implemented for 2022 import licenses for five commodities (sugar, rice, fish, meat, and salt) at the end of 2021. The policy was expanded to cover 19 additional commodities in 2023. Stakeholders have expressed concern regarding the Indonesian Government's lack of stakeholder consultation on this policy.

MOT Regulation No. 20/2021, amended by Regulation No. 25/2022, imposes additional burdensome import licensing requirements for cell phones, handheld computers, and tablets. (*For further information, see the Services Barriers section.*)

Under MOT Regulation No. 68/2020, and its amendment, Regulation No. 78/2020, Indonesia requires import approvals for footwear, electronic devices, and bicycles (except such products imported for market

testing or after sales service purposes) with the stated goal of reducing the volume of consumer goods entering Indonesia in favor of local production.

Import Licensing for Agricultural Products

Despite amending its import licensing regimes several times, Indonesia continues to maintain unjustified licensing regimes for the importation of horticultural products, animals, and animal products. In 2013, the United States challenged Indonesia's restrictions under the WTO's dispute settlement procedures because Indonesia repeatedly failed to address U.S. Government concerns. On December 22, 2016, the WTO issued the panel report, finding for the United States and co-complainant New Zealand on all 18 claims and finding that Indonesia was applying import restrictions and prohibitions that were inconsistent with WTO rules. The WTO Appellate Body subsequently upheld the panel's findings.

Since the Appellate Body report, Indonesia has amended its import licensing requirements several times. Through the issuance of Minister of Agriculture (MOA) Regulation No. 2/2020, imports of horticultural products from countries with a food safety system recognized by the MOA are exempt from the requirement to provide certain quality and safety certificates. This regulation also extends the validity of horticultural product import licenses for 60 days into the following calendar year. MOA Regulation No. 5/2022 affirms the requirement for imported horticultural products to have an import recommendation (RIPH). However, MOT Regulation No. 25/2022 provides that the issuance of import licenses does not require RIPH and will instead be issued on the basis of available supply and demand data if the commodity balance has not been determined.

In 2023, imported agricultural products subject to licensing requirements by government-determined commodity balances include sugar, rice, fish, meat, salt, and corn. Indonesia has not provided a comprehensive list of agricultural products that will be subject to this policy in the future. U.S. stakeholders report that they need to adapt constantly to changing, and often conflicting, implementing regulations from numerous ministries. The United States remains concerned about the lack of transparency in Indonesia's import licensing system for agricultural products and the repeated delays in importers receiving licenses, especially at the start of each calendar year.

Pharmaceutical Market Access

The U.S. pharmaceutical industry has raised concerns regarding the opportunity for meaningful stakeholder engagement in the Indonesian pricing and reimbursement system. Stakeholders report a lack of clarity regarding: how pharmaceutical products are selected for listing on the Indonesian online public procurement catalog system; how price caps are determined; and, whether, and for how long, such products will remain listed.

MOH Regulation No. 1010/2008 requires a foreign pharmaceutical company either to manufacture locally or to entrust another company that is already registered as a manufacturer in Indonesia to obtain drug approvals and import permits on its behalf.

Presidential Regulation No. 10/2021 limits traditional medicine to domestic ownership only. MOH Regulations No. 1010/2008 and No. 1120/2008 state that all foreign pharmaceutical companies operating in the country must manufacture medicines locally or form a partnership with a local manufacturer in order to register or trade their own products.

In January 2023, the Indonesian Government issued Presidential Decree No. 6/2023, requiring medicines, biological products, and medical devices sold in Indonesia and their manufacturing methods (including associated materials, manufacturing processes, storage, and packaging) to be halal certified. The regulation

requires Class D medical devices to be halal certified by October 2039. Stakeholders have expressed concern over the administration of the system, which they contend has lacked adequate consultative processes and does not follow internationally negotiated halal systems.

Import Bans and Other Restrictions

Indonesia tightly controls and regulates imports of sugar and other food commodities, including through annual quantitative import limits based on domestic production and consumption forecasts. Sugar refineries are permitted to import raw sugar based on annual allocations intended to offset idle refining capacity. Some food and beverage companies are permitted to import limited volumes directly, but there remains an expectation to first utilize refined domestic sugar. These import restrictions increase the price of sugar (and other commodities) across the domestic economy. As noted in the import licensing section above, sugar is one of the five commodities subject to the commodity balance policy initially implemented in 2022 per Presidential Regulation No. 32/2022.

State Trading

Presidential Regulation No. 66/2021 established Indonesia's National Food Agency (BAPANAS). BAPANAS is a minister-level institution that directly reports to the Indonesian President and has the authority to coordinate all food- and agriculture-related ministries and agencies, such as the MOA, MOT, Ministry of Industry (MOI), and the state-owned procurement body the Bureau of Logistics (BULOG).

Indonesia imposes restrictions on feed corn imports, limiting the right to import to BULOG. However, some corn imports intended for starch manufacturing are allowed. As Indonesia's sole importer of feed corn, BULOG prioritizes corn distribution to small-holder poultry farmers. The import volume is set based on the level of domestic feed production. Feed millers other than the small-holders who receive corn from BULOG are obligated to use locally-produced feed corn. They have expressed concern that they are unable to obtain feed corn in quantities sufficient to maintain the poultry industry's growth.

BULOG also maintains exclusive authority to import standard unbroken rice. Indonesia has cited food security and price management considerations as the principal objectives of this policy. BULOG is not allowed to import rice before, during, or immediately after the main harvest period. Private firms are only allowed to import broken rice for processing or specialty rice varieties, such as basmati and jasmine rice, for retail and food service. Importers of broken and specialty rice must obtain a special MOA importer identification number. Since 2014, MOA has refused to issue import recommendations for japonica rice to private traders.

Presidential Regulation No. 125/2022 on Government Food Reserves states that BULOG is appointed as Indonesia's sole importer of rice, feed corn, and soybean for government food reserves. Additionally, through MOT Regulations No. 57/2017 and No. 7/2020, and BAPANAS Regulation No. 5/2022, the Indonesian Government sets farmer-level and consumer-level reference prices for corn, soybeans, sugar, shallots, beef, chicken, eggs, and cooking oil, respectively. According to these regulations, BULOG and other state-owned enterprises can intervene in the market when prices are above or below threshold targets. In 2023, BAPANAS tasked BULOG with importing 500,000 metric tons (MT) of feed corn, of which 20,000 MT arrived mid-November 2023. BAPANAS also tasked BULOG to import soybeans for 2024 government soybean reserves.

Customs Barriers and Trade Facilitation

Indonesia notified its customs valuation legislation to the WTO in 2001, but has not responded to the Checklist of Issues describing how the WTO Customs Valuation Agreement (CVA) is being implemented.

U.S. firms continue to report that Indonesian customs officials rely on a schedule of reference prices to assess duties on some imports. Rather than using transaction values as the primary basis of valuation, as required by the CVA, Indonesia's Directorate General of Customs and Excise reportedly makes a valuation assessment based on the perceived risk status of the importer and the average price of the same or a similar product imported during the previous 90 days, rather than based on the transaction value of the good.

MOT Regulation No. 20/2021, amended by MOT Regulation No. 25/2022, requires preshipment verification by designated companies (known in Indonesia as surveyors) for a broad range of products. These include: electronics; textiles and footwear; toys; food and beverage products; and, cosmetics. As of December 31, 2023, Indonesia had yet to notify these measures to the WTO pursuant to the WTO Agreement on Preshipment Inspection.

On December 14, 2022, Indonesia published MOF Regulation No. 190/PMK.04/2022, The Transfer of Self-Consumed Goods, which establishes customs operations for intangible goods, including procedural requirements and classification under Chapter 99 of the Indonesian tariff schedule. The regulation has been in force since January 14, 2023. Stakeholders report that the regulation creates significant administrative burdens on U.S. industries by imposing a new paperwork retention requirement that is undefined and uncertain. The United States raised its concerns about this measure at the WTO Committee on Trade Facilitation in June and October 2023.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Standards and Testing Requirements

MOI Regulation No. 24/2013, as amended by MOI Regulations No. 55/2013 and No. 29/2018, requires that imported toys be tested by a laboratory with a mutual recognition agreement (MRA) with one of Indonesia's product certification bodies. The United States is not aware of any existing MRAs, leaving imported toys subject to mandatory testing in Indonesia in order to obtain certification. U.S. stakeholders have expressed concern about the discriminatory frequency of testing under these regulations, which is required on a per-shipment basis for imports, but only every six months for domestically produced products. MOI Regulation No. 29/2018 introduced an alternative procedure that allows importers to obtain a certification through product testing and an audit of production processes. Indonesia notified this measure to the WTO in November 2018. U.S. manufacturers remain concerned by the lack of clarity about how products can enter the market under the alternative procedure.

In February 2021, Indonesia issued GR No. 28/2021, which requires in-country conformity assessment testing for a wide variety of consumer goods including toys, electronics, and home appliances. GR No. 28/2021 requires that all steps of product testing be conducted by an Indonesian national residing in Indonesia, further complicating product sample collection for products that use a per-shipment testing scheme. The implementing regulation to GR No. 28/2021, MOI Regulation No. 45/2022, entered into force in November 2022, two months prior to its notification to the WTO in January 2023. U.S. stakeholders have reported that the requirements under GR No. 28/2021 have made conformity assessment processes more difficult.

Halal Import Requirements

Under Law No. 33/2014, on Halal Product Assurance, halal certification is mandatory for food, beverages, pharmaceuticals, cosmetics, medical devices, biological products, genetically engineered products, consumer goods, and chemical products sold in Indonesia. All business processes, including production, storage, packaging, distribution, and marketing, are required to comply with this law, which also requires non-halal information to be placed on packaging for non-halal products. The Halal Product Assurance Organizing Agency (Badan Penanggulangan Jaminan Produk Halal, or BPJPH), under the Ministry of Religious Affairs (MORA), leads the implementation of halal certification.

As Indonesia continues to develop regulations to implement Law No. 33/2014, U.S. stakeholders are concerned that Indonesia finalized many of these regulations before notifying the draft measures to the WTO and taking stakeholder comments into account, as required under the WTO Agreement on Technical Barriers to Trade, and as more specifically recommended by the WTO Committee on Technical Barriers to Trade (WTO TBT Committee). MORA Regulation No. 26/2019, which initially set out the transition period for halal requirements, was notified to the WTO in October 2019. MORA Decree No. 748/2021, which outlines a broad range of products requiring halal certification, was notified to the WTO in July 2021, after it had already been adopted in June 2021. Indonesia notified MORA Decree No. 1360/2021 to the WTO in January 2022, but the measure had already entered into force in December 2021.

In November 2023, Indonesia notified to the WTO additional halal regulations that had already been finalized, failing to provide its trading partners the opportunity to provide comments. BPJPH Decree No. 20/2023 enumerates the criteria for Indonesia's halal product assurance system; however, the WTO notification did not provide an effective date. BPJPH Decree No. 77/2023, which states the guidelines for ruminant and poultry slaughter, had already entered into force in September 2023. BPJPH Decree No. 78/2023, which outlines the guidelines for the halal certification of processed food and beverages for direct consumption at restaurants and catering services and requires companies to secure halal certification for products containing non-haram ingredients, also had already entered into force in September 2023. An amendment to BPJPH Decree No. 141/2021, on the determination of service rates for the BPJPH public service agency, had entered into force two years prior, in December 2021.

In addition, Indonesia notified to the WTO in November 2023 two draft regulations concerning guidelines for the accreditation of foreign halal certifying bodies (HCBs) and/or conformity assessments, and the establishment of an HS codification of food and beverage product types required to be halal certified. The United States is concerned that the proposed accreditation regulations create redundant document requests, increasingly onerous requirements for auditors to qualify for scopes, and a new scope-to-auditor ratio policy, all of which are increasing costs and unnecessarily delaying accreditation procedures for U.S. HCBs.

GR No. 39/2021, a revision to the implementing regulations first published in 2019, maintains the original timeline for phasing in mandatory halal certification, including for: food and beverage products (by October 2024); traditional medicines and food supplements, cosmetics, chemical products, and genetically modified organisms, wearable clothing items, household appliances, office products, and class A medical devices (by October 2026); for over-the-counter medicines and class B medical devices (by October 2029); and, for prescription medicines and class C medical devices (by October 2034). In January 2023, Presidential Decree 6/2023, on Halal Certification of Medicines, Biological Product, and Medical Devices, was issued, requiring class D medical devices to be halal certified by October 2039. Also known as the halal positive list, MORA Decree No. 1360/2021 is a living document that includes ingredients or materials that are not required to obtain halal certification.

In accordance with MORA Regulation No. 2/2022, on International Cooperation on Halal Product Assurance, U.S.-based HCBs are eligible to apply directly to BPJPH for recognition, which is required for

HCBs to issue halal certificates for U.S. exports. As of December 31, 2023, BPJPH officials had assessed five U.S. HCBs. The final step to obtaining recognition is for each HCB to conclude an MRA with BPJPH and receive a certificate of accreditation. As of December 31, 2023, BPJPH had accredited one U.S. HCB. Four others are in the process of completing BPJPH's final requirements for recognition.

The United States continues to raise concerns with the implementing regulations for Law No. 33/2014 at the WTO TBT Committee.

Product Testing

Indonesia's National Agency of Drug and Food Control (BPOM) sets out requirements for testing of heavy metals in cosmetics in its Regulation No. 12/2019 which replaced Regulation No. 17/2014. A 2016 BPOM Circular Letter provided additional guidance on the requirements, which are fulfilled through a certificate of analysis that is valid for one year. In practice, Indonesia's Directorate General of Customs and Excise requires each shipment to provide a separate test in addition to the certificate of analysis. These measures appear to be intended to limit imports.

Sanitary and Phytosanitary Barriers

Facility Registration for Animal-Derived Products

Indonesia's animal health and husbandry law (Law No. 18/2009, as amended by Law No. 41/2014) requires companies that export to Indonesia animal-derived products, such as meat, dairy and eggs, to complete a pre-registration process with the MOA. The law allows imports of these products only from facilities that Indonesian authorities have individually approved. MOA Regulation No. 15/2021 maintains this requirement and adds a new provision requiring raw materials used for the manufacturing of animal-derived products to originate from facilities that have already been approved by Indonesia.

Under MOA Regulation No. 15/2021, all establishments seeking to export animal products to Indonesia must undergo inspections to obtain eligibility certificates. As part of this process, and based on GR No. 28/2023, the MOA charges fees for a desk audit of application materials, an on-site facility inspection, and a post-audit desk review. Dairy production facilities are required to pass lengthy technical desk audits. Among all trading partners' registration requirements, U.S. exporters identify Indonesia's as the most burdensome. Other facilities (*i.e.*, meat and rendering) are required to undergo on-site facility inspections and post-audit desk reviews. Indonesia charges fees for transportation and lodging costs for MOA officials conducting inspections in the United States. In total, companies seeking to export to Indonesia could pay more than \$10,000 for each facility's onsite inspection and post-audit desk review. Many of the U.S. companies affected are small businesses that report that the fee is a significant barrier.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of domestic production in government procurement. It also instructs government departments, institutes, and corporations to utilize domestic goods and services to the maximum extent feasible. Presidential Regulations No. 54/2010 (as amended by Regulation No. 16/2018) and No. 38/2015 both require procuring entities to maximize domestic production in procurement, use foreign components only when necessary, and to designate foreign contractors as subcontractors to local companies. Both regulations provide general minimum requirements for domestic production and service provision. Depending on the sector or nature of the project, ministries with authority over the project may impose additional restrictions or requirements.

Indonesia's 2012 Defense Law and Presidential Regulation No. 76/2014 mandate priority for domestic materials and components and require defense agencies to use domestically produced goods and services whenever available. In addition, when an Indonesian Government entity procures from a foreign defense supplier due to lack of availability from an Indonesian supplier, there is a requirement for trade balancing offsets, including by incorporation of domestic production, production offsets, technology transfer, or a combination thereof.

In June 2021, the Indonesian Government had suspended imports of 79 medical device product categories from the government's electronic-catalog (e-Katalog) with minimal notice and without prior stakeholder consultation. Since that time, U.S. stakeholders have frequently raised concerns about their products being withheld from public hospital purchases under the e-Katalog and requested the Indonesian Government allow a sufficient grace period for the transition to local production, assuring patient access to safe and high-quality medical devices. In response, Indonesia offered limited exceptions to mitigate possible disruptions, but has not issued guidelines that companies can use to request exception.

Indonesia is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since October 2012.

INTELLECTUAL PROPERTY PROTECTION

Indonesia remains on the Priority Watch List in the [2023 Special 301 Report](#). Although Indonesia has recently taken steps to improve intellectual property (IP) protection and enforcement, including expanding an IP enforcement task force and increasing efforts to address online piracy, significant concerns remain.

Widespread copyright piracy and trademark counterfeiting (including online and in physical markets) are key concerns. The Mangga Dua Market in Jakarta continues to be listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List), along with multiple online Indonesian marketplaces. Lack of enforcement remains a problem, and the United States urges Indonesia to utilize the IP enforcement task force to improve enforcement cooperation among relevant law enforcement agencies and ministries. The United States also continues to encourage Indonesia to provide an effective system for protection against the unfair commercial use, in addition to unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also remains concerned about Indonesia's law regarding geographical indications.

In March 2023, Indonesia amended its 2016 Patent Law through the Omnibus Law on Job Creation to address certain issues related to local manufacturing and use requirements. Indonesia is in the process of further amending the Patent Law, and the United States continues to urge Indonesia to address remaining concerns, including with respect to the patentability criteria and disclosure requirements for inventions related to traditional knowledge and genetic resources.

The United States also continues to urge Indonesia to fully implement the bilateral Intellectual Property Rights Work Plan and plans continued engagement with Indonesia under the United States–Indonesia TIFA to address these issues.

SERVICES BARRIERS

Audiovisual Services

Indonesia's 2009 Film Law imposes a 60 percent screen quota for Indonesian films. In 2019, the Minister of Education and Culture issued Regulation No. 34/2019, which if enforced, would prohibit dubbing foreign films and prohibit foreign companies from distributing or exhibiting films.

Distribution Services

Logistics services generally are subject to a maximum 49 percent foreign ownership, except for freight forwarding, warehousing and storage services, and distribution, which are capped at 67 percent foreign ownership.

Express Delivery Services

Indonesian law requires that suppliers of intercity courier and express delivery services be majority owned by Indonesians, and that foreign suppliers limit their activities to provincial capitals with international airports and seaports.

Financial Services

Indonesia's central bank, Bank Indonesia (BI), restricts foreign ownership in private credit reporting firms to 49 percent under BI Circular Letter No. 15/49/DPKL.

Under BI Regulation No. 18/40/PBI/2016 on payment transaction processing operations, BI limits foreign ownership of payment companies to 20 percent (but exempts existing investments that exceed this foreign equity limitation).

BI Regulation No. 19/08/2017 on the National Payment Gateway (NPG) requires all domestic retail debit and credit transactions to be processed through NPG switching institutions located in Indonesia and licensed by BI. The regulation imposes a 20 percent foreign equity limitation on firms that wish to obtain a switching license to participate in the NPG, prohibiting the cross-border supply of electronic payment services for domestic retail debit and credit card transactions. BI Regulation No. 19/10/PADG/2017 mandates that foreign firms form partnership agreements with licensed Indonesian NPG switches in order to process domestic retail transactions through the NPG. BI must approve such agreements, and the regulation makes approval contingent on the foreign partner firm supporting development of the domestic industry, including by technology transfer.

Under BI Regulation No. 21/2019, Indonesia established national standards (termed QRIS, or Quick Response Code Indonesian Standard) for all payments using QR codes in Indonesia. U.S. companies, including payment providers and banks, noted concern that during BI's QR code policymaking process, international stakeholders were neither informed of the nature of the potential changes nor given an opportunity to explain their views on such a system, including how it might be designed to interact most seamlessly with existing payment systems.

Indonesia issued BI Regulation No. 22/23/PBI/2020, effective July 2021, to implement BI's 2025 Payment System Blueprint. The umbrella regulation establishes a risk-based categorization of payment system activities and a licensing system. The regulation implemented an 85 percent foreign ownership cap for non-bank payment service operators, also known as front-end payment companies, but foreign investors

may only hold 49 percent of voting shares. The foreign ownership cap for payment system infrastructure operators, or back-end companies, remains at 20 percent. Existing investors are exempted from the old requirements so they may continue to have higher amounts of foreign equity. BI Regulations No. 23/6/PBI/2021 (for front-end payment companies) and No. 23/7/PBI/2021 (for back-end payment companies) went into effect July 2021, and continue to apply foreign ownership rules in accordance with BI Regulation No. 22/23/PBI/2020. Stakeholders have expressed concern regarding BI's lack of consultation prior to issuance of regulations.

In May 2023, BI mandated that government credit cards be processed through the NPG and required the use and issuance of local government credit cards. U.S. payment companies are concerned the new policy will limit access to the use of U.S. electronic payment options.

Health Services

Problematic sectoral regulations remain in place in the healthcare sector, including regulations that require foreign-owned hospitals to have more inpatient beds than is required for domestic hospitals.

Franchising and Retail Distribution Services

Under MOT Regulation No. 71/2019, retail companies are required to prioritize the use of domestic goods and services unless domestic products do not meet a franchisor's quality standards. MOT Regulation No. 23/2021 requires modern shops to set aside promotion areas for products produced by micro-, small, and medium-sized enterprises (MSMEs) and requires business owners with more than 150 stores to franchise their business.

Telecommunications Services

Indonesia has issued a number of measures that make it difficult to import cellular and Wi-Fi equipped products. To support the commodity balance policy, Indonesia issued MOT Regulation No. 20/2021, as amended by MOT Regulation No. 25/2022. Importers are required to become a registered importer to sell directly to retailers or consumers. To qualify for an MOT import license, Indonesia requires importers to provide evidence of contributions to the development of the domestic device industry, or evidence of cooperation with domestic manufacturing, design, or research firms. Companies seeking to import 4G and beyond technology-enabled devices may only do so under a producer's license (API-P), which is generally held by importers of unfinished goods intended for use in the manufacturing process, limiting the ability of foreign producers to sell these devices in Indonesia. Importers are also required to submit product identification numbers and a corresponding certificate from the Ministry of Communications and Information Technology (MCIT). Industry stakeholders have complained that it takes months to get a decision on license requests.

U.S. companies have reported that, in some cases, the MOI is informally limiting import quantities under existing licenses (issued under MOI Regulation No. 108/2012) to protect locally manufactured cell phones, handheld computers, and tablets. Importers of any type of cell phone, handheld computer, or tablet are also subject to MOI Regulation No. 68/2016, which requires importers to obtain an MOI recommendation to establish themselves as registered importers of such devices. A recommendation is only available for local manufacturers, importers in a joint venture with a local manufacturer, or importers of specialized items. Altogether, Indonesia's licensing practices impose significant barriers on the importation of cellphones, handheld devices, and other electronic devices.

BARRIERS TO DIGITAL TRADE

Internet Services

GR No. 71/2019 (GR 71) requires private sector electronic system operators (ESOs) to facilitate supervision by government agencies, including by granting access to electronic systems and data for monitoring and law enforcement purposes. The MCIT issued implementing regulations for GR 71, Regulation No. 5/2020 and Regulation No. 10/2021, which required private sector ESOs, including those providing services on a cross-border basis, to register with the MCIT by July 2022, or be subject to blocking. Failure to comply with government takedown orders for a potentially broad category of prohibited electronic information can also result in blocking. Stakeholders voiced concerns over the lack of clarity of content classifications that fall within the scope of prohibited content, lack of an appeal and adjudication mechanism, and limited turnaround time for ESOs to respond to the MCIT's takedown request. The MCIT intends to impose administrative sanctions under GR 71, which will be further regulated under the draft GR on Non-Tax State Revenue.

MOT Regulation No. 50/2020 requires foreign electronic commerce operators that have either 1,000 transactions in or 1,000 packages delivered to Indonesia per year to appoint a representative in Indonesia and/or register for an electronic commerce foreign business license. Stakeholders have voiced concerns that these requirements, particularly establishing a local representative, create unnecessary burdens for carrying out business operations in Indonesia.

INVESTMENT BARRIERS

Presidential Regulation No. 10/21, as amended by Presidential Regulation No. 49/2021, identifies certain sectors subject to foreign ownership limitations. Foreign investment is limited to 49 percent for enterprises engaged in publishing newspapers and magazines, postal services, and air, land, and sea transportation. Foreign investment is limited to 20 percent for broadcasting service suppliers and certain financial service suppliers. Foreign investment is prohibited for certain activities such as fish processing and shipbuilding.

SUBSIDIES

Indonesia has not submitted a subsidy notification to the WTO since 2019 and has only made one such notification since joining the WTO in 1995.

According to the WTO Secretariat Report on Indonesia's 2020 Trade Policy Review, Indonesia continues to provide fiscal and non-fiscal incentives for manufacturing and exports in connection with its export processing zones and special economic zones programs. These include incentives related to corporate income tax, property tax, import duty, value-added tax, excise and luxury taxes, and local taxes, in addition to assistance on land acquisition, licensing, investment, and labor. Non-tax incentives in the form of loans and interest rate subsidies continue to be available mainly to domestic MSMEs. Additionally, Indonesia provides various forms of official export financing, insurance, and guarantees through the state-owned Indonesia Eximbank and Asuransi Ekspor Indonesia. The United States will continue to urge Indonesia to submit a WTO notification for all of its subsidy programs.

OTHER BARRIERS

Although the Indonesian Government and the Corruption Eradication Commission investigate and prosecute high-profile corruption cases, many stakeholders continue to view corruption as a significant barrier to doing business in Indonesia. Other barriers to trade and investment include: poor coordination

within the Indonesian Government; the slow pace of land acquisition for infrastructure development projects; poor enforcement of contracts; an uncertain regulatory and legal framework; arbitrary tax assessments; and, lack of transparency in the development of laws and regulations. U.S. stakeholders seeking legal relief in contract disputes have reported that they are often forced to litigate spurious counterclaims and have raised growing concern about the criminalization of contractual disputes.

Export Restrictions

As part of the implementation of the 2009 Mining Law, Indonesia prohibits nickel ore exports, one of several recent measures restricting exports of raw materials. The United States has expressed concerns about the impact this measure will have on the stainless steel industry amid ongoing multilateral efforts to address global excess capacity in the steel sector. On December 11, 2019, the United States requested to join consultations initiated by the European Union concerning the consistency of the export ban with Indonesia's WTO obligations and participated in subsequent panel proceedings as a third party. The panel report for this dispute was circulated on November 30, 2022; the panel found Indonesia's export ban on nickel ore to be inconsistent with its WTO obligations. Indonesia filed a notice of appeal on December 12, 2022.

Energy and Mining

In the oil and gas sector, GR No. 79/2010, as amended by GR No. 27/2017, allows the Indonesian Government to change the terms of certain existing production-sharing contracts; eliminate the tax deductibility of certain expenses; change the terms and criteria for cost recovery; and place limits on allowable costs for goods, services, and salaries.

ISRAEL

TRADE AGREEMENTS

The United States–Israel Free Trade Agreement

The United States–Israel Free Trade Agreement (FTA) entered into force on August 19, 1985. Israel implemented phased tariff reductions, culminating in the complete elimination of duties on all non-agricultural products by January 1, 1995. While Israel has eliminated tariffs on non-agricultural goods as agreed, tariff and non-tariff barriers continue to affect a significant number of key U.S. agricultural product exports.

To address the differing views between the two countries over how the FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), which established a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. The United States and Israel completed negotiation and implementation of a successor ATAP in 2004, which granted improved access for select U.S. agricultural products. Originally scheduled to last through December 31, 2008, the 2004 ATAP has been extended 16 times, most recently through December 31, 2024, to allow time for the negotiation of a successor agreement. The current ATAP provides U.S. food and agricultural products access to the Israeli market under one of three categories: unlimited duty-free access, duty-free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel’s Most-Favored-Nation (MFN) rates.

The United States and Israel meet regularly to review the implementation and functioning of the FTA and to address outstanding issues. The United States–Israel Joint Committee is the central oversight body for the FTA and last met on May 24, 2023.

IMPORT POLICIES

Tariffs

Israel’s average Most-Favored-Nation (MFN) applied tariff rate was 3.4 percent in 2022 (latest data available). Israel’s average MFN applied tariff rate was 11.7 percent for agricultural products and 2.1 percent for non-agricultural products in 2022 (latest data available). Israel has bound 75.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.6 percent.

U.S. agricultural exports that do not enter duty free under World Trade Organization (WTO), FTA, or ATAP provisions face barriers, such as high tariffs and a complicated TRQ system. These products include higher-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, fresh and frozen fish, and some processed foods. In 2022, Israel’s Ministry of Finance issued a decree that began a gradual reduction or elimination of tariffs on many agricultural products, including dairy, meat, fresh fruit, and vegetables as part of the Israeli Government’s agricultural reform. Stakeholders estimate that full market access in agriculture could result in increases in U.S. exports to Israel of a variety of agricultural products.

GOVERNMENT PROCUREMENT

Israel has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies that have been awarded government contracts are required to offset

foreign goods or services provided under the contracts by agreeing to localization commitments that require one of the following: (1) investment in local industry; (2) co-development or co-production with local companies; (3) subcontracting to local companies; or (4) purchasing from Israeli industry.

Israel is a Party to the WTO Agreement on Government Procurement (GPA).

Since January 1, 2009, the IC offset percentage for procurements covered by Israel's GPA obligations has been 20 percent of the value of the contract, 35 percent for procurements excluded from GPA coverage, and 50 percent for military procurements. Under the revised GPA, which entered into force in 2014, Israel began phasing out offsets in 2020 and will eliminate offsets by 2029.

U.S. suppliers have indicated that they believe that the size and nature of their offset proposals can be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the consideration of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters often are reluctant to commit to making purchases in Israel in compliance with the IC agreements. As a result, their participation in Israeli tenders is limited.

The inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of significant legal costs for unforeseeable problems resulting from a government contract, most U.S. firms choose to insure against the risk, which raises their overall bid price and reduces their competitiveness, as compared to bids from Israeli firms.

The United States–Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU) is intended to facilitate defense cooperation, in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to Israeli products, has not significantly opened the Israeli market for U.S. suppliers interested in competing for Ministry of Defense procurements. Tenders open to U.S. suppliers require the company to have a local agent or bank account to be able to transact in New Israeli Shekels (NIS).

INTELLECTUAL PROPERTY PROTECTION

The United States remains concerned with certain issues involving Israel's protection and enforcement of intellectual property rights. On copyright protection, although Israel is a signatory to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, Israel has not ratified either. U.S. stakeholders have raised concerns regarding the adequacy of the protection Israel provides against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

JAPAN

TRADE AGREEMENTS

The United States–Japan Trade Agreement (USJTA) and the United States–Japan Digital Trade Agreement (USJDTA) entered into force on January 1, 2020. The United States and Japan continue to monitor implementation of these agreements.

On March 28, 2023, the United States and Japan signed the Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (Agreement). The Agreement will strengthen and diversify critical minerals supply chains and promote the adoption of electric vehicle battery technologies. In particular, the Agreement formalizes the shared commitment of the United States and Japan with respect to the critical minerals sector to facilitate trade, promote fair competition and market-oriented conditions for trade in critical minerals, advance robust labor and environmental commitments, and cooperate in efforts to ensure secure, sustainable, and equitable critical minerals supply chains. The Agreement entered into force immediately upon signature.

The United States continues to urge Japan to remove a broad range of barriers to U.S. exports, including barriers at the border, as well as other barriers to entering and expanding the presence of U.S. products and services in the Japanese market. The United States continues to utilize the United States–Japan Partnership on Trade mechanism as an important vehicle for raising bilateral trade concerns.

IMPORT POLICIES

Tariffs

Japan’s average Most-Favored-Nation (MFN) applied tariff rate was 3.9 percent in 2022 (latest data available). Japan’s average MFN applied tariff rate was 13.4 percent for agricultural products and 2.4 percent for non-agricultural products in 2022 (latest data available). Japan has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 4.6 percent.

While Japan’s average MFN applied tariffs are relatively low for non-agricultural products, certain high tariffs have a negative impact on a range of U.S. industrial goods exports to Japan, such as chemicals, fish, wood products, and jewelry.

Japan is the fourth largest single-country market for U.S. agricultural products, with U.S. exports valued at approximately \$12.0 billion in 2023, despite the existence of tariff and substantial non-tariff market access barriers. While the USJTA removed or reduced tariffs on approximately 90 percent of U.S. food and agricultural exports, there are several important products for which tariffs remain high and limit U.S. market access, including: rice and rice products; certain dairy products; beverages, including mineral waters and fruit juices; processed foods and pet food; table grapes; frozen blueberries; sugar, chocolate, and sweetened cocoa powder.

Fish and Seafood

U.S. fish and seafood exports to Japan totaled \$665 million in 2023. However, tariffs of 3.5 percent to 10.0 percent on several fish and seafood products, such as pollock, herring, salmon, whiting, cod, and fish oil, hamper U.S. exports and reduce margins of Japanese importers who rely on U.S. raw product for their processing operations. Other market access issues include Japan’s import quotas on Alaska pollock and

surimi, cod, Pacific whiting, mackerel, sardines, squid, herring, pollock roe, cod roe, scallops, and kelp. While Japan has reduced tariffs, increased import quota volumes, and eased the administrative burdens associated with those quotas, the remaining import quotas and tariffs continue to present barriers to U.S. exports. U.S. companies report that the process of obtaining quota allocation is expensive and subject to frequent delays. The United States has urged Japan to take further action to reduce and eliminate obstacles to U.S. exports of fish and seafood.

Leather and Footwear

Japan maintains high tariffs on leather, footwear, and travel goods, ranging from 3.5 percent to an *ad valorem* equivalent of approximately 130.0 percent on certain footwear imported from the United States. For example, Japan continues to apply tariff-rate quotas (TRQs) to a limited and tightly controlled volume of leather footwear imports. The tariffs on out-of-quota imports are either 30 percent or ¥ (yen) 4,300 (approximately \$29) per pair, whichever is higher. These tariffs can more than double the cost of imports and negatively affect market access for U.S.-made footwear. Japan also applies TRQs on some raw hides and skins. The United States continues to seek improved market access for U.S. exports in this sector.

Non-Tariff Barriers

Rice

Japan's highly regulated and nontransparent system of importation and distribution for rice limits the ability of U.S. exporters to have meaningful access to Japan's consumers. Japan has established a global TRQ of 682,200 metric tons (on a milled basis) for imported rice. The Grain Trade and Operations Division of the Ministry of Agriculture, Forestry, and Fisheries (MAFF) Crop Production Bureau manages the TRQ through periodic ordinary minimum access (OMA) tenders and through simultaneous-buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. The MAFF releases these stocks exclusively for non-table rice uses, such as industrial food processing, animal feed, and re-export as food aid. Under SBS tenders, only a small amount of U.S. rice imported into Japan—still identifiable as U.S. rice—reaches Japanese consumers. In recent years, SBS tenders have not been filled due partly to the non-market-based price markup that the MAFF imposes on TRQ imports.

Although Japan asserts that the markup is set using supply and demand figures and world pricing, it has not changed the markup since 2018. U.S. rice exports currently make up only about 4 percent of all rice consumed in Japan. The United States will continue to monitor Japan's rice import system in light of Japan's WTO import commitments and engage with Japan on its SBS markup for rice.

Wheat

Japan requires food wheat to be imported through the Grain Trade and Operations Division of the MAFF's Crop Production Bureau to secure the lowest tariff rate. The Crop Production Bureau resells the wheat to Japanese flour millers at prices substantially above import prices by imposing a markup. The United States continues to carefully monitor Japan's operation of its state trading entity for wheat and its potential to distort trade.

Pork

U.S. pork exports to Japan are subject to a trade-distorting "gate price mechanism" that functions as a variable levy. To prevent lower-priced imports from competing with Japanese pork, the mechanism levies progressively higher duties on lower-priced imports. For instance, chilled and frozen pork are subject to a specific duty of up to ¥125 per kilogram (approximately \$0.89 per kilogram) based on the difference

between the actual import value and a government-established reference price. This duty is in addition to an *ad valorem* duty that is charged on all chilled and frozen pork, regardless of import value. With the implementation of the USJTA, the variable levy under the pork gate price mechanism is being reduced over time for U.S. pork, but not eliminated.

Ethanol

In April 2023, Japan implemented a revised Biofuels Standard that will allow the United States to provide up to 100 percent of Japan's annual on-road biofuels target of 500 million liters crude oil equivalent. Under the previous standard, the United States was restricted to supplying no more than 66 percent of Japan's annual on-road biofuels target. However, the new Biofuels Standard did not increase the annual biofuels target volume, which has remained unchanged since 2017. The United States continues to urge Japan to increase its annual biofuels target volume to a level that would allow Japan to achieve at least an E3 blend rate (97 percent gasoline and 3 percent bioethanol) and further reduce its greenhouse gas emissions in the transportation sector.

Customs Barriers and Trade Facilitation

Expanding Japan's advance rulings system to address more customs issues would improve transparency and predictability for U.S. exporters. The United States continues to urge Japan to improve the speed of customs processing and to reduce the complexity of customs and border procedures. (*For further information, see the Services Barriers section.*)

SANITARY AND PHYTOSANITARY BARRIERS

Food Safety

Regulatory Oversight

As part of an overall effort to streamline management of issues relating to health and infectious disease, the Government of Japan will shift food safety standard administration (under the Food Sanitation Act) from the Ministry of Health, Labour and Welfare (MHLW) to the Consumer Affairs Agency (CAA). The Diet, Japan's national legislature, passed legislation for this purpose in 2023, and the transfer of responsibility was to occur on April 1, 2024. However, responsibility for monitoring and inspection of domestic and imported foods will remain with the MHLW. The United States will monitor implementation and development of regulations to ensure continued science-based regulatory decision-making and a level playing field for U.S. exports of food products to Japan.

Pre- and Post-Harvest Fungicides

Japan classifies fungicides applied pre-harvest as pesticides and classifies fungicides applied post-harvest as food additives. These different classifications based on the time of application lack a discernable science-based rationale. Because post-harvest fungicides are classified as food additives, Japan requires products treated with them to be labeled at the point of sale with a list of fungicides used. This requirement does not have a significant impact on domestic producers because Japanese farmers selling their produce domestically do not need to treat that produce for long-distance distribution and generally apply fungicides prior to harvest. The requirement may disadvantage U.S. products, however, because it wrongly suggests that competing Japanese products have not been treated with fungicides.

Maximum Residue Limits

Japan's procedures for enforcement of maximum residue limits (MRLs) result in uncertainty for shippers, including those who have never violated Japan's standards. Japan imposes enhanced surveillance on all imports from an exporting country following one MRL violation by one exporter. If a second violation is detected during the enhanced surveillance period, Japan will detain and test all shipments of that product from the exporting country, holding shipments until residue testing proves compliance. A violation by a single producer from one country is not indicative of violations by other producers from that same country. The United States continues to urge Japan to adopt a risk-based approach to addressing individual MRL violations, and apply measures to all shipments from a particular country when evidence indicates a systemic, country-wide program.

Beef and Beef Products

On May 17, 2019, Japan eliminated age-related restrictions on the cattle from which U.S. beef and beef product exports to Japan are derived, thereby allowing use of cattle that are 30 months of age and older. However, Japan maintained the requirement that U.S. exporters must hygienically remove those tissues Japan defines to be specified risk materials (SRMs). Japan's definition of SRMs is more restrictive than the World Organisation for Animal Health (WOAH) guidelines provide for countries with a negligible risk for bovine spongiform encephalopathy (BSE), as well as the U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) regulations. Specifically, Japan requires that all parts of the head, other than tongues, cheek meat (Masseter muscle), and skins, be removed. Notably, this excludes head meat, which is allowed under WOAH guidelines and FSIS regulations. This restriction has necessitated the retention of an extra-regulatory third-party verification program, as FSIS does not verify the removal of the additional tissues. When Japan eliminated its age-related restrictions, the United States pressed Japan to align its SRM definition with WOAH guidelines for countries with a negligible risk for BSE. The United States continues to seek Japan's alignment with international guidelines.

Plant Health

Table-Stock Potatoes

U.S. potato exports to Japan are currently limited to chipping potatoes. In March 2020, the United States submitted an official request to Japan for market access for table-stock potatoes. In September 2023, Japan provided the final pest list for table-stock potatoes. The United States continues to engage with Japan on this market access request.

Apples

In 2017, the United States submitted an official request to export apples to Japan under a systems approach, which would provide Japan with a comparable level of phytosanitary protection to Japan's current regulatory approach and eliminate costly pest-mitigation requirements for U.S. exporters. The United States will continue to engage with Japan and provide capacity building on the requested systems approach.

Stone Fruit

In August 2021, Japan granted market access for U.S.-grown Japanese plum varieties, but Japan continues to impose costly fumigation requirements even though without them an appropriate level of phytosanitary protection can be provided to Japan. The United States will continue to engage with Japan on phytosanitary topics related to U.S. stone fruit, including the U.S. market access request for peaches and revision of the fumigation monitoring requirements for U.S. plums.

GOVERNMENT PROCUREMENT

Japan is a Party to the WTO Agreement on Government Procurement (GPA).

Japan is obligated to open its GPA-covered government procurement tenders to goods, services, and suppliers from the United States and other GPA Parties. U.S. companies in several sectors have expressed concern that the Japanese Government sometimes uses technical specifications that could exclude U.S. products and services and, in some cases, may exert pressure on various entities to select domestic companies for procurement opportunities. The United States has expressed these concerns to Japan as they have arisen and will continue to engage with Japan to address these concerns.

INTELLECTUAL PROPERTY PROTECTION

Japan generally provides strong intellectual property (IP) protection and enforcement, although a number of concerns remain.

In 2023, Japan amended its Copyright Act in a manner that may adversely affect individual creators. Under the amendment, where the copyright holder is not known, users have greater rights to engage in use of those works. For individual creations on the Internet, it is often difficult to contact the copyright holders; therefore, the amendment may facilitate use of those works relative to others by identifiable creators. Under the new system of “unmanaged works arbitration,” Japan will establish a contact organization to respond to user consultations and inquiries. Users will be granted temporary use by paying compensation and fees equivalent to the usage fee of this contact organization. The maximum period of use is three years, renewable by reapplying. Japan will also create a cross-disciplinary database of copyrighted works to allow searching for copyright holders. This new system is not envisioned to come into force until 2026. The United States will continue to monitor developments in this area.

On October 1, 2022, an amendment to Japan’s Trademark Act came into force that addresses concerns over Japan’s personal use exemption for imported goods, which had been used increasingly to send counterfeit items to individuals in Japan via postal and courier services. Pursuant to the amendment, items imported from “overseas vendors” for personal use fall within the scope of the Trademark Act; counterfeits imported in this manner are subject to seizure. The United States is continuing to monitor the implementation and enforcement of the amendment to determine whether it reduces the import of counterfeit goods into Japan.

Japanese and foreign products are eligible for geographical indications (GIs) protection in Japan. Japan also has recognized numerous GIs pursuant to international agreements. Exchanges of lists of terms pursuant to international agreements have resulted in Japan’s granting automatic GI protection to certain terms without sufficient transparency or due process. The United States continues to monitor implementation of Japan’s GI system, as well as implementation of its recent agreements with the European Union and other trading partners with respect to GIs.

SERVICES BARRIERS

Express Delivery

The United States remains concerned by unequal conditions of competition between Japan Post Co. and international express delivery suppliers. Private U.S. express carriers are required to declare all shipments for customs clearance and calculate duties and consumption taxes based on cost. Different procedures apply to Japan Post Co., as duty assessment is based on Express Mail Service (EMS) shipment rules.

Japan Post Co. is regulated by a single agency—the Ministry of Internal Affairs and Communications (MIC), whereas private express delivery companies are subject to rules imposed by various ministries, including the Ministry of Finance; the MHLW; the MAFF; and, the Ministry of Land, Infrastructure, Transport, and Tourism. The United States continues to urge Japan to equalize customs procedures and requirements.

Insurance Services

Postal Insurance and Banking

The United States has longstanding concerns about the negative impact of Japan Post Insurance on competition in Japan’s insurance market and continues to closely monitor the implementation of reforms. The United States continues to urge Japan not to allow Japan Post Bank and Japan Post Insurance to expand the scope of their operations before a level playing field is established.

Insurance Cooperatives

Kyōsai (insurance cooperatives) hold a substantial share of the insurance business in Japan. Some *kyōsai* are regulated by their respective agencies of jurisdiction (*e.g.*, the MAFF or the MHLW) instead of by Japan’s Financial Services Agency (FSA), which regulates all private sector insurance and financial services companies. These separate regulatory schemes create a nontransparent regulatory environment and afford *kyōsai* critical business, regulatory, and other advantages over their private sector competitors. The United States remains concerned about limited FSA supervisory authority over *kyōsai*.

Professional Services

Educational Services

Japan does not treat foreign universities’ Japanese campuses as equivalent to domestic higher education institutions for tax, scholarship, and research grant purposes. This has harmed the ability of such degree-granting campuses to compete for students and faculty and deterred other U.S. universities from launching full four-year degree programs. Despite extensive consultations with authorities, no U.S. university has been able to satisfy all the legal requirements to be granted “educational corporation” (*gakkō hōjin*) status, which would confer the same tax benefits enjoyed by Japanese universities. The requirement that such corporations be “independently administered” (*i.e.*, not subject to direct administration by the parent university in the home country) is a particularly difficult legal hurdle to overcome. Lack of *gakkō hōjin* status also means foreign satellite universities are excluded from participation in Japanese Government grant programs that promote international exchange and provide financial support for study abroad, and their faculties are excluded from applying for government-funded and other research grants on the same basis as faculty at other Japanese universities.

Legal Services

In 2020, the Japan Fair Trade Commission (JFTC) introduced protections for certain attorney-client communications, a departure from Japan’s general absence of such protections. However, the scope of protected confidential attorney-client communications is extremely limited, protecting only legal advice under the Antimonopoly Act regarding alleged antitrust cartels, which involve price-fixing, market allocation, and bid rigging. In principle, only an external lawyer’s advice to a client is protected. An in-house lawyer’s advice might be protected only if the in-house lawyer is working independently from the enterprise itself. In addition, only legal advice by lawyers qualified in Japan is protected. Legal advice

from foreign lawyers (even if they are registered in Japan as a Registered Foreign Lawyer) is not protected. The rules further protect communications only for documents that are carefully segregated from other unprotected documents. The United States will continue to monitor developments and support fuller recognition of attorney-client privilege by the JFTC.

Telecommunications Services

Telecommunications Business Act

U.S. and foreign services operators in Japan, including those offering only streaming and cloud-based services, became subject to regulation under Japan's Telecommunications Business Act (TBA) in April 2021. Businesses that undertake intermediate communications with users in Japan, including providers of cross-border services, must register as telecommunications providers with the MIC, appoint a representative or agent physically domiciled in Japan, and comply with regulations imposed on domestic operators under the TBA, including disclosure and reporting obligations.

Spectrum Auctions

Unlike most advanced economies, Japan does not use auctions to allocate spectrum for commercial mobile services. Allocation decisions are at the discretion of the MIC and are based on consultation with the Radio Regulatory Council and consideration of plans submitted by the operators. The factors that the MIC uses to evaluate applications have raised questions about the fairness of the allocation process. On March 31, 2022, the MIC released an interim report on the use of auctions to allocate spectrum for a limited number of frequency bands. On November 25, 2022, the MIC released a summary of discussions held with an advisory council, laying out a policy direction introducing a "conditional auction" for allocation of then-underutilized millimeter wave bands or frequency bands that need to be shared with other wireless systems, in addition to the current allocation system. The conditional auction would still allow the MIC discretion to account for certain conditions such as area coverage when allocating spectrums. In March 2023, the MIC launched a task force to study the introduction of a spectrum auction system for millimeter wave.

Renewable Energy

Renewable energy growth in some regions of Japan has been constrained by lack of electricity grid capacity. Laws implemented in 2020 require the legal unbundling of the transmission and distribution business from the power generation and retail business, but incumbent utility companies still own and operate most of the transmission and distribution grids in Japan through wholly owned subsidiaries. These utility companies reportedly overstate actual grid usage and understate available capacity to prevent competition from new entrants. Many of the utility companies are also holding unused space on the grid for long-idled nuclear power reactors. Incumbent transmission utilities are required to allow power producers to connect to their power facilities unless they have a justifiable reason to deny the request. Given real grid capacity constraints in some regions, utilities have begun offering renewable generation "non-firm" transmission contracts, which allow generators to connect to the grid and use available grid capacity in exchange for a higher risk of curtailment during times of congestion. In order to ensure that renewable energy is used to the fullest extent possible, the Ministry of Economy, Trade, and Industry is considering changes to the curtailment order that would favor renewable energy generation.

SUBSIDIES

Japan maintains numerous support programs at the national, prefectural, and municipal levels that may favor domestic logs and wood products over imports. To increase the supply of domestic wood products

from 34 million cubic meters in 2021 to 42 million cubic meters in 2030, Japan allocated ¥49.9 billion (approximately \$330 million) for the Emergency Measures to Utilize Domestic Forest Resources and Strengthen the International Competitiveness of the Wood Industry from the 2022 MAFF supplemental budget. Furthermore, in 2023 Japan allocated ¥169 billion (approximately \$1.13 billion) under the Forest Management Project to support domestic thinning and selective logging operations. In addition, Japan has provided funding for local governments to manage unprofitable forestlands. Starting in 2024, Japan will begin to collect the Forest Environment Tax from each Japanese taxpayer to cover the cost of this program (approximately ¥60 billion, or \$400 million, per year). The United States is monitoring the disbursement of these funds and other support programs.

OTHER BARRIERS

Transparency

Advisory Groups

Advisory councils and other government-commissioned study groups enjoy significant power in Japan's regulatory process that sometimes goes beyond providing advice and recommendations. The United States continues to urge Japan to follow good regulatory practices and ensure transparency with respect to the formation and operation of advisory councils by adopting new requirements to ensure ample and meaningful opportunities for those not on advisory councils and study groups to participate in, and directly provide input to, the regulatory process.

Public Comment Procedure

The United States remains concerned about inadequate implementation of public comment procedures by Japanese ministries and agencies. In 2023, stakeholders flagged several instances where comment periods for regulations or guidelines were non-existent, unnecessarily short, or occurred at the same time as major national holidays. In other cases, comments did not appear to have been adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. While the United States acknowledges recent instances when Japanese ministries allowed comments to be submitted in English and provided an appropriate amount of time for parties to draft, finalize, and submit their comments, for example METI's Draft Guidelines for Corporate Takeovers, the United States stresses the need for Japan to improve the system, such as by lengthening the standard public comment period for rulemaking, more broadly and consistently.

Automotive

The United States has expressed strong concerns with the overall lack of access to Japan's automotive market for U.S. automotive companies. A variety of non-tariff barriers impede access to Japan's automotive market, and overall sales of U.S.-made vehicles and automotive parts in Japan remain low. Non-tariff barriers include the non-acceptance of U.S. Federal Motor Vehicle Safety Standards certification as providing an equivalent level of protection as the Japanese vehicle safety standards; unique standards and testing protocols; unique spectrum allocation for short-range vehicle communications systems; a lack of opportunities for input by interested persons throughout the process of developing regulations; and hindrances to the development of distribution and service networks.

Japan aims to transition to 100 percent clean energy vehicles, including electric vehicles, hybrid vehicles, and fuel cell electric vehicles (FCVs), sold in Japan by 2035. Japan provides a purchase subsidy of up to ¥850,000 (approximately \$5,700) for traditional battery electric vehicles (BEVs). However, FCVs, which

are primarily produced by Japanese companies, receive a much higher subsidy than BEVs, of up to ¥2.55 million (approximately \$17,000), depending on the size of the vehicle. Until May 2022, Toyota had a 100 percent market share in Japan for FCVs, making this subsidy almost entirely directed toward one Japanese company.

Japan provides another incentive of up to ¥250,000 (approximately \$1,700) for vehicles equipped with power feeding technology that allows vehicles to send stored power back into a home in the event of power outages. This subsidy was implemented in March 2022 with little lead time, but few non-Japanese companies produce vehicles equipped with this specific technology, giving a competitive advantage to Japanese automotive manufacturers. Japan also provides subsidies for vehicle charging stations but requires compliance with CHAdeMO, a charging standard originally developed in Japan and supported by Japanese industry groups. Although this standard was previously used in earlier model electric vehicles in other countries, Japanese automakers in 2023 joined U.S. and European automakers in endorsing other standards for their sales in North America, Europe, and China. This leaves Japan as an outlier on charging technology and disincentivizes foreign automakers and charging suppliers from operating in Japan by requiring outdated technology in order to receive the subsidy.

Japan does not permit use of the global standard of 433.92 MHz radio frequency for Short Range Vehicle Communication Systems, which includes remote keyless entry (RKE) and tire-pressure monitoring systems (TPM). Japan has allocated the frequency primarily to amateur radios and has expressed concern that its use in vehicles will cause interference for the amateur radio community. As a result, U.S. automakers must modify their products for the Japanese market. To address this longstanding concern of U.S. automakers over Japan's spectrum allocation, the MIC launched the 433.92 MHz TPM-RKE System Ad Hoc Group (AH Group) on July 13, 2023, to study potential sharing of the frequency between automakers and amateur radio users.

Medical Devices and Pharmaceuticals

Japan's Price Maintenance Premium (PMP) system, introduced in 2010, adds price premiums to innovative new drugs and protects this price throughout the patent life of a medicine. In the 2018 pricing cycle, Japan made changes to its PMP rules that significantly reduced the number of innovative products and companies that received the full benefit of the PMP. In particular, several of the criteria that were used in PMP calculations appeared to make it easier for Japanese companies to qualify for top premiums and were unrelated to the degree of innovation of the individual product under consideration. However, the fiscal year 2024 National Health Insurance Drug Pricing System Reform Framework that was instituted for the 2024 pricing cycle made several promising adjustments to the PMP rules, including abolishment of these company criteria.

U.S. industry has also raised serious concerns regarding the lack of transparency and predictability in government decision-making. For example, the scope of the pharmaceutical annual price cut policy implemented in 2021 went far beyond any options put forward by the MHLW, and there was no opportunity for public comment prior to its formal announcement. In addition, in recent years, the MHLW has been consolidating medical device product functional categories for price determination with little explanation and little time for key stakeholders to respond. U.S. industry is concerned about the lack of more frequent and meaningful opportunities to provide input regarding Japan's reimbursement rules, as well as other policies of critical importance to the biopharmaceutical and medical device industries.

The United States continues to urge Japan to solicit and consider the input of all stakeholders, including U.S. stakeholders, when developing any measures related to reimbursement policies, and to follow transparent processes in the present and future development of any new policies and measures. The United States also continues to urge Japan to take into account relevant international standards in the development

of its regulations in clinical development, multiregional clinical trials, and risk management. In November 2023, Japan announced it would relax its requirement of “in principle” drug testing on Japanese people before a drug’s release in the domestic market, a policy that is unique to Japan. However, the phase III local testing requirement will remain for some drugs with strong side effects, representing a continuing concern.

Nutritional Supplements

Japan regulates nutritional supplements as a part of a loosely defined “health food” subcategory of foodstuffs, unlike in the United States, where “dietary supplements” are regulated by the U.S. Department of Health and Human Services Food and Drug Administration (FDA) under different regulations than “conventional” foods. Japan has taken steps to streamline import procedures and improve access in this market. U.S. nutritional supplement manufacturers must follow Japanese health claim systems that are often duplicative in nature.

Japan’s CAA establishes three categories for both domestic and imported products under the Food with Health Claims system: Food with Function Claims (FFC); Foods for Specified Health Uses (FOSHU); and Foods with Nutrient Function Claims (FNFC). Most U.S. nutritional supplement products are unable to obtain either FOSHU approval or FNFC designation due to FNFC’s standards and specifications, which limit the range of nutritional ingredients such as vitamins and minerals that can qualify as FNFC. Vitamin and mineral products designated under the FNFC system are excluded from the FFC system.

Quasi-Drugs

Quasi-drugs are defined in Japan’s Act on Securing the Quality, Efficacy and Safety of Products Including Pharmaceuticals and Medical Devices (PMD Act) as products with limited amounts of officially recognized active ingredients and are generally classified in the United States as over-the-counter drugs (for example, anti-acne products) or cosmetic products (for example, anti-aging products). U.S. companies indicate they are experiencing delays in market authorization due to Japan’s delay in the adoption of a well-designed online system to process requirements and updates. Although there have been some improvements in processing time, there continue to be delays in the adoption of a monograph (or product standard) system intended to expedite the registration of such products as quasi-drugs under the PMD Act. As a result, products that contain active ingredients that are approved for specific uses in Japan, such as in anti-dandruff shampoos and skin care, may require up to six months to receive market approval. The MHLW is currently working with industry and local prefectural governments to develop a monograph system (such as “Approval Product Standards for Medicated Cosmetics”), which lists the approved uses for previously reviewed ingredients and claims.

JORDAN

TRADE AGREEMENTS

The United States–Jordan Free Trade Agreement

The United States–Jordan Free Trade Agreement (FTA) entered into force on December 17, 2001. Under the FTA, as of January 1, 2010, Jordan provides duty-free access to nearly all U.S. exports, with exceptions for a few product lines, such as alcoholic beverages. The United States and Jordan meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Taxes

Jordan's General Sales Tax law allows the government to impose a special tax at the time of importation in addition to the general sales tax. For example, Jordan imposes a 15 percent special tax on carbonated drinks. Jordan also imposes a special tax on vehicles that varies according to the type of engine which in practice only affects imports as there is no domestic motor vehicle production. Cars with conventional fuel engines are taxed within a range of 67 percent to 94 percent, electric-powered cars are taxed within a range of 10 percent to 15 percent, and hybrid vehicles are taxed at 50 percent. Most U.S.-origin cars sold in Jordan are conventional fuel or hybrid. The United States continues to work with Jordan to promote transparency and predictability.

Non-Tariff Barriers

Import Licensing

Import licenses are required for specific food products by the Ministry of Health and for raw agricultural goods by the Ministry of Agriculture. The approval process can be time-consuming and, at times, lacks transparency. U.S. exporters have raised concerns about the difficulty of obtaining import licenses from the Ministry of Agriculture for U.S.-origin chicken leg quarters and live dairy cattle. The United States continues to engage with Jordanian authorities to address this issue.

Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry, Trade, and Supply occasionally issues directives requiring import licenses for certain goods or categories of goods and products in newly emerging or protected sectors. Jordan requires a special import license prior to the importation of telecommunications and security equipment.

Customs Barriers and Trade Facilitation

Jordan ratified the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) in February 2017. Jordan has not yet submitted four transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; (3) customs contact points for the exchange of information; and (4) details on the operation of the single window. Three notifications had been due to the WTO on February 22, 2017, and notification for details on the operation of the single window had been due on December 31, 2022, according to Jordan's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE

Corn Import Sampling Procedures

According to U.S. stakeholders, Jordan's Ministry of Agriculture does not comply with the sampling technique guidance for grain issued by the Jordan Standards and Metrology Organization, and Jordan's poor sampling techniques have resulted in the rejection of shipments of U.S.-origin corn. The United States has worked with Jordan to improve sampling and inspection procedures, but problems persist. As a result, U.S. exports of corn to Jordan have decreased significantly compared to 2021 and prior years. In 2023, U.S. corn exports to Jordan were valued at approximately \$148,000. An agreement in principle with the Jordanian Government to accept certificates of inspection from the U.S. Department of Agriculture Grain Inspection Service to assure the quality of corn shipped from the United States expired in June 2023. While applicable Jordanian Government agencies have informally committed to accepting such certificates on an *ad hoc* basis, this mechanism has not been tested. The United States continues to work with Jordan to resolve this issue.

GOVERNMENT PROCUREMENT

In September 2022, the Jordanian Cabinet adopted Government Procurement Bylaw No. 8, which grants priority to a domestic bid over a foreign bid if the bids are equivalent in terms of requirements, specifications, and price. Additionally, Jordan offers domestic companies a preferential rate of 15 percent in all government tenders based on a 2013 cabinet decision, which has been renewed annually.

Jordan is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since March 2000.

In 2002, Jordan began the process of acceding to the WTO GPA with the submission of its initial offer, but negotiations on Jordan's accession have been inactive since 2014.

INTELLECTUAL PROPERTY PROTECTION

Jordan continues to take steps to provide more comprehensive protection of intellectual property (IP) rights. In September 2023, Jordan's new Cyber Crime law went into effect, criminalizing a broad array of digital violations, including pirated content. However, challenges regarding IP protection and enforcement persist. As seen throughout the region, online and physical copyright infringement is widespread. For example, Jordan-based company Spider is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for supplying Spider-branded piracy devices through online and physical stores across Europe, the Middle East, and North Africa. The National Library, the primary IP authority in Jordan, has noted challenges to combating this online and physical copyright infringement, including a lack of adequate resources. Despite past efforts by law enforcement officials to crack down on pirated and counterfeit products, enforcement efforts need to be strengthened, particularly with respect to using *ex officio* authority to pursue criminal investigations. The U.S. Government continues to engage with the Government of Jordan on these issues.

KENYA

IMPORT POLICIES

Tariffs

Kenya's average Most-Favored-Nation (MFN) applied tariff rate was 14.3 percent in 2022 (latest data available). Kenya's average MFN applied tariff rate was 24.5 percent for agricultural products and 12.7 percent for non-agricultural products in 2022 (latest data available). Kenya has bound 16.3 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 93.8 percent.

Kenya applies the East African Community (EAC) Customs Union's Common External Tariff (CET), with four tariff bands: (1) zero percent duty for raw materials and inputs, (2) 10 percent duty for processed or manufactured inputs, (3) 25 percent duty for finished products, and (4) 35 percent for a list of products the EAC concluded would promote regional integration and domestic industrial sectors. Among the imports that are impacted by the 35 percent fourth tariff band are U.S. exports of secondhand clothing and environmentally cleaner cooking products. Many textiles and agricultural products are classified as "sensitive items" under the EAC and as a result are subject to *ad valorem* tariff rates above 35 percent. This includes rates of 50 percent for textiles, 60 percent for most milk products, 50 percent for corn and corn flour, 75 percent for rice, 60 percent for wheat flour, and 100 percent for sugar.

When deemed necessary, the Kenyan Government has temporarily waived agricultural tariffs to stabilize prices when domestic agricultural prices exceeded certain levels. When the Kenyan Government has taken such action, the EAC has granted an exemption from the CET.

Under its exemptions regime, the EAC had exempted all solar and wind energy products from import duties. In June 2016, the EAC amended its exemptions regime to include only products related to the development and generation of solar and wind energy. The duties were subsequently imposed on spare parts and accessories to solar equipment. Kenya has not uniformly applied the duties, and some stakeholders have voiced concern that this amendment does not adequately define the term "spare parts and accessories."

Non-Tariff Barriers

Import Bans

In October 2023, Kenya's domestic agricultural production exceeded projections. In response, the Kenyan Government issued an import ban on maize and wheat imports and stopped issuing import permits.

Customs Barriers and Trade Facilitation

U.S. companies have raised concerns about the length of time required for Kenyan Customs to release shipments, as well as the use of a complex and inefficient process that involves many steps with uncoordinated offices, despite implementation of a single window system. Many U.S. companies have commented that Kenya's one-stop customs clearance system does not operate as intended and that pre-arrival processing of electronic documents is ineffective. Other U.S. companies have raised concerns about the inconsistent application of classification and valuation decisions, as well as unnecessary transit inspections.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Verification of Conformity to Standards Procedures

In 2019, Kenya issued the Standards (*Verification of Conformity to Standards and Other Applicable Regulations of Imports*) Regulations, which subjects all imports, except those meeting certain exemption criteria, to the Pre-Export Verification of Conformity (PVoC) program. The PVoC program requires pre-shipment inspection of most imports—in their country of origin—to ensure compliance with applicable Kenyan standards and regulations. Under the PVoC program, an importer must obtain a Certificate of Conformity (CoC) from a PVoC inspection agent in its region designated by the Kenya Bureau of Standards (KEBS). The PVoC inspection agent assesses what, if any, testing is required to meet Kenyan standards and regulations. Kenya asserts that the program is necessary to address health, environmental, and security concerns, but U.S. industry has raised concerns that the program’s testing, certification, and labeling requirements deviate from international standards without providing an additional measure of safety.

Certain products are exempt from the PVoC program, including: raw materials, machines, and spare parts imported by registered local manufacturers; products certified by KEBS under the Diamond Mark of quality product certification; and products waived by the Kenyan Government through the Cabinet Secretary for Investment, Trade, and Industry. Goods exempted from the program are still subject to KEBS destination inspection.

Goods arriving at the port of entry without having undergone an inspection through the PVoC program to obtain a CoC are subject to inspection by KEBS. The cost of this inspection is 5 percent of the customs value of the shipment, and the goods may be rejected. After obtaining a CoC or undergoing inspection at the port of entry, the importer must also purchase from KEBS an Import Standardization Mark label that must be affixed to each imported article or its retail packaging. Additionally, many of the KEBS mandatory standards are not publicly available, which hinders transparency.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

On October 3, 2022, Kenya lifted a 10-year ban on the import and commercialization of genetically engineered (GE) products, opening a path to cultivation and import of GE food and feed. However, the lifting of the ban is on hold pending the outcome of one remaining domestic legal challenge before Kenya’s High Court. In October 2023, the Environmental and Land Court dismissed one case against the release and planting of GE products, on the grounds that: 1) there was no evidence to support that the Kenyan Government breached the law while lifting the ban, 2) there was evidence to support Kenya has the proper framework to govern GE activities, and 3) the plaintiffs did not present sufficient evidence of harm to human and environmental health from GE products.

Animal Genetics

In January 2020, Kenya’s Office of the Director of Veterinary Services (DVS) and the U.S. Department of Agriculture Animal and Plant Health Inspection Service agreed on veterinary requirements and certificate attestations for the importation of bovine embryos from the United States. In May 2020, however, the DVS proposed additional requirements that went beyond those previously agreed by the two agencies. Kenya

imposes standards that are overly restrictive for bovine semen imports, precluding actual market access for most U.S. bovine semen for dairy cattle and leaving the largest share of the market to the domestic producers who do not meet the same criteria. Technical work is ongoing.

Import Permits

Kenya maintains complex, nontransparent, and costly requirements for the importation of all meat, dairy, and poultry products, including a “Letter of No Objection to Import Permit” (no-objection letter) from the DVS under the Ministry of Agriculture, Livestock, and Fisheries. Before issuing a no-objection letter, which requires several attestations, including animal and public health statements, the DVS requires an importer to explain the reason for importation through a “Letter of Application to Import” and to specifically address the market need the import would meet. The DVS issues the no-objection letter for meat, dairy, and poultry products at its discretion on a case-by-case basis. Importers have reported that the DVS has at times provided them with non-sanitary-related grounds for denying permits, such as the local availability of a similar product. The DVS does not always provide written justification for not issuing the letter.

Plants and Plant Products

Kenya subjects imported and domestically produced corn to a total aflatoxin limit of 10 parts per billion and a 13.5 percent maximum moisture content. The aflatoxin limit in Kenya is lower than the U.S. Department of Health and Human Services Food and Drug Administration’s action level for aflatoxin in corn in the United States, is lower than the standard established by the Codex Alimentarius, and does not appear to be based on a risk assessment. As a result, most U.S. exports are denied permits for importation. Under special circumstances—such as food shortages—Kenya has allowed higher moisture content for imported corn, which must then be dried and milled immediately upon arrival to reduce the risk of aflatoxin contamination. For U.S. corn exports that are permitted under special circumstances, the costs associated with the additional processing requirements make U.S. corn exports largely uncompetitive.

GOVERNMENT PROCUREMENT

Since May 2015, an initiative dubbed “Buy Kenya Build Kenya” has required Kenyan state ministries, departments, and agencies to procure at least 40 percent of their supplies locally. For example, government entities are required to give an exclusive procurement preference to motor vehicles and motorcycles produced by companies that have assembly plants in Kenya.

The 2016 Public Procurement and Asset Disposal Act (PPADA) reserves procurement preferences for Kenyan-owned firms and goods manufactured or mined in Kenya. For tenders funded entirely by the government with a value of less than KES 50 million (approximately \$333,333), the preference for Kenyan firms and goods is exclusive. If the procuring entity seeks to contract with non-Kenyan firms or procure foreign goods, the PPADA requires a report detailing evidence of an inability to procure locally. In April 2020, the National Treasury issued implementing regulations for the PPADA, which mandate that tender proposals include skills and knowledge transfer to Kenyan citizens, a 75 percent set-aside of employment opportunities for Kenyans, and a plan relating to domestic sourcing.

U.S. firms have had very limited success bidding on Kenyan Government tenders, and corruption remains a significant concern. Many of these tenders are challenged in the courts. Foreign firms, some without proven track records, have won government contracts when partnered with well-connected Kenyan firms or individuals. As of January 2019, all tenders and procurements are required to be undertaken through the Kenyan Government’s electronic procurement system, the Integrated Financial Management Information System (IFMIS). U.S. companies have expressed concerns about IFMIS due to insufficient connectivity

and technical capacity in county government offices, apathy from county government officials, central control shutdowns, and security gaps that render the system vulnerable to manipulation and hacking.

Kenya is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Kenya's complex customs recordation system continues to raise concerns about the ability of U.S. importers to bring products containing intellectual property into Kenya. Widespread availability of counterfeit and pirated goods remains an issue. Stakeholders also have raised concerns regarding distribution of copyright-infringing content online and the need for Kenya to join the World Intellectual Property Organization (WIPO) Internet treaties, which deal particularly with copyright and related rights in the digital environment.

SERVICES BARRIERS

Insurance Services

Kenya requires that a minimum of one-third of the equity of an insurance company be held by Kenyan persons or citizens of another EAC Member State. In addition, Kenya requires that local insurers offer at least 20 percent of their treaty reinsurance contracts to the state-owned Kenya Reinsurance Corporation (Kenya Re). Although regulatory approval can be sought, Kenya generally prohibits cross-border Difference-in-Conditions and Difference-in-Limits insurance, which is an important type of insurance for facilitating U.S. investment in countries such as Kenya because it covers unique risks faced by U.S. firms.

Telecommunications Services

Foreign participants in the telecommunications services market report long delays in the licensing process, creating an unpredictable regulatory environment.

BARRIERS TO DIGITAL TRADE

Cross Border Data Flows

Kenya's 2019 Data Protection Act (DPA) includes unclear provisions governing the cross-border transfer of personal information. The DPA requires that data controllers provide proof that personal data will be secure as a condition for transferring the data outside Kenya but does not describe what would constitute acceptable proof.

Digital Services Taxation

Kenya applies a 1.5 percent digital services tax (DST) to nonresident businesses and persons. The DST taxes gross transaction value through any "digital marketplace," defined as "an online platform which enables users to sell or provide services, goods, or other property to other users."

INVESTMENT BARRIERS

Limitations on Foreign Equity Participation

Kenya imposes foreign ownership limitations in several sectors. For example, the 2016 Private Security Regulation Act restricts foreign participation in the private security sector by requiring at least 25 percent Kenyan ownership of private security firms. Additionally, since 2015, Kenya has imposed regulations requiring that Kenyans own at least 15 percent of the share capital of derivatives exchanges.

The 2016 Mining Act imposes a variety of restrictions on foreign participation in the mining sector. Among other restrictions, the Mining Act reserves acquisition of mineral rights for Kenyan companies, requires 60 percent Kenyan ownership of both mineral dealerships and artisanal mining companies, and requires large-scale mining operations to list a minimum of 20 percent of their shares on the Nairobi Securities Exchange within three years of commencing operations, while also offering 10 percent “free-carried interest” (free equity stake) to the Kenyan Government.

In August 2023, Kenya lifted the 30 percent domestic ownership requirements in the Information and Communications Technology sector, which stimulated new foreign investments in the sector.

Real Estate Restrictions

The 2010 Kenyan Constitution prohibits foreigners from holding freehold land title anywhere in the country, permitting only leasehold titles of up to 99 years. The process for leasing developed land and property is clear and established, but the process for obtaining clear title of undeveloped land is opaque and unreliable. For undeveloped land, investors risk receiving fake title deeds or leasing a plot with multiple titles and unauthorized sales.

STATE-OWNED ENTERPRISES

The Kenyan Government wholly owns the National Oil Corporation and the Kenya Pipeline Corporation, which limits competition in this sector. Other state-owned enterprises (SOEs), including Kenya Electricity Generating Company, Kenya Electricity Transmission Company, Kenya Power, and the Geothermal Development Company, dominate the electricity generation, transmission, and distribution segments of the energy sector. Kenya Power’s internal procurement rules require that 80 percent of supplies be sourced from Kenyan-registered companies to encourage foreign suppliers to establish manufacturing facilities in the country.

Certain SOEs have enjoyed preferential access to markets. Examples include Kenya Re, which enjoys a guaranteed re-insurance market share; Kenya Seed Company, which has fewer marketing barriers than its U.S. competitors; and the National Oil Corporation, which benefits from retail market outlets developed with government funds. Some SOEs have also benefited from easier access to government loan guarantees, subsidies, and credit at favorable interest rates. The Kenyan Government announced in November 2023 that it would privatize several SOEs.

OTHER BARRIERS

Disputes over tariffs and taxation are resolved through the judicial system, which is subject to delays and uncertainty. Since June 2015, the Kenya Revenue Authority has offered an alternative dispute resolution mechanism to help taxpayers resolve some tax disputes more quickly. U.S. companies have expressed concerns with the delay experienced in tax dispute resolutions through this established mechanism.

Bribery and Corruption

Corruption remains a substantial barrier to doing business in Kenya. U.S. firms continue to report challenges competing against foreign firms that are willing to ignore legal standards or engage in bribery and other forms of corruption. Corruption is widely reported to affect government procurements at the national and county levels. Kenya has not effectively implemented its anticorruption laws. U.S. firms routinely report direct requests for bribes from all levels of the Kenyan Government.

Despite efforts to increase efficiency and public confidence in the judiciary, the backlog of cases and continued corruption undermine the judicial system's credibility and effectiveness. While judicial reforms are moving forward, bribes, extortion, and political considerations continue to influence court cases. As such, foreign and local investors risk lengthy and costly legal procedures.

Export Ban

The 2013 Agriculture, Fisheries and Food Authority Act prohibits exports of raw agricultural produce such as macadamia nuts, Bixa, cashew nuts, and pyrethrum without authorization from the Kenyan Cabinet Secretary for Investment, Trade, and Industry.

KOREA

TRADE AGREEMENTS

United States–Korea Free Trade Agreement

The United States–Korea Free Trade Agreement (KORUS) entered into force on March 15, 2012. Korea immediately eliminated duties on nearly 80 percent of bilateral trade in industrial and consumer goods. Duties on most other such goods were phased out in stages over 10 years and have been eliminated as of January 1, 2021. Tariffs continue to be phased out for certain seafood products, which are scheduled to be eliminated in 2026. Korea has eliminated tariffs on the majority of U.S. agricultural products, while maintaining tariff-rate quotas (TRQs) on a handful of U.S. agricultural exports.

The United States and Korea reached agreement in 2018 to modifications and amendments to KORUS and a related letter exchange. The United States and Korea meet regularly to review the implementation and operation of KORUS and to address outstanding issues.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Chemicals

Four laws and their respective implementing regulations form the basis of Korea’s chemical management system: the Act on the Registration and Evaluation of Chemicals (last revised in April 2021); the Occupational Safety and Health Act (last revised in August 2021); the Consumer Chemical Products and Biocides Safety Control Act (last revised in May 2021); and the Chemical Substances Control Act (last revised in August 2021). U.S. chemicals exporters regularly raise concerns with aspects of all of these laws and their implementing regulations, including: lack of guidance from the regulators on how to implement the regulations; insufficient protection for confidential business information; and, inadequate transparency regarding the selection of chemicals to be tested and the testing methodology.

Packaging Materials and Labeling Regulations

U.S. stakeholders remain concerned about the lack of clarity relating to the calculation method for packaging space ratios used by Korean Government authorities under the Act on the Promotion of Saving and Recycling of Resources (Recycling Act). While not yet passed, proposed amendments to the Recycling Act in August 2020 and November 2020 would mandate pre-launch testing of packaging materials and labeling of small electronic products to ensure compliance with specified packaging requirements. Stakeholders have raised concerns that the amendments would delay product releases, particularly when not provided with sufficient time to find alternative solutions to adapt to new requirements.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Korea’s regulatory system for agricultural biotechnology continues to present challenges to U.S. agricultural exports. The approval process for new biotechnology products is onerous and protracted due

to inefficiencies, which include redundant reviews and excessive data requests. The regulatory approval is managed across five different agencies, each with its own process and data submission requirements. While there is no clear mechanism to address the inefficiencies of Korea's regulatory process, Korea has indicated a willingness to continue discussing potential reforms to its regulatory process. The United States and industry stakeholders have provided ideas on how to improve the process and developed pilot projects to test a streamlined process for biotechnology product reviews. These initiatives have had little impact, however, because Korea's Living Modified Organisms (LMO) Act mandates participation by the five agencies, limiting the potential for streamlining the system without legislative changes.

In 2022, Korea's Ministry of Trade, Industry and Energy (MOTIE) proposed a draft revision of the LMO Act to include a policy on products of innovative biotechnologies (*e.g.*, genome editing). Korea proposed to classify genome-edited products as LMOs, but also introduced a pre-review system to exempt certain products from a full risk assessment under certain conditions. Once the LMO Act revision is finalized, Korea will develop regulations to implement the pre-review system and establish approval procedures for products that are not exempted. The United States discussed concerns with Korea's approval process for agricultural biotechnology products during the August 2023 meeting of the KORUS Committee on Sanitary and Phytosanitary Measures (KORUS SPS Committee).

Beef and Beef Products

Prior to 2008, Korea restricted the importation of U.S. beef and beef products, citing concerns related to bovine spongiform encephalopathy (BSE). In 2008, the United States and Korea reached a bilateral agreement to fully reopen Korea's market to U.S. beef and beef products. However, as a transitional measure, U.S. beef and beef products imported into Korea had to be derived from animals less than 30 months of age. This "transitional measure" has remained in place for sixteen years. In addition, imports of processed beef products, including ground beef patties, beef jerky, and sausage, are still prohibited.

Market Access for Pet Food Containing Ruminant Ingredients

In May 2018, the United States sent a formal request to Korea's Ministry of Agriculture, Food, and Rural Affairs (MAFRA) for market access for pet food containing U.S.-origin ruminant ingredients, as well as any ruminant ingredients imported from countries that, like the United States, are deemed by the World Organisation for Animal Health as having a negligible risk for BSE. In July 2018, the MAFRA indicated that it was drafting import health requirements for pet food. The United States reiterated the request in the KORUS SPS Committee in August 2023. As of December 2023, Korea's revised pet food import health requirements remain unpublished.

Horticultural Products

Several U.S. market access requests remain pending with the MAFRA Animal and Plant Quarantine Agency (APQA). Among these are expanded access for blueberries from U.S. states other than Oregon; improvement in the cherry import program; and access for apples, pears, Texas grapefruit, and California stone fruits. The United States requested that the APQA expedite the approval process for these products. The United States and Korea continued efforts to establish access for U.S. exports and discussed these issues during the KORUS SPS Committee in August 2023 and at a bilateral plant health technical meeting in November 2023.

Maximum Residue Limits

Korea's Positive List System (PLS) requires the establishment of new import tolerances for agrochemical residues that were previously permitted but not officially registered for use in Korea, as well as for new

substances that do not have any maximum residue limits (MRLs) in Korea. As of January 2022, U.S. agricultural exports are required to comply with Korea's domestic MRLs, import tolerance, or a default of 0.01 parts per million (ppm).

Korea plans to introduce a PLS for meat, poultry, and other animal products. Like the PLS for agrochemical residues, Korea began a phased implementation of the PLS for veterinary drugs. Starting in January 2022, Korea lowered the default limit for antimicrobial residues from 0.03 ppm to 0.01 ppm, in the absence of Korean or Codex Alimentarius Commission MRLs. Under the second phase, expected to begin in January 2024, in the absence of a Korean MRL or import tolerance, Korea will apply a default of 0.01 ppm for veterinary drugs in six major product categories, including: beef; pork; chicken; milk; eggs; and, fishery products.

GOVERNMENT PROCUREMENT

Korea is Party to the WTO Agreement on Government Procurement (GPA). Korea has made commitments to open its government procurement to U.S. suppliers under the revised GPA and under KORUS. KORUS provides U.S. suppliers significantly expanded access to central government procurements through a substantially lower threshold for eligible central government procurement contracts of goods and services than what exists in the WTO GPA (\$100,000 versus the current GPA threshold of \$182,000). While KORUS does not cover procurement by Korean sub-central government entities and government enterprises, the GPA provides U.S. businesses with access to procurement conducted by most Korean provinces, cities, and government enterprises.

Encryption and Security Requirements for Public Procurement of Information and Communication Technology Equipment

Korea and the United States are both members of the Common Criteria Recognition Arrangement (CCRA), under which products certified at any CCRA-accredited laboratory in any member country should be accepted as meeting the certification requirements in any other member country. Korea's National Intelligence Service (NIS), however, has imposed additional domestic cybersecurity certification requirements through its Security Evaluation Scheme (SES) since October 2014. Korea has broadly imposed the SES for common criteria (CC)-certified information technology products to be sold to the public sector. In October 2022, the NIS introduced a three-tiered scheme dividing all public institutions into three sensitivity tiers. The NIS now allows institutions in the middle and lower tiers, such as universities and public schools, to use CC-certified information and communication technology products without additional domestic security verification. However, the SES still applies to most major public institutions, which account for over 90 percent of the public sector market, including all central administrative institutions such as ministries and metropolitan local governments. The United States has urged Korea to abide by its obligations as a CCRA member.

Korea requires network equipment procured by public sector agencies (*i.e.*, government agencies and quasi-government agencies) to incorporate encryption functionality certified by the NIS. However, the NIS only certifies encryption modules based on the Korean-developed ARIA and SEED encryption algorithms (which, although they align with ISO standards, are in practice primarily used in Korea), rather than the internationally standardized Advanced Encryption Standard (AES) algorithm in widespread use worldwide. This restriction has *de facto* significantly limited U.S. suppliers' access to this market as it requires the development of a Korea-specific product line, which may not be commercially viable. The United States has urged Korea to ensure that equipment based on widely used standards has full access to Korea's public sector market.

Cloud Security Certification for Public Sector Cloud Service Procurement

The Cloud Security Assurance Program (CSAP) was created by the Korea Internet and Security Agency in 2016 and elevated from administrative guidance to a legal requirement through a March 2022 revision to the Cloud Computing Promotion Act. The CSAP, which applies to Korea's central, provincial, and local public sector with very limited exceptions, creates significant barriers to foreign cloud service providers (CSPs) seeking to sell to Korea's public sector. CSPs are required to create physically segregated facilities for exclusive use by government-owned customers, comply with data localization of cloud systems, create backup systems and data, and ensure that operations and management personnel of cloud service providers are located within the territory of Korea to obtain the low-tier certification. CSPs must also use only NIS-certified encryption algorithms (ARIA or SEED).

The potential market from which U.S. providers are being excluded is large and growing. In August 2022, Korea began a review of the CSAP with a view to reform it in a way that would open market access possibilities for foreign service providers, indicating it would benchmark the U.S. Federal Risk and Authorization Management Program (FedRAMP). In January 2023, Korea revised the Notification of the Security Certification for Cloud Computing Services to introduce a three-tiered scheme dividing all public networks into three risk tiers under the CSAP, which still creates significant barriers to U.S. CSPs seeking to sell to Korea's public sector. Only those CSPs that have at least the mid-tier CSAP certification can effectively participate in the government's digital transformation initiative. The United States raised this issue in June 2023 and in November 2023 and urged Korea to align its cloud security certification requirements with other internationally accepted standards.

INTELLECTUAL PROPERTY PROTECTION

In general, Korea has a strong regime of intellectual property (IP) protection and enforcement. Under KORUS, Korea agreed to strong enforcement provisions for various types of IP rights and agreed to join key multilateral IP agreements. Moreover, the Korean Government prioritizes IP protection, as Korea is a significant creator of IP. Nevertheless, some IP-related concerns remain, including with respect to: the transshipment of counterfeit goods, especially via small express-shipped parcels; geographical indications; and, a lack of civil and criminal penalties sufficient to deter IP violations. The United States continues to work with Korea to improve these areas.

SERVICES BARRIERS

Audiovisual Services

Notwithstanding KORUS commitments not to impose new restrictions, multiple Korean Government agencies and the National Assembly have been discussing ways to incorporate online media streaming platforms into the existing restrictive regulatory framework for legacy media, including potential Korean content requirements for U.S. over-the-top platforms.

Financial Services and Insurance Services

Cross-Border Data Transfer by Reinsurance Institutions

Reinsurance firms are not able to transfer information outside Korea as required in their ordinary course of business and as they should be able to do under Korea's KORUS obligations. Korea's Financial Services Commission (FSC) informed the U.S. Government in 2021 and in 2022 that it changed its interpretation of relevant rules under the User Protection and Credit Information Act such that U.S. reinsurance companies

can send personal information of primary insurance policy holders outside Korea for purposes of data processing, risk management, and underwriting. However, U.S. reinsurance companies reported in 2022 that they had not seen such a change in practice, and, absent sufficient legal certainty, they have not been able to send information cross-border. In October 2022, progress was made in clarifying important outstanding questions, including: the allowable purposes for such information transfers; the locations to which information may be sent; and, the interaction of the User Protection and Credit Information Act and the Insurance Business Act, both of which regulate the insurance industry. These clarifications indicated that the transfer of such information by reinsurance companies would be allowed in most cases; however, there is no public written documentation of this upon which industry could rely for legal certainty.

Professional Services

Since 2013, Korea has taken steps to open its legal services market, as outlined in KORUS. The amended Foreign Legal Consultants Act now allows foreign law firms to open foreign legal consultant offices in Korea and to enter into “cooperative agreements” with Korean firms to handle cases jointly where domestic and foreign legal issues are mixed. Foreign-licensed lawyers and firms have been able to establish joint ventures and hire Korean-licensed lawyers since 2017; but, several requirements that are unique to Korea discourage U.S. companies from doing so. The Act limits a foreign law firm’s ownership of the joint venture to 49 percent and requires that the firms composing the joint venture have been in operation for at least three years. The Act also requires foreign and Korean law firms participating in a joint venture to establish a new separate legal entity under Korean law. In addition, the Act limits the scope of practice of joint ventures. These provisions undermine the legislation’s purpose of facilitating trade in legal services between the two countries.

BARRIERS TO DIGITAL TRADE

Network Usage Fees

Since 2021, a number of bills have been introduced in the National Assembly that would require foreign content providers to pay network usage fees to Korean Internet service providers (ISPs). Because some Korean ISPs are also themselves content providers, fees paid by U.S. content providers could benefit a Korean competitor. Furthermore, such a mandate could be anticompetitive by further strengthening Korea’s ISP oligopoly of three major providers to the detriment of the content industry. The United States raised this issue with Korea on several occasions throughout 2023.

Location-Based Data

Korea’s restrictions on the export of location-based data have led to a competitive disadvantage for international suppliers seeking to incorporate such data into services offered from outside Korea. For example, foreign-based suppliers of interactive services incorporating location-based functions, such as traffic updates and navigation directions, cannot fully compete against Korean companies because locally-based competitors typically are not dependent on foreign data processing centers and do not need to export location-based data. Korea is the only significant market in the world that maintains such restrictions on the export of location-based data. While there is no general legal prohibition on exporting location-based data, exporting such data requires a license. As of December 2023, Korea had never approved a license to export cartographic or other location-based data, despite receiving numerous applications from foreign suppliers.

INVESTMENT BARRIERS

Korea maintains various restrictions on foreign investment in the telecommunications and media sectors. Korean law prohibits foreign investment in radio and terrestrial broadcasting operations; limits foreign ownership to 25 percent in news agency activities; and limits foreign ownership to 49 percent in television programming and content distribution, cable and satellite broadcasting services, and wired, wireless, satellite, and other telecommunications. Since March 2015, Korea has permitted U.S. investors to hold up to 100 percent ownership of a television program provider not engaged in news reporting, multi-genre programming, or home shopping, but foreign cable and satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the restrictions in the telecommunications and media sectors, Korea limits foreign ownership to 30 percent in hydroelectric, thermal, solar, and other forms of power generation, and limits foreign ownership to 50 percent for enterprises engaged in raising beef cattle, meat wholesaling, electric power sale, transmission, and distribution, coastal passenger and freight transport, domestic and small air transport, and newspapers, magazines, and periodicals.

OTHER BARRIERS

Motor Vehicles

Increased access to Korea's automotive market for U.S. automakers remains a key priority for the United States.

The U.S. Government has raised concerns about Korea's emission-related components (ERC) regulations under Korea's Clean Air Conservation Act. Vehicle manufacturers and importers are required to obtain either a modification certification (for a substantial modification of ERCs) or prepare modification reports for insignificant changes. However, the automobile industry has expressed concern about lack of clarity over what types of modifications fall under which category. Automakers also have noted that violations with respect to imports could be subject to criminal prosecution by Korea's customs authorities, which lack authority to investigate domestically manufactured vehicles.

In August 2022, U.S. automotive industry stakeholders raised concerns around the Ministry of Environment's verification test procedure, conducted by the National Institute of Environment Research, on randomly selected new models imported to Korea. These tests have caused delays in manufacturers' product launches.

Pharmaceuticals and Medical Devices

The U.S. pharmaceutical and medical device industries continue to report concerns regarding a lack of transparency in Korea's pricing and reimbursement policies and a lack of substantive opportunities for stakeholder input into proposed policy changes. Industry has raised similar transparency concerns regarding Korea's Innovative Pharmaceutical Company (IPC) Accreditation policy, under which the Ministry of Health and Welfare designates certain companies as IPCs that can receive tax credits, research and development support, and more favorable premiums, but does not offer an explanation to companies who are denied the accreditation.

The United States continues to urge Korea to improve its engagement with this sector by enhancing transparency and providing meaningful opportunities for stakeholder input.

LAOS

TRADE AGREEMENTS

The United States–Laos Trade and Investment Framework Agreement

The United States and Laos signed a Trade and Investment Framework Agreement (TIFA) on February 17, 2016. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Laos. The United States signed a bilateral trade agreement with Laos on February 4, 2005.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Laos' average Most-Favored-Nation (MFN) applied tariff rate was 8.6 percent in 2022 (latest data available). Laos' average MFN applied tariff rate was 11.2 percent for agricultural products and 8.1 percent for non-agricultural products in 2022 (latest data available). Laos has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound MFN tariff rate of 19.2 percent, as all of its WTO accession commitments came into force in 2023.

Taxes

In October 2023, a Laos presidential decree raised excise taxes on six categories of products including gasoline vehicles, with progressively higher tax rates aligned with engine size, such that vehicles with engines over 5,000 cubic centimeters would be subject to a tax rate of 220 percent. U.S. automobile brands dominate the market for larger engines. Stakeholders have raised concerns that the decree was issued without adequate consultation.

Non-Tariff Barriers

Import Licensing and Restrictions

Laos has gradually removed license requirements for some imports. Certain products are still subject to import licensing requirements, including motor vehicles, refined petroleum fuels and oil, and natural gas products.

Customs Barriers and Trade Facilitation

Laos notified its customs valuation legislation to the WTO in June 2013, but has not yet responded to the Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE

Vehicles

Laos' Government Decree No. 470 of 2019 on the management of land vehicles requires that imported vehicles, registered and used in Laos, meet regional and international standards and are in accordance with the international obligations of Laos. Under the Association of Southeast Asian Nations (ASEAN) Mutual Recognition Agreement on Type Approval for Automotive Products, the ASEAN members established a procedure for accepting or recognizing conformity assessment results with reference to the United Nations Economic Commission for Europe (UNECE) 1958 Agreement regulations. Further regulations are anticipated, and the United States will continue to monitor the development of proposed regulations in 2024 to promote acceptance of imported vehicles that meet demonstrated high standards such as the U.S. Federal Motor Vehicle Safety Standards.

INTELLECTUAL PROPERTY PROTECTION

Laos continues to improve its intellectual property (IP) regime, including by issuing regulations to implement its Law on Intellectual Property, and also continues to increase public awareness and media coverage of the harm caused by counterfeit goods and the impact of copyright piracy on local content industries. With U.S. Government assistance, Laos also continues to work to establish an effective system for civil and criminal enforcement of IP. However, counterfeit and pirated goods continue to be available in Lao marketplaces.

MALAYSIA

TRADE AGREEMENTS

The United States–Malaysia Trade and Investment Framework Agreement

The United States and Malaysia signed a Trade and Investment Framework Agreement on May 10, 2004. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Malaysia.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Malaysia's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2022 (latest data available). Malaysia's average MFN applied tariff rate was 7.9 percent for agricultural products and 5.3 percent for non-agricultural products in 2022 (latest data available). Malaysia has bound 83.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 21.2 percent. Malaysia's maximum WTO bound tariff rate varies significantly by product group, for example, from 5 percent for petroleum to 257 percent for dairy products.

Duties for tariff lines where there is significant local production are often higher. In general, tariffs are lower for raw materials than for value-added goods.

Taxes

Malaysia continues to assess a higher excise tax on imported distilled spirits than on spirits that are predominantly produced domestically. Malaysia maintains very high excise taxes on motor vehicles, ranging from 60 percent to 105 percent, based on vehicle type and engine size.

Non-Tariff Barriers

Import Restrictions on Motor Vehicles

Malaysia imposes import restrictions on automobiles under the Malaysian National Automotive Policy, which makes a fundamental distinction between “national” cars (*e.g.*, domestic automakers Proton and Perodua) and “non-national” cars, which include other vehicles produced or assembled in Malaysia, as well as imports. The Malaysian system of “national approved permits” confers on permit holders the right to import and distribute cars and motorcycles. The national approved permits system is administered in a non-transparent manner and is used to implement a cap on the total number of vehicles that can be imported in a given year, currently set at 10 percent of the domestic market. In addition, Malaysia applies high tariffs in the automobile sector, and has traffic restrictions and noise standards that affect the usage of large motorcycles.

In its 2024 federal budget, the Malaysian Government proposed import and excise duty exemptions for imported electric vehicles (EVs) through December 31, 2025. Only locally assembled EVs would benefit from these exemptions through December 31, 2027.

Cabotage Policy on Submarine Cable Repairs

In 2019, the Malaysian Ministry of Transport issued an exemption to the Merchant Shipping Ordinance of 1952 that allowed non-Malaysian ships to conduct submarine cable repairs in Malaysian waters. The exemption reduced the time required to conduct submarine cable repairs critical for continued internet, voice, and data traffic. In November 2020, the new Minister of Transport suddenly revoked the exemption. The United States and industry groups continue to raise concerns with the revocation and have called on the Malaysian Government to restore the exemption.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Halal Import Requirements

Malaysia's halal requirements are more prescriptive than relevant internationally recognized guidelines on labeling food as halal. Specifically, Malaysia requires slaughter plants to maintain dedicated halal production facilities and to ensure segregated storage and transportation facilities for halal and non-halal products. In contrast, relevant international practices allow for halal food to be prepared, processed, transported, or stored using facilities that have been previously used for non-halal foods, provided that Islamic cleaning procedures have been observed. U.S. industry has expressed concerns regarding the costs of creating new, segregated production facilities to access Malaysia's market.

Prior to exporting to Malaysia, the halal practices at each individual U.S. meat and poultry plant must be inspected by Malaysia's Department of Islamic Development (JAKIM) and certified by a JAKIM-accredited Foreign Halal Certification Body (FHCb). Malaysia's Department of Veterinary Services (DVS), in conjunction with JAKIM, has approved only one U.S. beef plant and one U.S. turkey plant to export halal products to Malaysia. In October 2023, the DVS delisted the single approved U.S. beef plant, alleging violations of Malaysian halal requirements identified during a June 2023 plant audit. In addition to plant inspection requirements, all meat, poultry, and dairy products exported to Malaysia must be certified by a JAKIM-approved FHCb.

As of December 2023, Malaysia's Attorney General was still reviewing JAKIM's draft Procedure for the Recognition of Foreign Halal Certification Bodies, which sets out the new requirements for recognizing a FHCb and their post-recognition obligations. The United States will continue to engage with JAKIM on its draft procedure.

Facility Registration Requirements for Export

Malaysia requires that all meat, poultry, and dairy facilities that export to the country be registered by the DVS. This process requires submission of an application with supporting documentation for DVS review, which can take several months. Following the application review, meat and poultry products (with the exception of pork products) are subject to on-site inspection by the DVS and JAKIM. For all products subject to registration, the DVS requires a new application for any adjustment to registration parameters (e.g., introduction of a new product in an approved plant and clerical changes to plant numbers or addresses). Updating the registration can involve additional delays of weeks to months. Minor differences between export certificate details and plant details in the registration system can result in detained shipments that often take several days to clarify.

Restrictive Regulations on Alcoholic Beverages

The definitions for a number of alcoholic beverage products in Malaysia's Food Regulations of 1985 are very narrow and do not provide for the sale of new products that do not fit neatly within the product categories. As a result, Malaysia prohibits the importation of products that do not meet a defined category. The United States is concerned that malt-based and spirit-based ready-to-drink products are not permitted in Malaysia, even though similar wine-based beverages are allowed. The United States continues to engage with Malaysia on its regulations for alcoholic beverage products, including potentially trade-restricting definitions for alcoholic beverages.

GOVERNMENT PROCUREMENT

Malaysia generally invites international tenders only when domestic goods and services are not available. In those cases, foreign companies often find they need to take on a local, Bumiputera (indigenous ethnic Malay) -qualified partner before their tenders will be considered.

Malaysia is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since July 2012.

INTELLECTUAL PROPERTY PROTECTION

Malaysia has been in the process of reforming its intellectual property (IP) laws, including laws governing copyrights, patents, and trademarks. Malaysia has adopted the Copyright (Amendment) Act of 2022, which contains provisions that create a new criminal offense for committing copyright infringement with streaming. The amendment entered into force in March 2022. Malaysia also continues to take steps to enhance its IP enforcement regime.

However, concerns remain in a number of areas. Counterfeit goods are widely available, as highlighted by the continued inclusion of Petaling Street Market in Kuala Lumpur in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). In addition, online, book and journal piracy remain as challenges for right holders. The United States urges Malaysia to continue its efforts to improve protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to enhance criminal sanctions for trade secret theft and misappropriation.

SERVICES BARRIERS

Financial Services

Best Interest Test

Under the Financial Services Act, Bank Negara Malaysia (Malaysia's central bank) evaluates potential investments in financial institutions based on whether the investment serves the "best interests of Malaysia," the criteria for which include evaluating the level of Malaysian participation in the sector.

Bank Negara Malaysia continues to limit foreign banks to eight physical branches in Malaysia, and imposes certain other restrictions. For example, foreign banks cannot set up new branches within 1.5 kilometers of an existing local bank; and Bank Negara Malaysia considers ATMs as equivalent to separate branches. In

addition, Bank Negara Malaysia has conditioned foreign banks' ability to offer some services on commitments to undertake certain back-office activities in Malaysia.

As of December 31, 2023, Bank Negara Malaysia had issued digital bank licenses to five consortiums of banks, investment banks, and businesses.

Malaysia maintains some restrictions on the business of reinsurance, requiring that Malaysian insurers first seek reinsurance from local reinsurers, and then from reinsurers based in the Labuan territory, before obtaining cross-border reinsurance. Also, primary insurers must offer Malaysian Re, the national reinsurer, up to 15 percent of certain lines of both proportional and non-proportional treaty reinsurance, and for facultative and engineering reinsurance up to a certain amount.

BARRIERS TO DIGITAL TRADE

Cloud Services

As of April 2022, the Minister of Communications and Multimedia has mandated that the Malaysian Communications and Multimedia Commission subject cloud service providers, and data centers hosting cloud service applications, to licensing obligations under the Communications and Multimedia Act of 1998, which are vague and can result in unnecessary administrative burdens when operating in Malaysia. Cloud service providers with a local presence are required to apply for an "Application Service Provider's (ASP) license" and can remain 100 percent foreign-owned; cross-border suppliers of cloud services without a local presence do not need to register or obtain ASP licenses.

INVESTMENT BARRIERS

Limitations on Foreign Ownership

Foreign investment in certain sectors is subject to local participation requirements that take the form of joint ventures with mandated minimum ownership interests held by ethnic Malaysian individuals or entities. When applying for certain operating licenses, permits, and approvals, entities with foreign ownership most commonly comply with the local participation requirements through a 70–30 equity split between the foreign investors (who are limited to a maximum of 70 percent ownership) and ethnic Malaysian individuals or entities (which must have a minimum 30 percent stake). Sector-specific regulators set the applicable local participation requirements, including in banking and insurance, education, freight forwarding and logistics, power generation, and cable and satellite telecommunications. In the oil and gas industry, non-Malaysian firms are permitted to participate in oil services in partnership with local firms, and are restricted to the maximum 49 percent equity stake if the foreign partner is the principal shareholder.

SUBSIDIES

Export Subsidies

Malaysia maintains several programs relating to exports, distinct from the pioneer status and investment tax allowance programs listed in Malaysia's subsidies notifications to the WTO. For example, the normal and enhanced allowance for increased exports programs provide for tax deductions of up to 70 percent of statutory income for increased exports. Malaysia has not included these measures in its WTO subsidies notifications. The United States continues to raise concerns with Malaysia about these and other policies.

MEXICO

TRADE AGREEMENTS

The United States–Mexico–Canada Agreement

The United States–Mexico–Canada Agreement (USMCA) entered into force on July 1, 2020. The USMCA maintains the zero tariffs that were in place among the three countries under the North American Free Trade Agreement and modernized the agreement to include strong, enforceable labor and environmental obligations, ground-breaking provisions to combat non-market practices, and provisions covering small and medium-sized enterprises (SMEs).

IMPORT POLICIES

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Mexico continues to provide insufficient prior notification of procedural changes, inconsistent interpretation of regulatory requirements at different border posts, and uneven border enforcement of Mexican standards and labeling rules. Some goods are still not allowed to be imported at all ports of entry. Restricting goods to certain ports has made it difficult for U.S. exporters to arrange for transportation and logistics, especially for electronic commerce purchases from U.S. SME exporters.

The USMCA prohibits arbitrary limits on the number of ports at which a customs broker may operate. Yet, Article 161 of Mexico’s Customs law limits a broker to operate at four ports if the broker is not part of a customs agency. The United States continues to urge Mexico to amend the law to allow brokers to operate at any port where the broker is able to perform its duties.

The USMCA also requires that Mexico implement a periodic payment option for express delivery shipments, which Mexico had not done as of December 2023.

On January 1, 2022, Mexico imposed a new requirement for a “complement” to the existing electronic waybill requirement on transportation services. Any shipment transported within Mexico over federal roads must be accompanied by an electronic waybill “complement” that contains up to 140 data elements about the shipment. On December 31, 2023, Mexico began enforcing the requirement. The United States continues to monitor Mexico’s implementation of this requirement.

Medical Devices, Supplies, and Pharmaceuticals

Industry continues to report delays of 18 months to 24 months for adjudication of sanitary registrations and import permit applications. Overall, the regulatory environment has shown minor improvements, but more structural changes need to be made to facilitate registration in Mexico. Although the Federal Commission for Protection Against Sanitary Risks (COFEPRIS) continues to work through its backlog, companies that try to register U.S. Health and Human Services Food and Drug Administration (FDA)-approved products in Mexico continue to report delays of more than a year. Regulatory delay remains a primary barrier to entering the Mexican market for medical devices and pharmaceuticals. COFEPRIS reportedly continues to be understaffed, with insufficient capacity to grant sanitary registrations and conduct factory inspections to issue good manufacturing practices certifications within the established timeframes. COFEPRIS is in

the process of implementing reliance mechanisms for approvals and inspections and, as part of these efforts, continues to hold technical regulatory discussions with the FDA to identify opportunities to improve its review process.

Glyphosate

Mexico's Secretariat of the Environment and Natural Resources has rejected import permits for glyphosate-containing chemical products. Mexico has not provided an opportunity for public comment, submitted notifications to the World Trade Organization (WTO), or provided scientific evidence for the rejections. Glyphosate remains registered for use in Mexico.

Separately, on January 1, 2021, a decree that called for the phaseout of the use of glyphosate and glyphosate-containing products by January 31, 2024, entered into force. A subsequent decree, published on February 13, 2023, extended the phaseout deadline to March 31, 2024. During the phaseout period, Mexico's National Council of Humanities, Sciences and Technology has been tasked with studying, developing, and promoting alternatives to glyphosate. Furthermore, the decree prohibits Mexico from using glyphosate in any government-sponsored programs during the phaseout period. Mexico is implementing import quotas for glyphosate and glyphosate-containing products. On March 1, 2023, COFEPRIS reduced the quota for imports of glyphosate by 50 percent, to 4,131 tons of formulated glyphosate and 314 tons of technical glyphosate.

The United States continues to press Mexico to grant import permits for glyphosate and glyphosate-containing products, consistent with the fact that glyphosate remains registered for use in Mexico.

Pesticides and Agricultural Chemicals

U.S. companies continue to report significant delays in receiving the necessary registration and marketing approvals from COFEPRIS for certain pesticides and agricultural chemicals. These delays appear to impact both applications for registration and applications for reregistration, sometimes involving only administrative updates such as changing the company's address. Companies report COFEPRIS is not granting registration renewals for many pesticide molecules. Consequently, some license holders have lost their registrations and the ability to import pesticides and agricultural chemicals.

Chemical and Petrochemical Products

On October 23, 2023, Mexico issued a decree that immediately placed new import restrictions on over 60 chemical and petrochemical products. On June 6, 2023, Mexico published a separate measure expanding the scope of coverage of certain existing import and export requirements to 58 new chemical and petrochemical products and creating additional requirements for companies importing or exporting in scope products. The United States continues to monitor Mexico's implementation of these new requirements.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Dairy Products

The United States continues to be concerned about Mexico's proposed modifications to Mexican Official Standard NOM-223 on cheese conformity assessment procedures, NOM-222 on milk powder, and NOM-

181 on yogurt. The United States has requested that Mexico consider changes to its overly burdensome informational requirements and conformity assessment scheme, including by basing them on international standards. In 2023, the United States once again raised concerns regarding the cheese conformity assessment procedures in the WTO at every meeting of the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and the WTO Council for Trade in Goods.

Local Specific Absorption Testing Requirements

The United States continues to express concerns with regulations that Mexico's telecommunications regulator, the Federal Telecommunications Institute (IFT), published in 2020 pursuant to Technical Provision IFT-012-2019 that pose a barrier to trade for mobile telecommunications products by requiring in-country testing for Specific Absorption Rates and reference out-of-date standards from the International Electrochemical Commission/Institute of Electrical and Electronics Engineers and the International Commission on Non-Ionizing Radiation Protection. The requirements include duplicative testing and may cause delays, as Mexico has a limited number of accredited facilities able to perform the required tests. The United States continued to press Mexico, including on the margins of the 2023 WTO TBT Committee meetings, to use the latest testing standards and to include testing to these standards in the scope of the Mutual Recognition Agreement between the Government of the United States of America and the Government of the United Mexican States for Conformity Assessment of Telecommunications Equipment.

Sanitary and Phytosanitary Barriers

Fresh Potatoes

Since 2003, the United States has sought access for fresh potatoes to all of Mexico, beyond a 26-kilometer zone along the U.S.–Mexico border outside of which imports were not permitted. In April 2021, the Supreme Court of Mexico affirmed the authority of Mexico's regulatory agency to expand access for U.S. fresh potatoes. Subsequently, in 2021, Mexico completed the regulatory steps necessary for access for U.S. fresh potatoes to cities with populations over 100,000 people. In May 2022, the United States began shipping fresh potatoes to Mexico beyond the 26-kilometer zone. The United States is monitoring the situation to ensure transparent and predictable access for U.S. exporters and that requirements are based on science.

Products of Agricultural Biotechnology

Mexico's Biosafety Law requires COFEPRIS to decide on a complete application for authorization covering the importation and sale of genetically engineered (GE) products within six months of receipt. The United States has expressed serious concerns that certain decisions on applications were not based on science and were subject to significant delays.

On February 13, 2023, the Mexican Government published a decree that bans the use of GE corn in tortillas and dough and instructs Mexican Government agencies to gradually substitute—*i.e.*, restrict and eventually ban—the use of GE corn in all products for human consumption and for animal feed. In March 2023, the United States requested and held technical consultations with Mexico regarding its measures concerning GE products under the USMCA Sanitary and Phytosanitary Measures Chapter, but the consultations did not resolve the matter. In June 2023, the United States requested and held dispute settlement consultations with Mexico regarding its measures under the USMCA Dispute Settlement Chapter, but these consultations also failed to resolve the matter. On August 17, 2023, the United States established a USMCA dispute settlement panel challenging the aforementioned measures reflected in Mexico's February 13, 2023 decree on the basis that these measures are not based on science and undermine the market access Mexico agreed to provide in the USMCA. A final panel report is expected at the end of 2024.

Genetically Engineered Cotton

Mexico rejected applications for cultivation of GE cotton in 2019 and 2020. No applications were submitted in 2021 and 2022. In 2023, companies submitted three applications for experimental field trials of new GE cotton varieties. Mexico had not decided on these applications as of December 2023. GE cotton has been cultivated in Mexico for 25 years with no evidence of adverse impact on the environment, biodiversity, or animal or plant health. The United States continues to press Mexico to reconsider rejected applications, complete its approval procedure without undue delay, and use a science- and risk-based approval process.

INTELLECTUAL PROPERTY PROTECTION

Mexico was listed on the Watch List in the [2023 Special 301 Report](#). Obstacles to U.S. trade in intellectual property (IP) intensive goods and services include the wide availability of pirated and counterfeit goods, via both physical and online markets. As broadband access increases, so has online piracy, and stakeholders report that Mexico has one of the highest rates of music and video game piracy in the world. Overall criminal enforcement of IP rights, including online, continues to be characterized by weak coordination among federal, state, and municipal officials; limited resources for prosecutions; the lack of sustained investigations targeting suppliers of counterfeit and pirated goods and services; and the lack of sufficient penalties to deter violations. Brand owners also face bad faith trademark registrations, making it important for companies to register their trademarks early. Moreover, rights holders continue to express concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. The Tepito market in Mexico City, the La Cuchilla market in Puebla, and the La Pulga Río market in Monterrey are listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) for selling pirated and counterfeit goods.

With respect to geographical indications (GIs), in 2020, Mexico and the European Union (EU) concluded negotiations on a free trade agreement in which Mexico agreed to protect 340 names for foodstuffs, wines, and beers. The United States remains concerned about the EU practice of negotiating product-specific IP outcomes as a condition of market access and reiterates the importance of each individual IP right being evaluated on its individual merit in Mexico. In a USMCA side letter, Mexico confirmed that market access of U.S. products is not restricted in Mexico due to the mere use of certain individual cheese terms. Mexico has a *sui generis* system of protection for GIs that includes certain elements aimed at improving and respecting due process and transparency.

In 2020, Mexico enacted a new Federal Law for the Protection of Industrial Property and amended its Federal Copyright Law and Federal Criminal Code with a view to complying with various provisions of the USMCA and strengthening IP protection. Mexico is still in the process of drafting regulations for both the Federal Law for the Protection of Industrial Property and the Federal Copyright Law amendments, and the lack of regulations is creating uncertainty for the creative and innovative sectors looking to protect and enforce their IP.

SERVICES BARRIERS

Electronic Payments Services

The United States continues to closely monitor developments with respect to Mexico's evolving policy framework for electronic payment service suppliers. Aspects of the existing policy framework limit the

ability of U.S. electronic payment service suppliers to supply their complete suite of value-added services, including fraud protection, and differentiate themselves in the marketplace. On September 14, 2023, Mexico's Federal Economic Competition Commission identified barriers to competition in the card payment processing market and issued recommendations to Mexico's Central Bank—Banxico—and the National Commission for Banking and Securities to restore conditions for competition. As Mexico considers updating its regulations, the United States continues to urge Mexico to facilitate a competitive market and level playing field for U.S. electronic payment service suppliers, aligned with Mexico's USMCA obligations.

Mexico issued regulations in 2021 relating to the use of cloud service suppliers by electronic payment fund institutions. The United States continues to be concerned by the length, complexity, and uncertainty of the approval process for electronic payment fund institutions that seek to use secure, U.S.-based cloud computing services, raising questions about the extent to which the approvals are tacitly being conditioned on using local computing facilities.

Telecommunications Services

Notwithstanding the sweeping reforms of the telecommunications sector in 2013 and 2014, new market entrants still must compete with the traditional dominant supplier, which has maintained a market share well above 60 percent and was designated as a “preponderant economic agent” by the IFT. The entrenched position maintained by this dominant supplier, particularly regarding the mobile services market, demonstrates the continued need for vigilant enforcement by the IFT of the regulations it adopted to address that supplier's status as a preponderant economic agent. Statements by the Mexican President concerning the intention to eliminate the IFT raise significant concerns regarding Mexico's continued compliance with its USMCA obligations.

The cost of spectrum in Mexico is one of the highest in Latin America. Although Mexico assigns spectrum licenses through competitive auctions, it imposes a substantial annual fee based on the amount of spectrum held by each licensee. This approach is out of sync with international best practices and is in part responsible for the relative failure of Mexico's most recent auction (IFT-10), where only 3 of 41 blocks of spectrum received any bids. It also appears that the structure of Mexico's annual spectrum fee may advantage the dominant supplier and has led another supplier to return to the Government of Mexico all the spectrum it had been awarded. The Government of Mexico dismissed several proposals to lower the costs made by the IFT and the private sector. The United States continues to press Mexico to consider changes to its rules that would lower overall costs for spectrum and address the market power of the dominant supplier.

INVESTMENT BARRIERS

Energy Sector

Since December 2018, Mexico has pursued an energy policy centered on reinstating the primacy of its state-owned electric utility, the Federal Electricity Commission (CFE), and oil and gas company, Mexican Petroleum (PEMEX). Mexico has undertaken various measures to achieve this aim. For example, in March 2021, Mexico amended its Electric Power Industry Law so that its grid operator will prioritize for dispatch to Mexico's grid CFE-generated electricity over electricity generated by all private competitors, irrespective of cost or environmental impact.

Certain actions or inactions by Mexico have also been curtailing the ability of private companies to participate effectively, if at all, in Mexico's energy sector. They include delaying, denying, or failing to

act on applications for new permits or permit modifications; suspending or revoking existing permits; and otherwise blocking private companies' ability to operate renewable energy facilities (such as wind and solar installations), import and export electricity and fuel, store or transload fuel, and build or operate retail fuel stations.

In addition, in December 2019, Mexico's energy regulator granted PEMEX—but not other companies, including U.S. companies—a five-year extension to comply with maximum sulfur content requirements under its fuel standard in certain parts of Mexico, which otherwise require the sale of ultra-low sulfur diesel fuel throughout the country. Without the extension, PEMEX would have had to purchase ultra-low sulfur diesel imported from the United States or upgrade its facilities to produce ultra-low sulfur diesel in sufficient quantities.

In June 2022, Mexico's Secretary of Energy notified the Energy Regulatory Commission and the National Natural Gas System Operator of a change in policy that would require, among other things, that users of Mexico's gas transportation network demonstrate that they source natural gas from PEMEX or CFE.

Multiple U.S. companies have reported exiting Mexico's energy market as a direct consequence of these measures.

In July 2022, the United States requested consultations with Mexico under USMCA Chapter 31 regarding these measures. In 2023, the United States engaged with Mexico in these consultations on specific and concrete steps Mexico must take to address the concerns set out in the consultations request.

Mining Sector

The Government of Mexico passed legislation in April 2022 amending the national mining law to establish greater state control over the country's lithium resources. The amendments place responsibility for the exploration, exploitation, and utilization of Mexico's lithium under the exclusive control of a newly created state-owned lithium company, LitoMx, and prohibit concessions, licenses, contracts, permits, and authorizations to nonpublic entities to undertake those activities. The amendments also open the door to declaring other minerals as "strategic resources" that would require greater state control in the future. The Mexican Government was still drafting implementing measures for the amendments as of December 2023. The United States continues to monitor Mexico's implementation of these amendments.

Restricted Sectors

Mexico restricts foreign investment in certain sectors under the Foreign Investment Law. Foreign ownership is capped at 49 percent for express delivery companies and land for agricultural, livestock, and forestry purposes, as well as port administration services. Certain other sectors, such as transportation infrastructure, are closed to foreign participation.

SUBSIDIES

Export Subsidies

On October 11, 2023, Mexico issued a decree that establishes nationwide tax benefits for investment in certain export sectors. Specifically, the decree provides for the accelerated deduction of expenditures in certain new fixed assets and the additional deduction of training expenses. The United States has expressed concerns about the provision of benefits that are contingent upon the export or sale for export of products.

MOROCCO

TRADE AGREEMENTS

The United States–Morocco Free Trade Agreement

The United States–Morocco Free Trade Agreement (USMFTA) entered into force on January 1, 2006. Morocco immediately eliminated duties on 95 percent of industrial and consumer goods. Morocco implemented phased tariff reductions culminating in the complete elimination of duties on most goods by 2016. Some sensitive agricultural products have longer periods for duty elimination and may be subject to other provisions, including tariff-rate quotas (TRQs). Goods from key U.S. export sectors such as information technology, machinery, construction equipment, chemicals, and textiles receive either duty-free or other preferential duty treatment when entering Morocco. The United States and Morocco consult regularly to review the implementation and functioning of the Agreement and to address outstanding issues. The United States–Morocco Joint Committee is the central oversight body for the USMFTA.

IMPORT POLICIES

Tariffs

On January 1, 2024, as prescribed in the USMFTA, Morocco published Circular 6519/222, announcing tariff changes for calendar year 2024. The circular includes a list of products for which tariffs have been phased out in 2024, products for which tariffs are not yet fully liberalized, and updated agricultural TRQs and agricultural safeguard measures for the period from January 1 through December 31, 2024. A notable change includes the imposition of additional safeguard measures on frozen, fresh, or chilled chicken legs and wings.

TECHNICAL BARRIERS TO TRADE

Technical Barriers to Trade

In 2023, Morocco adopted Decree No. 2.10.421 of Ramadan 5, 1445 which stipulates that starting in January 2024, vehicles that are not aligned with the Euro 6b standard for emissions may no longer be registered in the country. Heavy vehicles have an additional 24 months to comply. Morocco generally only allows the importation of automobiles meeting the United Nations Economic Commission for Europe (UNECE) 1958 Agreement vehicle standards, effectively barring many automobiles produced in the United States from entering the Moroccan market. Although the Moroccan Government has officially allowed for the importation of automobiles that meet the U.S. Federal Motor Vehicle Safety Standards since 2016 (under Decree No. 2-15-89 of Ramadan 3, 1437), U.S. companies continue to report that Moroccan customs has still not adopted a procedure to regularize this process.

INTELLECTUAL PROPERTY PROTECTION

Inadequate intellectual property protection and enforcement in Morocco continues to be an area of concern. Although the United States acknowledges the efforts of Morocco to combat piracy and trade in counterfeit goods, Morocco faces challenges with digital piracy and continues to be a thriving market for counterfeit products.

The United States and Morocco continue to engage on matters related to Morocco's policy toward geographical indications (GIs). The United States remains concerned that the European Union (EU) has pursued negotiations with Morocco and other countries that would require partner countries to adopt overly broad protection of EU GIs as a condition of market access into the EU. The United States continues to reiterate to Morocco the importance of each GI being independently evaluated on its individual merits, with adequate due process requirements.

SERVICES BARRIERS

Although Morocco's insurance regulations do not appear to make formal distinctions based on national origin, U.S. insurance suppliers have reported that, in practice, the Moroccan regulatory body (part of the Ministry of Economy and Finance) applies an authorization process that has impeded U.S. insurance companies from introducing products that compete with Moroccan firms.

OTHER BARRIERS

U.S. firms have cited irregularities with regard to certain government procedures, including a lack of clear and accessible information about new regulations and certifications relating to imports into the country, as among the greatest obstacles to investment with Morocco. In particular, U.S. companies have pointed to difficulties they encounter in processes for obtaining permits, land use approvals, and other government permissions. U.S. companies also have noted the challenges created by rigid protocols and excessive bureaucracy, which can lead to long wait times for decisions and permissions, particularly when dealing with public sector entities. Morocco's property registration procedures also continue to impede business.

In an effort to avoid an excessive drain on foreign exchange, Moroccan authorities allow Moroccan companies to prepay only up to 30 percent of a shipment's total value in advance of importation. These restrictions on purchasers are often problematic for U.S. exporters that require 100 percent advance payment. Some U.S. exporters use letters of credit to mitigate the effect of these limitations, but these are costly and many U.S. exporters report lengthy payment delays. While Moroccan officials had indicated in 2019 that the 30 percent limit would be phased out over an indefinite timeline, it remained in effect as of December 31, 2023. The United States continues to press for removal of the limitation.

NEW ZEALAND

TRADE AGREEMENTS

The United States–New Zealand Trade and Investment Framework Agreement

The United States and New Zealand signed a Trade and Investment Framework Agreement on October 2, 1992. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and New Zealand.

IMPORT POLICIES

Tariffs

New Zealand's average Most-Favored-Nation (MFN) applied tariff rate was 1.9 percent in 2022 (latest data available). New Zealand's average MFN applied tariff rate was 1.4 percent for agricultural products and 2.0 percent for non-agricultural products in 2022 (latest data available). New Zealand has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 9.6 percent.

As of 2022, New Zealand applied a zero percent duty on an MFN basis on 72.5 percent of its tariff lines in agricultural goods and on 65.0 percent of its tariff lines in non-agricultural goods.

SANITARY AND PHYTOSANITARY BARRIERS

Animal Health

New Zealand maintains restrictions on imports of pork from the United States related to concerns that certain pork products may transmit animal diseases, which do not appear to be grounded in science and risk. Imports of U.S. frozen or chilled pork products weighing more than three kilograms must be cooked, canned, or undergo further processing within New Zealand.

INTELLECTUAL PROPERTY PROTECTION

The United States continues to monitor developments to amend the Medicines Act 1981, any developments regarding the Geographical Indications (Wine and Spirits) Registration Act 2006, and proposed amendments to the Patent Act 2013. The United States will continue to work with New Zealand to address any intellectual property issues.

NICARAGUA

TRADE AGREEMENTS

Dominican Republic–Central America–United States Free Trade Agreement

The Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006; for the Dominican Republic in 2007; and for Costa Rica in 2009. The United States and the other CAFTA–DR countries meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items (approximately 95 percent of Nicaragua’s tariff lines) at a maximum of 15 percent, with some exceptions. However, under the CAFTA–DR, as of January 1, 2015, non-agricultural goods enter Nicaragua duty free.

In addition, nearly all U.S. agricultural exports enter Nicaragua duty free under the CAFTA–DR. Nicaragua eliminated its remaining tariffs on rice and chicken leg quarters on January 1, 2023, and is scheduled to eliminate tariffs on dairy products by 2025. For certain agricultural products, tariff-rate quotas (TRQs) permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through annual expansion of a TRQ that reaches a maximum of 7,000 metric tons in 2025. Nicaragua is required under the CAFTA–DR to make TRQs available on January 1 of each year. Nicaragua monitors its TRQs through an import licensing system, which the United States carefully tracks to ensure the timely issuance of these permits.

Taxes

The Nicaraguan Government levies a consumption tax of 15 percent to 42 percent on certain luxury items. Since 2019, Nicaraguan customs officials have calculated this tax based on a unilaterally devised purchase price that often seems to be inflated. Other products, such as alcoholic beverages, are also taxed on the basis of a presumed purchase price. The selective consumption tax may disadvantage foreign suppliers because domestic products pay the tax only on the actual purchase price. In addition, businesses report being unable to secure tax refunds, with some stating that filing for a refund has resulted in audits, additional taxes, and penalties. The National Institute of Information and Development has provided a schedule of retail prices that is supposed to serve as a baseline for this tax, but businesses report that customs authorities often do not use the schedule.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Businesses report that Nicaraguan customs officials routinely delay customs inspections and levy arbitrary fines for minor paperwork problems such as typographical errors. These fines reportedly often represent up to three times the value of the shipment. Businesses also continue to report that nearly all shipments are subject to physical inspection. Some businesses express concern that customs officials might target shipments for further scrutiny for political reasons.

In addition, six government institutions are involved in processing import paperwork. Many services, such as lab testing for food safety, are available only in the capital city of Managua, creating delays and additional costs if goods must be stored while testing is completed. Some businesses report that customs officials arbitrarily hold or open containers that contain perishable items, such as refrigerated or frozen goods.

Starting in 2019, Nicaragua's Customs Authority (DGA) began systematically seeking proof of country of origin for various types of products that had previously been established as originating under the CAFTA-DR, including through a comprehensive questionnaire to importers seeking detailed information about the products. Multiple businesses have reported that the requested information includes proprietary business data or trade secrets. Businesses have sought to make arrangements with the DGA to provide proof of origin without publishing trade secrets in questionnaires, such as through site visits to production plants and staff interviews. However, DGA has rejected those proposals and in multiple cases has initiated administrative processes to remove preferential treatment under the CAFTA-DR and has sought retroactive tariffs for the time that the product was imported with preferential treatment. The DGA's increased scrutiny of the proof of origin of imports has led to delays at customs and arbitrary fines for businesses. In multiple cases, the DGA has also levied a separate fine that doubles the amount owed.

U.S. exporters report that the DGA has ignored certifications of origin for various products provided by U.S. Government or local government agencies as proof of origin for agricultural commodities and that submission of additional documents requested by the DGA, such as questionnaires, has not resulted in approval of a claim for preferential treatment and has not appeared to be part of a good faith process.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

U.S. industry has raised concerns that food product registration in Nicaragua can be complicated and arbitrary. The Nicaraguan Ministry of Health requires a Certificate of Free Sale for product registration. Such documents are not issued at a national level in the United States and are not uniformly available to U.S. exporters. In some cases, U.S. companies have satisfied the requirement by submitting documents that are issued by some U.S. states or local government authorities or trade organizations. However, not all U.S. manufacturers are located in jurisdictions or affiliated with institutions that issue such documents and therefore cannot gain approval to sell in the Nicaraguan market as they are unable to submit such documents.

U.S. food companies have expressed concern regarding Law 842 (2013), which requires that all processed food products be marked with an expiration date. Nicaraguan officials have at times interpreted "Best By" dates, which indicate food quality or freshness rather than food safety, as expiration dates, and have destroyed products exceeding those dates. Nicaraguan importers of U.S. products have complained that

the law imposes costs on food importers, especially for products that do not typically have expiration dates. Nicaraguan importers continue to work with suppliers to include expiration dates in the translated Spanish label as required by the Central American Technical Regulation on General Labeling of Prepackaged Food Products (RTCA 67.01.07:10).

Sanitary and Phytosanitary Barriers

U.S. exporters have faced multiple container rejections since 2021 as a result of Nicaragua's interpretation of a Central American Technical Regulation for fresh/chilled/frozen meat (RTCA 67.04.50:17). Among the Central American countries applying the regulation, only Nicaragua applies a 20 percent threshold requirement for the presence of Salmonella on raw chicken. Additionally, Nicaragua enforces a 'zero tolerance' standard for Salmonella on raw pork meat. Most of the shipments rejected by Nicaragua have been successfully returned to the United States, passed subsequent food safety inspections by U.S. regulators, and were re-exported to other Central American countries that operate under the same Central American regional regulation.

GOVERNMENT PROCUREMENT

Significant hurdles inhibit the ability of U.S. suppliers to compete for sales to Nicaraguan Government entities. Existing law provides that all government purchases must be planned and approved by procurement committees within each public entity and published in Annual Procurement Plans. The law also requires a minimum of 30 days from publication of a bid to the due date for submissions. However, these requirements are not always followed. Industry reports that the Nicaraguan Government limits transparency on public procurement, publishes public procurements too late to ensure fair competition, creates terms of reference and technical specifications that are frequently unclear, and includes requirements for financial guarantees and local legal representation that create significant challenges for U.S. firms. Moreover, U.S. businesses report that the rule of law is weak and that outside actors can influence the judicial process and hamper due process.

Nicaragua is neither a Party to the World Trade Organization (WTO) Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. However, the CAFTA–DR contains disciplines on government procurement.

INTELLECTUAL PROPERTY PROTECTION

Despite a strong legal framework to implement CAFTA–DR commitments on intellectual property (IP) protection and enforcement, concerns remain, including optical disc and broadcast media piracy and the use of unlicensed software in Nicaragua. Furthermore, the sale of counterfeit and pirated goods is reportedly on the rise throughout Nicaragua. The United States has expressed concern to the Nicaraguan Government about inadequate IP enforcement, as well as the need to ensure transparency in procedures relating to the protections for geographical indications. The United States will continue to monitor Nicaragua's implementation of its IP obligations under the CAFTA–DR.

NIGERIA

IMPORT POLICIES

Tariffs

Nigeria's average Most-Favored-Nation (MFN) applied tariff rate was 12 percent in 2022 (latest data available). Nigeria's average MFN applied tariff rate was 15.9 percent for agricultural products and 11.4 percent for non-agricultural products in 2022 (latest data available). Nigeria has bound 19.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 120.5 percent.

Consistent with the Economic Community of West African States (ECOWAS) Common External Tariff (CET), Nigeria applies five tariff bands: (1) zero percent duty on essential social goods (*e.g.*, medicine); (2) 5 percent duty on essential commodities, raw materials, and capital goods; (3) 10 percent duty on intermediate goods; (4) 20 percent duty on consumer goods; and, (5) 35 percent duty on certain goods that the Nigerian Government elected to afford greater protection. The CET was slated to be fully harmonized by 2020, but, in practice, some ECOWAS Member States have maintained deviations from the CET beyond the January 1, 2020 deadline.

Nigeria maintains a number of supplemental levies and duties on imports of certain goods, which significantly raises the effective tariff rate paid by importers. For example, Nigeria maintains a combined effective duty (tariff plus levy) of 50 percent or more on 156 tariff lines. These include 15 tariff lines on which the combined effective duty exceeds the 70 percent limit set by ECOWAS, covering products including rice (120 percent), wheat flour (100 percent), and sugar (80 percent).

Non-Tariff Barriers

Import Bans

The Nigeria Customs Service continues to ban the import of 45 different product categories. The list of prohibited imports currently includes: bird eggs; cocoa butter, powder, and cakes; pork; beef; live or dead birds; frozen poultry; refined vegetable oil and fats; bottled water; spaghetti and other noodles; fruit juice in retail packs; tomatoes, tomato ketchup, and tomato sauces; nonalcoholic beverages (excluding energy drinks); bagged cement; beer and stout; all medicaments falling under Harmonized System headings 3003 and 3004; soaps and detergents; mosquito repellent coils; paper board; telephone recharge cards and vouchers; used motor vehicles more than 12 years old; ball point pens; pistols and air pistols; cartridge reloading implements; used clothing; and, certain spirits and alcohols.

Customs Barriers and Trade Facilitation

Nigeria ratified the WTO Trade Facilitation Agreement (TFA) in January 2017. Nigeria's notification on the use of customs brokers was due to the WTO in December 2020, according to Nigeria's self-designated TFA implementation schedule. Nigeria submitted an incomplete notification with respect to the use of customs brokers on November 25, 2022, and the United States will seek further information and encourage Nigeria to submit a revised notification with complete information.

The Nigeria Customs Service's practices continue to present major obstacles to trade. Importers report inconsistent application of customs regulations; lengthy clearance procedures, often due to outdated manual

processing systems; and, corruption. These factors sometimes contribute to product deterioration and result in significant losses for importers of perishable goods. Disputes among Nigerian Government agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. The customs authority has attempted to automate its processes, but many basic customs procedures are still paper-based and require an unreasonably long time to complete. In September 2020, the Nigerian Government approved a \$3.1 billion customs modernization project that would include the automation of paper-based customs processes. The project was to be completed in 36 months and executed via a public-private partnership through a 20-year concession. This project has experienced implementation delays and is the subject of domestic litigation. While the project is delayed, the Nigerian Customs Service announced in 2023 a partnership with the World Customs Organization to deploy geospatial intelligence at the nation's border, which will enhance enforcement.

While the Nigerian Government has undertaken efforts to implement access road improvement projects, traders continue to report that infrastructural limitations in and around Nigeria's ports contribute to long queues of both trucks and ships, resulting in delays and increased costs.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Transparency

Transparency of the regulatory system in Nigeria is a concern. U.S. companies have raised concerns that some regulations are issued as final measures without a clear process or period for public comment on draft regulations. Nigeria has not consistently notified draft technical regulations to the WTO Committee on Technical Barriers to Trade. Additionally, Nigeria is not consistent in the implementation of technical regulations, which can create confusion and undermine compliance.

Sanitary and Phytosanitary Barriers

Import bans

Nigeria continues to prohibit imports of beef, poultry, pork, sheep, goat meat, and edible offal. Nigeria has indicated that the import prohibitions are in place to prevent the spread of animal diseases or threats to human health, but the prohibitions apply to products from all countries regardless of animal disease status. Nigeria also prohibits the import of live poultry (with the exception of day-old chicks) due to alleged concerns about avian influenza that do not appear to be based on scientific approaches. The United States continues to press Nigeria to use science- and risk-based approaches to prevent the spread of animal disease.

Import Certificates

Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates from manufacturers, third-party certifiers, or exporters' national authorities, depending on the product. These certificates must attest that the product is safe for human consumption, even though certificate-issuing authorities do not inspect every shipment of exported food product. However, Nigeria's limited capacity to review certificates, carry out inspections, and conduct testing has resulted in delays in the clearance of food imports and has diverted imports to informal channels. Since 2019, the United States has sought to negotiate import permits for the export of several categories of U.S. food and agricultural products. Nigeria has been slow to approve these requests.

GOVERNMENT PROCUREMENT

U.S. companies have expressed concerns about corruption and a lack of transparency in procurement processes in Nigeria.

The Public Procurement Act of 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for the monitoring and oversight of public procurement in Nigeria. Nigeria only requires government entities to engage in competitive bidding for any procurement worth more than ₦2.5 million (approximately \$5,747). Only majority Nigerian-owned companies may bid on procurements above ₦2.5 million, up to ₦100 million (approximately \$229,885) for goods, and up to ₦1 billion (approximately \$2.3 million) for services and works. Above those thresholds, both majority foreign-owned and majority Nigerian-owned companies may engage in competitive bidding. Nigerian Government agencies do not always follow procurement guidelines, despite the requirement that no procurement proceedings are to be formalized until the procuring entity has ensured that funds are available to meet the obligations and has obtained a “Certificate of ‘No Objection’ to Contract Award” from the BPP.

Executive Order 5 of 2018 added restrictions and obligations for public procurement related to science, engineering, and technology. The order is designed to bolster the Public Procurement Act of 2007 and directs government offices to grant preference to Nigerian professionals.

Foreign companies may be subject to requirements to, for example, use a local partner firm or join a consortium. In 2013, the National Information Technology Development Agency (NITDA), an agency of the Federal Ministry of Communication Technology, issued the “Guidelines for Nigerian Content Development in Information and Communications Technology” (NITDA Guidelines). The NITDA Guidelines require ministries and development agencies to source and procure all computer hardware only from NITDA-approved original equipment manufacturers. The Nigerian Oil and Gas Industry Content Development Act also mandates a maximum quota of 5 percent of all positions that can be allotted to foreign nationals.

Nigeria has made modest progress on its pledge to conduct open and competitive bidding processes for government procurement. The BPP has made a variety of procurement procedures and bidding information publicly available on its website. However, Nigeria’s National Assembly operates its own procurement process that is not subject to BPP oversight and lacks transparency. Although U.S. companies have won contracts in various sectors, difficulties in receiving payments are common and can discourage firms from bidding. Supplier or foreign government-subsidized financing arrangements appear in some cases to be a crucial factor in the award of government procurements.

Nigeria is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Nigeria has taken steps to improve its legal framework for intellectual property (IP) protection. In 2019, Nigeria enacted the Federal Competition and Consumer Protection Act, which includes provisions designed to combat trademark counterfeiting, and in 2021, Nigeria enacted the Plant Variety Protection Act, creating a legal framework and administrative structure for the protection of plant varieties. In March 2023, the Nigerian President signed the Copyright Act 2022 into law. The Copyright Act 2022 includes provisions addressing technological protection measures, remuneration, and broadcasting rights and provides anti-piracy penalties, with a view toward implementing the World Intellectual Property Organization (WIPO)

Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Beijing Treaty on Audiovisual Performances; and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The United States has urged Nigeria to consider whether additional amendments are needed to ensure Nigerian copyright law is in compliance with all IP treaties to which Nigeria is a party.

Pirated and counterfeit goods remain widely available in Nigeria and often threaten the health and safety of consumers. Counterfeit pharmaceuticals, automotive parts, and other consumer goods, as well as online infringements and pirated software, music, and video recordings are prevalent. IP enforcement remains inadequate due to chronically insufficient resources for enforcement agencies, porous borders, entrenched trafficking systems that make enforcement difficult, and corruption. Public awareness is low regarding the role of IP in Nigeria's economy, despite the benefits Nigeria is seeing with its growth as a regional hub for the African film, music, and fashion industries and the harm to consumers from counterfeit products. The Nigerian Copyright Commission and the Federal Competition and Consumer Protection Commission, often in partnership with the U.S. Embassy, have taken steps to raise awareness about IP.

SERVICES BARRIERS

Nigeria prohibits foreign firms from participating in reinsurance of risks in the oil and gas sector. Although the regulator may waive this prohibition, all local reinsurance capacity must be fully exhausted. Nigeria also imposes 5 percent mandatory reinsurance cession requirements in favor of the Africa Reinsurance Corporation and the WAICA Reinsurance Corporation.

In June 2022, the National Assembly passed the Advertising Regulatory Council of Nigeria Act, which entered into force on July 25, 2022. The Act replaced the Advertising Practitioners Council of Nigeria, which functioned like a trade association, with the Regulatory Council, which has sweeping regulatory and enforcement powers. The Act prescribes mandatory registration for any person or company engaging in any form of advertising in Nigeria and requires all advertisements to be approved before publication.

BARRIERS TO DIGITAL TRADE

The NITDA Guidelines require all foreign and domestic businesses to store all data concerning Nigerian citizens within Nigeria. The NITDA Guidelines further require that businesses host all government data locally, unless officially exempted. However, the requirements do not seem to be rigorously enforced.

The NITDA Guidelines also require information and communications technology companies to use Nigerian businesses for the provision of at least 80 percent of all value-added services on their networks. The NITDA Guidelines define “value-added service” vaguely, creating uncertainty for businesses seeking to comply with the measure. Though Nigeria has largely declined to enforce the NITDA Guidelines, periodic threats of repercussions for non-compliance remain a concern.

In October 2022, NITDA issued a “Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries,” which came into force on December 26, 2022. It also requires digital service platforms with more than 1 million users in Nigeria to incorporate in and have a physical contact address in Nigeria.

OTHER BARRIERS

Bribery and Corruption

Corruption remains a substantial barrier to trade and investment in Nigeria. Corruption and lack of transparency in tender processes have been great concerns to U.S. companies. U.S. firms experience difficulties in day-to-day operations as a result of inappropriate demands from officials for “facilitative” payments. Efforts to strengthen anticorruption measures have been hampered by inter-ministry infighting and partisan politics. Questions also remain regarding the Nigerian justice system’s capacity to achieve convictions and appropriate sentencing for corruption-related crimes.

Foreign Exchange Controls

Foreign exchange limitations have negatively impacted investment as well as trade. Restrictive measures have hampered some U.S. companies’ abilities to import finished or semi-finished goods for use in their Nigerian operations. Moreover, Nigeria’s policies have increased challenges for projects developed with international financing that include U.S. dollar-denominated debt obligations, as borrowers have struggled to secure the necessary foreign exchange to meet those obligations.

In addition, Nigerian importers report they sometimes must agree to schemes to produce domestically in order to be allocated import permits by the government and to access foreign exchange through the Nigerian Foreign Exchange Market to source similar products from abroad.

However, the Nigerian Government has taken steps to address these limitations. On June 14, 2023, the Central Bank of Nigeria (CBN) introduced a market-based foreign exchange regime, collapsing its multiple official exchange rates into one, the “Nigerian Foreign Exchange Market.” On October 13, 2023, the CBN reversed its eight-year-old restriction on access to U.S. dollars for the importation of 43 items such as rice, meat, poultry, vegetable oil, fertilizer, dairy products, maize, sugar, and several steel products. Despite these moves, many products remain restricted by Nigerian import prohibitions and the foreign exchange shortage persists. U.S. companies report they are unable to obtain dollars for imports or repatriation purposes.

Maritime Trade

Delays caused by congestion and the poor condition of access roads, combined with corruption issues and an insufficient number of digital cargo scanners, make operations at Nigerian ports among the most expensive in the world. According to shipping industry reports, the 30-day average delay to clear a container ship makes Apapa in Lagos among the most expensive ports for shipments from the United States. Lagos ports also lack adequate space, and ships often wait for days—in some cases weeks and months—before being able to berth and discharge their contents. The \$1.5 billion Lekki Deepsea port commissioned in Lagos in January was expected to reduce the pressure on the inefficient Apapa and Tin Can ports but is yet to attract enough traffic. Nigeria continues to lose tens of millions of dollars daily because of traffic gridlock at the Apapa main port in Lagos. Maritime crime in the Gulf of Guinea emanating from Nigeria diminished in 2022 but still has a deleterious effect on maritime trade. To help address some of these challenges, in August 2023 the Tinubu administration created the Ministry of Marine and Blue Economy, which has encouraged the use of technology in Nigerian ports, including cargo tracking to promote efficiency and ease of doing business.

Export Ban

The Nigeria Customs Service prohibits enforces an export ban on a number of products, including maize, timber, raw hides and skin, scrap metals, and unprocessed rubber latex. The export ban list can be found on the Nigerian Customs Authority's [Export Prohibition List](#).

NORWAY

TRADE AGREEMENTS

Norway participates in the European Union (EU) single market through the European Economic Area (EEA) Agreement. As an EEA Agreement signatory, Norway assumes most of the rights and obligations of EU Member States, except in the agricultural and fishery sectors. Norway has implemented or is in the process of implementing most EU trade policies and regulations. Norway grants preferential tariff rates to EEA Members.

IMPORT POLICIES

Tariffs

Norway's average Most-Favored-Nation (MFN) applied tariff rate was 5.2 percent in 2022 (latest data available). Norway's average MFN applied tariff rate was 35.5 percent for agricultural products and 0.4 percent for non-agricultural products in 2022 (latest data available). Norway has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 22.3 percent. Norway continues to reduce tariffs on industrial products on a unilateral basis.

Although Norway is less than 50 percent self-sufficient in agricultural production, it maintains tariff rates on agricultural products as high as several hundred percent to protect domestic agricultural interests. Domestic agricultural shortages and price surges are offset by temporary tariff reductions. However, a lack of predictability in tariff adjustments and insufficient advance notification of these adjustments, generally only two days to five days before implementation, make the export of products from the United States, especially fruits, vegetables, and other perishable horticultural products, very difficult. For some processed food products, tariffs are applied based on a product's ingredients, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to provide all requested details and, as a result, their products are subject to maximum tariffs.

Non-Tariff Barriers

Agricultural Support

Although agriculture accounts for only 0.5 percent of Norway's gross domestic product, support provided by Norway to its agricultural producers was 51.0 percent of total farm receipts between 2020 and 2022 (latest data available), the second highest among Organization for Economic Cooperation and Development (OECD) Member States, and more than three times the OECD average.

Norway maintains a price reduction regime that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, ice cream (for milk and glucose), pizza (for cheese and meat), and sweets. The purpose of the system is to help compensate the domestic food processing industry for the high costs of domestically-produced raw materials.

SANITARY AND PHYTOSANITARY BARRIERS

Transparency

Under the EEA Agreement, Norway applies certain EU sanitary and phytosanitary (SPS) regulations that may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health; are not based on science; or are maintained without sufficient scientific evidence. On plant health, the Norwegian Food Safety Authority provides measures to eradicate, prevent, or limit the spread of regulated pests independent of the EU. However, Norway's maximum residue limits for pesticides were adopted under the EEA Agreement and are updated when new EU regulations are adopted.

Agricultural Biotechnology

Norway has implemented extremely restrictive policies for crops derived from agricultural biotechnology, with limited exceptions. The restrictions include prohibiting farmers from cultivating biotechnology crops and using biotechnology feed for farm animals. The United States continues to press Norway to recognize the applicable science on the safety of such products and, accordingly, to open its market to U.S. exports of such products. The advent of innovative biotechnology research approaches, such as genome editing, has led Norway to reconsider its stance on agricultural biotechnology.

In December 2018, the Norwegian Biotechnology Advisory Board published a proposal on a forward-looking regulatory framework for genetically modified organisms that was developed in close dialogue with the public. The proposal recommends basing risk assessment and approval for new breeding techniques on a tiered system related to the genetic change(s) that have been made, from level 1 to level 3 based on contribution to societal benefit, sustainability, and ethics. An expert committee on biotechnology was appointed by the Norwegian Government in 2020 to gather updated scientific information on new biotechnologies for use in formulating new policies and to assess whether to adjust the existing legal framework to ensure that technological advancements benefit society without harming health or the environment. The committee delivered its recommendations on June 6, 2023, and concluded that current regulations and their implementation create obstacles to realizing the full potential of these technologies. The committee proposed streamlining public administration, harmonizing regulations with EU legislation, and taking concrete measures to stimulate more socially beneficial innovation.

Beef

Norway applies regulations developed by the EU that ban imports of beef from animals treated with hormones, despite the absence of scientific evidence demonstrating that beef from animals treated with hormones not exceeding the regulatory limit poses any risk to human health.

GOVERNMENT PROCUREMENT

U.S. pharmaceutical companies active in Norway have raised concerns regarding government procurement procedures for pharmaceuticals, including a lack of detailed information on the selection process for winning bidders and unauthorized disclosures of confidential pricing data. Tenders in the pharmaceutical sector in Norway have been unpredictable and nontransparent, and companies have sought more direct communication with the body responsible for final procurement decisions on behalf of regional health authorities (the Norwegian Decision Forum).

Norway is a Party to the WTO Agreement on Government Procurement (GPA).

INVESTMENT BARRIERS

Direct foreign ownership of hydropower resources is prohibited in Norway, except in rare instances in which the government allows foreign investors up to 20 percent equity ownership.

PAKISTAN

TRADE AGREEMENTS

United States–Pakistan Trade and Investment Framework Agreement

The United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) in June 2003. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Pakistan.

IMPORT POLICIES

Tariffs

Pakistan's average Most-Favored-Nation (MFN) applied tariff rate was 10.3 percent in 2022 (latest dates available). Pakistan's average MFN applied rate was 13.1 percent for agricultural products and 9.9 percent for non-agricultural products in 2022 (latest data available). Pakistan has bound 98.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 60.8 percent. For agricultural products, the average WTO bound rate is 96.2 percent. The average WTO bound rate for non-agricultural products is lower at 55.2 percent.

Despite the reduction of applied tariff rates since 2013, U.S. companies have cited concerns that Pakistan has been imposing high tariff rates and, in some cases, additional duties, on products such as automobiles and finished goods. In addition, Pakistan grants sector and product-specific import duty exemptions, concessions, and protections through the promulgation of statutory regulatory orders (SROs). SROs may be issued without providing for stakeholder consultations or allowing importers time for implementation and compliance. Under previous International Monetary Fund (IMF) programs, Pakistan pledged to limit the use of SROs to genuine emergencies. However, SROs continue to be issued, and Pakistan has not provided a timeline for their removal.

Non-Tariff Barriers

Pakistan permits the importation of certain goods only by the public sector or industrial consumers (*e.g.*, active ingredients for the formulation or manufacturing of pesticides). Some imports require approvals from federal-level ministries such as the Ministry of Climate Change (MOCC) and the Ministry of National Health Services, Regulations and Coordination. Imports of certain products, including food colors, waste, parings, and scrap plastics, must receive official certification by the exporting country or by a specialized pre-shipment inspection company.

Customs Barriers and Trade Facilitation

U.S. food and consumer product exporters have expressed concerns regarding a lack of uniformity in customs valuation in Pakistan that negatively affects U.S. stakeholders. Similarly, in the machinery and materials sectors, there are reports that customs officials have erroneously assessed goods based on a set of minimum values rather than the declared transaction value.

Some U.S. companies have reported being adversely affected by Customs Rules 389 and 391. Customs Rule 389 requires the placement of a physical invoice and packing list in the shipping container, while Customs Rule 391 places the responsibility of including such documents, and liability for failure to comply,

on the owner of the goods and the carrier. Such rules pose compliance challenges for companies that use intermediaries, re-invoicing, or the storage of goods at various points during transit in order to insert paper documents into the shipping container. They also create additional burdens for shippers who are required by other countries' customs requirements to provide this information only through electronic filings and may, therefore, not have paper documentation available. Many companies' invoicing, accounting, and shipping systems do not permit the generation of invoices and packing lists prior to the departure of the goods from the company's production or storage facilities. Customs officials impose penalties on companies lacking invoicing systems or incapable of producing paper documentation. While Pakistan has shown openness to addressing the issue, and U.S. authorities have worked with Pakistan's Federal Board of Revenue (FBR) to that end, the rules remain formally in place and customs officials can implement them at any time.

Pakistan notified its customs valuation legislation to the WTO in May 2001, but has not yet responded to the WTO Checklist of Issues that describes how the Customs Valuation Agreement is being implemented.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pakistan generally accepts imported food as packaged in the exporting country. A notable exception, however, is food packaging for vegetable oil. Pakistan requires refined vegetable oil to be imported in bulk for re-packaging.

In July 2019, Pakistan issued SRO 237, which was not notified to the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) for comment. This measure mandates that each food and beverage shipment include a halal certificate and prohibits the use of stickering, overprinting, or stamping to meet the requirements, even on an interim basis. Although Pakistan resolved the issue for wholesale bulk food items by permitting the use of stickers, the issue remains for retail sales. SRO 237 also requires all products to have 50 percent shelf-life remaining from the date of filing of the Import General Manifest, and 66 percent shelf-life remaining from the date of manufacture. When taken together, manufacturers report that these requirements introduce significant uncertainty and operational barriers. After notification requests from the United States, Pakistan eventually notified SRO 237 to the WTO TBT Committee in May 2020. The United States raised concerns with Pakistan's requirements at WTO TBT Committee meetings between November 2019 and May 2020. The United States continues to monitor updates to SRO 237. During the February 2023 TIFA meeting, the Ministry of Commerce and the Ministry of National Food Security and Research (MNFSR) indicated a willingness to amend SRO 237 to allow for stickering. The United States continues to engage on this issue.

Sanitary and Phytosanitary Barriers

Pakistan continues to ban imports of all beef and beef products from the United States. However, during the February 2023 TIFA Council meeting, Pakistan and the United States reached an agreement in principle on an export certificate that would re-open the market for U.S. beef. Finalization of the agreement was still pending as of December 2023.

In October 2022, Pakistani customs authorities detained two shipments of U.S. genetically engineered (GE) soybeans. The MNFSR reiterated the requirement to apply for an import license for GE products, a process currently stymied by a lack of implementing regulations for approval of GE soybeans for food, feed, and processing (FFP). In December 2022, Pakistan formed a committee to evaluate the issue. On November

24, 2023, Pakistan's cabinet passed amendments to the Biosafety Rules aimed at restarting the importation of GE commodities for FFP purposes. Based on the approved amendments, Pakistan's National Biosafety Committee is working on developing an import license regime to allow future imports of GE commodities. During 2023, the United States routinely engaged the Government of Pakistan on re-opening the market for U.S. GE soybeans.

GOVERNMENT PROCUREMENT

Since 2014, Pakistan has relied more on technical qualifications in its procurements relative to prices, though U.S. suppliers continue to struggle with pricing issues. Some U.S. companies report instances in which the procuring agency used a U.S. bid as a basis for, and to incentivize, further negotiations with other competitors, rather than accepting the lowest-priced and technically superior bid as outlined and required by applicable bidding guidelines. Most notably, this has occurred with competing firms based in the People's Republic of China. There is concern that Pakistan's practice rewards anticompetitive behavior, in that it may facilitate the use of lower bids in an effort to negotiate lower prices from U.S. and other foreign companies, thereby procuring goods at below-market pricing.

Pakistani authorities have worked with international financial institutions on improving the transparency of their procurement regime, including a structural benchmark in Pakistan's current IMF program, which requires publication of beneficial ownership information for companies awarded contracts above \$178,000. Pakistan is also receiving World Bank support for the development of an electronic procurement system that will publish information on procurement contracts and bid winners across federal and provincial authorities. According to the IMF, the Public Procurement Regulatory Authority in March 2023 piloted the electronic procurement system with the ministries responsible for health and education. A complete roll out at all federal and provincial levels was not completed as of December 2023.

Pakistan is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since February 2015.

INTELLECTUAL PROPERTY PROTECTION

Pakistan remained on the Watch List in the [2023 Special 301 Report](#). Intellectual property (IP) concerns in Pakistan were raised during the February 2023 TIFA Ministerial meeting. However, serious concerns remain, particularly in the area of IP enforcement.

Although Pakistan has maintained a positive dialogue with the United States on IP, as noted in the 2023 Special 301 Report, Pakistan must do significantly more to overcome challenges with respect to adequate and effective IP protection and enforcement. A new IP Policy Board was constituted at the federal level in January 2023, but a lack of public awareness, as well as budgetary and human resource constraints, are also challenges for IP enforcement. For example, while Pakistan's establishment of IP tribunals in three cities in 2016 and the addition of tribunals in two more cities in 2023 were welcome developments, litigants with experience in Pakistan's tribunals have raised concerns over lack of capacity, inconsistency of rulings, nominal fines, a general lack of expertise among tribunal judges, confusion over standards by which courts review tribunal decisions, and large case backlogs. Additionally, Pakistan's ongoing but unfinished efforts to align its patent, trademark, and copyright laws, and IP regulations and enforcement regimes, with international standards continues to be an area for further progress. Moreover, counterfeiting and piracy in Pakistan remain high, particularly in the areas of pharmaceuticals; consumer goods such as food and beauty products; printed works; digital content; and, software.

SERVICES BARRIERS

Insurance Services

The National Insurance Company, a majority state-owned enterprise, has the exclusive authority to underwrite and insure public sector firms, assets, and properties. Pakistan has the discretion to grant exemptions to this requirement. Private sector firms may use foreign reinsurance companies to meet only up to 65 percent of their treaty re-insurance needs, but the remainder of reinsurance must be ceded locally. In the case of facultative reinsurance, there is a system of mandatory cession; business must initially be offered to the state-owned Pakistan Reinsurance Company, which may choose to accept the business or not.

BARRIERS TO DIGITAL TRADE

Data Localization

As of December 31, 2023, Pakistan was finalizing the Personal Data Protection Bill. Although there was an initial stakeholder consultation on an early draft of the bill in 2021, the Pakistani Government has not offered formal comment periods on subsequent drafts. The latest draft bill would require platforms to store all personal data on servers within the territory of Pakistan and prohibit the cross-border transfer of “critical” personal data. The scope of what information is considered “critical” personal data is not clearly defined.

Internet Services

Pakistan routinely blocks access to Internet services for hosting content deemed to be blasphemous or immoral, or on grounds that such services can be used to “undermine national security.” The Pakistan Telecommunications Authority (PTA) has also sent notices to U.S.-based social media platforms threatening adverse action if those platforms did not remove objectionable content. Pakistan has repeatedly suspended access to mobile data and certain online services in major cities in response to perceived unrest. In September 2022, the PTA inhibited the live streaming of a former prime minister’s speeches, and the Pakistan Electronic Media Regulatory Authority (PEMRA) suspended transmission of multiple television broadcasters in response to their airing of the speeches. In November 2022, PEMRA briefly blocked all broadcasting of a former prime minister’s speeches across all channels. On March 5, 2023, PEMRA imposed a blanket ban on broadcasting of live or recorded speeches of a former prime minister.

In October 2021, Pakistan adopted the Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguards) Rules. The Rules authorize the removal and blocking of online content on a “social media or social network service” that is deemed unlawful. Several provisions would pose significant barriers to foreign firms operating in Pakistan, including content restrictions and requirements that companies maintain a physical presence in Pakistan. These Rules may also expand authorities’ ability to censor online content and enable government access to encrypted data. The Ministry of Information Technology and Telecommunication (MOITT) and the PTA consulted with foreign and domestic firms and other stakeholders, but did not circulate a revised version of the rules for further public consultation before sending it to the Pakistani cabinet for final approval. In April 2022, the prime minister instructed the MOITT to review the Prevention of Electronic Crimes Act (PECA) 2016 and the Removal and Blocking of Unlawful Online Content Rules, soliciting feedback from all stakeholders to identify and address issues. The MOITT started its deliberations but was not able to finalize the revised drafts of PECA and Rules by the end of the government’s tenure.

Pakistan drafted an Electronic Commerce Policy Framework in August 2018, with the aim of increasing exports and strengthening the digital economy. The framework, adopted in January 2022, contains some restrictive requirements. For example, the policy contains licensing, registration, and local presence requirements, as well as broad restrictions on cross-border data flows.

INVESTMENT BARRIERS

Pakistan generally permits foreign investment, subject to equity caps in certain sectors including agriculture, aviation, banking, media, insurance, securities, and railways. Ostensibly to combat tax evasion, in which companies report operating losses but remit royalties, Pakistan has limited foreign investors' remittance of royalty payments to a maximum of \$100,000 for the first payment, with subsequent payments capped at 5 percent of net sales for the following 5 years.

Although Pakistani law allows 100 percent repatriation of profits, subject to restrictions listed in Chapter 14, section 15 of the SBP Foreign Exchange Manual, U.S. and other companies continue to face bureaucratic hurdles repatriating profits and assets from Pakistan, generally coinciding with the government's focus on stemming dollar outflows. Local franchises of U.S. brands report limitations and extended delays in remitting funds to the United States as a result of SBP policies. Payment repatriation delays were further exacerbated by balance of payments challenges in 2022 and 2023. U.S. and other foreign investors saw a slight increase in successful repatriations in the final quarter of 2023 following concerted U.S. and other foreign governments' advocacy.

U.S., global, and domestic firms also continue to face arbitrary restrictions on letters of credit (LCs) due to the balance of payments situation. Stakeholders report long delays in banks' issuance of LCs, a lack of clarity from SBP on which items may qualify for exemption, granting of priority status to favored firms, and expedited approvals only for imported inputs destined for export-oriented industries.

Industry reports that contract enforcement can be difficult for U.S. and other foreign investors in Pakistan due to significant delays and lack of enforcement of court rulings.

Taxes

Pakistan has one of the lowest tax compliance and tax-to-Gross Domestic Product ratios in the world, 9.4 percent in FY2023. Pakistan relies heavily on multinational corporations for the revenue generated by tax collection. Foreign investors in Pakistan regularly report that both federal and provincial tax regulations are difficult to navigate, frequently citing the lack of transparency in the assessment of taxes.

Improving and broadening tax collection is a key focus of the IMF's Standby Agreement program for Pakistan, agreed to in July 2023. Under the program, the target is for Pakistan to increase its tax revenues to PKR 9.4 trillion (approximately \$33.6 billion) in 2024, an increase of PKR 2.2 trillion (approximately \$7.8 billion) from the collections made during FY2023. However, Pakistani authorities have long delayed key politically sensitive tax reforms under the previous program signed in July 2019. U.S. companies have experienced increased pressure from the FBR to prepay anticipated tax liabilities and have expressed concern that many of their local competitors still do not pay taxes at all or engage in tax evasion. The U.S. Government has repeatedly engaged Pakistani Government officials on issues involving unfair and disproportionate taxation of U.S. companies and continues to reinforce the importance of Pakistan broadening its tax base.

OTHER BARRIERS

Bribery and Corruption

U.S. companies cite corruption and a weak judicial system as substantial disincentives to foreign investment in Pakistan. Pakistan's federal anticorruption agency, the National Accountability Bureau (NAB), provides a legal framework to combat corruption. However, business and civil society stakeholders have expressed reservations about the body's effectiveness. The NAB's broad exercise of its remit to investigate government operations and business dealings have led to a number of cases where it reopened established policies and targeted reputable businesses, potentially dissuading foreign investors and making officials reticent to exercise authority.

PANAMA

TRADE AGREEMENTS

The United States–Panama Trade Promotion Agreement

The United States–Panama Trade Promotion Agreement (the Agreement) entered into force on October 31, 2012. The United States and Panama continue to work closely together to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs

Tariff reduction under the Agreement began on October 31, 2012, and all U.S. non-agricultural products have been duty free since January 1, 2021. Remaining duties on the most sensitive agricultural products will phase out between 2026 and 2031, 15 years to 20 years after entry into force of the Agreement.

Since August 2020, Panama has imposed volume restrictions on U.S. onion imports outside of the Agreement tariff-rate quota (TRQ) quantities. Panamanian authorities have also designated approved importers and specified volumes per importer. The United States has since raised concerns regarding these issues at the World Trade Organization (WTO) Committee on Import Licensing and discussed them with Panamanian authorities in light of the Agreement commitments.

On December 19, 2023, Panama held its auction for rough rice TRQ volumes for 2024 after notifying the United States that the volume of the 2024 milled rice quota allocation would be converted to rough rice and added to the rough rice quota allocation. The United States is discussing this issue with Panamanian authorities in light of the Agreement commitments.

In early 2023, Panama’s Ministry of Commerce and Industry (MICI) enacted safeguards for a number of U.S. agricultural products. In the case of cheddar, other cheeses, and butter, it appears MICI miscalculated imported volumes in making its safeguard determination. The United States continues to discuss the issue with Panama to ensure proper application of safeguard measures.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Panama ratified the WTO Trade Facilitation Agreement (TFA) in November 2015. Panama submitted its transparency notification related to the operation of its single window on March 14, 2023. This notification had been due to the WTO on January 1, 2022, according to Panama’s self-designated TFA implementation schedule. Panama has not yet submitted its transparency notification related to import, export, and transit regulations. This notification had been due to the WTO on June 1, 2022, according to Panama’s self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Since February 2017, the United States has raised concerns with Panama's quality requirements for fresh onions and, since March 2019, its quality requirements for fresh potatoes. Both measures establish mandatory harvest date requirements, sprouting limits, and temperature and storage criteria, raising concerns regarding their consistency with international standards. Since October 2020, the United States has raised these issues at the WTO Committee on Technical Barriers to Trade (WTO TBT Committee) and elevated the concerns to the WTO Council for Trade in Goods. U.S. concerns regarding the measures continue to go unaddressed, and U.S. onion and potato producers continue to be negatively affected. After a number of delays, in December 2021, Panama issued Resolution 235, which finalized quality requirements on fresh potatoes, and began implementing the measure on February 19, 2022. The United States has raised this issue with Panama and will continue to raise concerns regarding these regulations.

In August 2022, the United States submitted comments on Panama's draft technical regulations on grains and cereals, including requirements for paddy rice and milled and white rice. The United States raised concerns regarding Panama's creation of a unique grading system for rice, and bagging requirements for paddy rice that needs further processing. Panama's draft technical regulations contain unreasonable requirements for bagging paddy rice prior to export. Paddy rice cannot be consumed directly and must be milled after export before being bagged for retail, and thus the requirement poses a barrier to trade. As of December 2023, Panama was still reviewing these comments. Also, Panama does not accept U.S. Department of Agriculture (USDA) grading standards, despite the fact that Panama is required to give favorable consideration to sector-specific regulatory cooperation in the Agreement.

On January 22, 2020, Draft Bill 265 was presented in Panama's National Assembly. If passed, the bill would establish a front-of-package nutritional warning labeling scheme. The United States provided its formal comments to Panama in October 2021 and requested that it notify the proposed implementing measure to the WTO TBT Committee. As of December 2023, Panama had not yet notified this draft bill. A National Assembly commission was created in 2022 to address the labeling program, but, as of December 2023, the bill had not been approved. The United States will continue to monitor the status of the draft bill and engage with Panama.

Sanitary and Phytosanitary Barriers

In 2023, Panama adopted its Agri-Food State Policy Law No. 352 (PADE), as well as implementing regulations. The measures contain restrictions on sales of imported products at national traditional markets, import restrictions based on local harvest dates, and the creation of private customs observers. The USDA has engaged with Panama to ensure PADE and its implementing regulations do not unnecessarily affect U.S. exports.

In August 2020, the Panamanian Food Safety Authority began implementing Ministry of Health (MINSA) Decree 255, which requires registration of establishments involved in the storage, display, distribution, and sale of raw meat and raw meat products. These products were previously only subject to routine registration, a process that could be completed in 24 hours. The process under Decree 255 takes 180 days, resulting in delays of U.S. exports, including U.S. beef, pork, and poultry that supply the hotel, restaurant, and institutional market, as well as products destined for supermarkets. The United States is monitoring the implementation of Decree 255 to ensure that the registration requirements for raw meat are consistent with the basic product information requirements in the 2006 United States–Panama Agreement Regarding

Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agricultural Products.

On August 25, 2022, MINSA shared draft revisions of Decree 255, and in October 2022 the United States shared comments on the proposed draft. The August 2022 revision separated out regulations for poultry products and proposed a draft regulation (Decree 147). While the United States reviewed the draft measure and provided comments, it was published unchanged in December 2022. In January 2024, Panama issued Executive Decree 71 of 2023, which further clarified beef slaughter and handling practices for domestic and imported beef. The United States will continue to monitor developments and seek to engage with Panama on concerns with certain aspects of these decrees, particularly regarding labeling, end-use attestations, and bans on the sale of thawed, previously frozen product.

In October 2022, the Animal Health Directorate of Panama's Ministry of Agriculture issued two decrees that clarified import procedures for U.S. pet food and poultry products from U.S. counties in which Highly Pathogenic Avian Influenza has been detected in commercial flocks. These decrees clarified trade issues related to these products and are in line with World Organisation of Animal Health (WOAH) guidance, as well as regulations under the Agreement.

INTELLECTUAL PROPERTY PROTECTION

Panama still must develop a system for Internet service provider notice-and-takedown procedures and preestablished damages for copyright infringement and trademark counterfeiting, as required by the Agreement. An interagency committee, which is led by the Panama Customs Authority and includes the Ministry of Commerce and Industry, the Ministry of Economy and Finance, the District Attorney for Intellectual Property Rights (IPR), and the Ministry of Health, has held discussions on modifying the current decree for IPR enforcement in customs and providing for preestablished damages. The committee last met in April 2020 to discuss customs-related fines, but the initiative has not advanced since then. Challenges also remain in the areas of trademarks as well as pirated and counterfeit goods. The United States continues to engage closely with Panama to ensure its effective implementation of all obligations under the Agreement.

PARAGUAY

TRADE AGREEMENTS

The United States and Paraguay signed a Trade and Investment Framework Agreement on January 13, 2017. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Paraguay.

IMPORT POLICIES

Tariffs

Paraguay's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2021 (latest data available). Paraguay's average MFN applied tariff rate was 10.0 percent for agricultural products and 9.5 percent for non-agricultural products in 2021 (latest data available). Paraguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 33.4 percent.

Paraguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also comprises Argentina, Brazil, and Uruguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of tariff lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Paraguay (not including free trade zones) is subject to the payment of the CET to Paraguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not yet taken effect.

Non-Tariff Barriers

Import Licensing

Paraguay requires import licenses on a variety of products. Import licenses, once issued, are only valid for 30 days. Importing goods within this 30-day window can be difficult if there are shipment delays, which are fairly common in Paraguay, a landlocked country largely dependent on riverine shipment that can slow during dry seasons. Due to those delays, importers may need to reapply for an import license.

Customs Barriers and Trade Facilitation

Paraguay ratified the WTO Trade Facilitation Agreement (TFA) in March 2016. Paraguay submitted its transparency notification related to import, export, and transit regulations on December 20, 2023. This notification had been due to the WTO on September 1, 2021, according to Paraguay's self-designated TFA implementation schedule.

Paraguay passed Law 7196/23 on November 2, 2023, eliminating its trade-related consular fees, payment of which required specific documentation for each import shipment (*e.g.*, commercial invoice, certificate of origin, and cargo manifest). These consularization requirements had been burdensome for U.S. exporters and imposed additional costs for each set of commercial documents.

INTELLECTUAL PROPERTY PROTECTION

Paraguay was listed on the Watch List in the [2023 Special 301 Report](#). The United States is concerned with the lack of enforcement action in Paraguay. Ciudad del Este is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) as one of the main distribution and sales hubs for counterfeit goods in the region, and has reportedly become a home to manufacturing and “finishing” facilities for counterfeit goods. The United States urges Paraguay to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Paraguay proceeds with the European Union–MERCOSUR Trade Agreement. The United States and Paraguay agreed on an Intellectual Property Work Plan in September 2022 that serves as a roadmap for Paraguay to address a number of these outstanding issues.

PERU

TRADE AGREEMENTS

The United States–Peru Trade Promotion Agreement

The United States–Peru Trade Promotion Agreement (the Agreement) entered into force on February 1, 2009. Under the Agreement, Peru currently provides duty-free access to nearly all U.S. exports. The United States and Peru meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

IMPORT POLICIES

Tariffs

All duties for U.S. non-agricultural goods exported to Peru have been eliminated, while a small number of Peruvian tariffs apply to select U.S. agricultural products. These are scheduled to be phased out by 2026. In accordance with the Agreement commitments, Peru has ceased applying its price band system to U.S. agricultural products.

Non-Tariff Barriers

Under Peru’s Customs Crime Law No. 28008 of 2003, express delivery managers and legal representatives are subject to criminal investigations and penalties for minor discrepancies in the value of invoices of low value shipments. The same law also allows for concurrent administrative sanctions against the express courier companies for the same violations. Express delivery carriers are subject to the same fixed monetary penalty as containerized cargo, regardless of the differences in shipment size or value.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

A variety of stakeholders have continued to note inconsistencies in the application and enforcement of regulatory processes in Peru. Peru’s Congress approved Decree No. 063-2021 on regulatory quality improvement and the application of regulatory impact analysis (RIA) in 2021. The United States is working with Peru on its whole-of-government initiative to integrate the RIA with public consultation for future regulatory actions.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

In January 2021, the Peruvian Congress passed Law No. 31111, which extended Peru’s moratorium on the cultivation and import for cultivation of genetically engineered crops and the import of genetically engineered seeds for 15 years. Peru has not supported its biotechnology moratorium with a risk assessment or otherwise put forward a scientific justification for it. The United States has raised its concerns regarding the moratorium with government officials from Peru at each annual meeting of the Agreement’s Standing Committee on Sanitary and Phytosanitary Measures from 2012 through 2022. The United States will

continue urging Peru in this forum and at other opportunities to address the United States' concerns and to notify its moratorium and its implementing regulations to the WTO Committee on Sanitary and Phytosanitary Measures.

Agricultural Product Certification

In January 2018, Peru's Ministry of Foreign Trade and Tourism created new sanitary import requirements for U.S.-processed meat and egg products. As of 2018, a Single Export Sanitary Certificate (SESC) containing both human and animal sanitary requirements from Peru's National Sanitary Authority and the National Agrarian Health Service (SENASA) must accompany shipments of processed products of animal origin, including processed meat and egg products. In October 2022, Peru clarified some requirements and added a few additional requirements to the certificate. As of December 1, 2023, Peru had not notified the certificate requirement to the WTO Committee on Sanitary and Phytosanitary Measures. The United States continues to engage with Peru to finalize a certificate that includes Peru's SESC attestations.

In November 2022, SENASA published a resolution requiring additional food safety requirements for corn, beef, pork, and poultry. This resolution requires that each shipment of these products be accompanied by a health certificate or undergo testing in a local laboratory. Following U.S. Government engagement, SENASA agreed to delay implementation of the resolution until after it is notified to the WTO, which had not occurred as of December 2023.

GOVERNMENT PROCUREMENT

Legislative Decree 1444 issued in September 2018 modified the public procurement law to allow government agencies to use government-to-government (G2G) agreements in procurement processes. Following the execution of recent infrastructure tenders using the G2G model in 2019, an increasing number of ministries and government entities require foreign companies, including U.S. firms, to obtain sponsorship by their respective governments to compete for major procurements. The U.S. Government is not permitted to sign such contracts, making Peru's use of G2G procurements a barrier for U.S. domiciled companies to compete in some relevant government tenders.

Peru is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement. Peru does open procurement to U.S. goods, services, and suppliers covered under the Agreement.

INTELLECTUAL PROPERTY PROTECTION

Peru remained on the Watch List in the [2023 Special 301 Report](#).

Pirated and counterfeit goods continue to remain widely available in Peru, and right holders cite particular concerns with respect to counterfeit medicines, internet piracy, and illicit recordings in cinemas. The Gamarra market in Lima is listed in the [2023 Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List).

The United States continues to call for Peru to fully implement the Agreement's intellectual property (IP) obligations, including enacting statutory damages for copyright and trademark infringement. The United States also calls on Peru to undertake IP reforms that include increasing and enhancing enforcement efforts such as expanding the imposition of deterrent-level fines and penalties for counterfeiting and piracy, border measures, and building the technical IP-related capacities among enforcement agencies.

LABOR

A review of Peru's progress on implementing specific recommendations to improve worker rights practices in Peru's nontraditional export sectors has been ongoing since the issuance of a U.S. Department of Labor (DOL) [report in 2016](#). The DOL report, published in response to a submission from the public under the Agreement, raised significant concerns regarding the right to freedom of association in certain sectors, including textiles, apparel, and certain agricultural sectors. The DOL report also noted concerns regarding labor law enforcement in Peru.

THE PHILIPPINES

TRADE AGREEMENTS

The United States–Philippines Trade and Investment Framework Agreement

The United States and the Philippines signed a Trade and Investment Framework Agreement (TIFA) on November 9, 1989. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and the Philippines.

IMPORT POLICIES

Tariffs

The Philippines' average Most-Favored-Nation (MFN) applied tariff rate was 6.1 percent in 2022 (latest data available). The Philippines' average MFN applied tariff rate was 9.8 percent for agricultural products and 5.5 percent for non-agricultural products in 2022 (latest data available). The Philippines has bound 67.6 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 24.9 percent.

Products with unbound tariffs include certain automobiles, chemicals, plastics, vegetable textile fiber, footwear, headgear, fish, and paper products. MFN applied tariffs on fresh fruit, such as grapes, apples, oranges, lemons, grapefruits, and strawberries, as well as on processed potato products (including frozen fries), range between 7 percent and 15 percent. Exceptions include dates and figs, which carry a 3 percent MFN applied tariff. WTO bound rates are much higher, ranging between 35 percent and 50 percent, with fresh potatoes subject to a 40 percent tariff.

U.S. agricultural exports are significantly inhibited by the high in-quota tariffs for agricultural products under the Philippines' tariff-rate quota (TRQ) program, known as the Minimum Access Volume (MAV) system. Under the MAV system, the Philippines has scheduled TRQs on select agricultural products, including sugar, corn, coffee and coffee extracts, potatoes, pork, and poultry products, with in-quota tariffs ranging from 30 percent to 50 percent.

The Department of Agriculture (DA) Administrative Order No. 52 (2000) amended the Rules and Regulations for the Implementation of the MAV, which canceled penalties for underutilization if the MAV licensee purchased local supply. This provision effectively allows existing MAV license holders to keep their full allocation for next year without having to import.

The Philippine President signed Executive Order No. 171 on May 17, 2022, reestablishing the uniform tariff on rice at 35 percent, reducing tariffs on pork to 15 percent in-quota and 25 percent out-of-quota, and reducing tariffs on corn to 5 percent in-quota and 15 percent out-of-quota until December 31, 2022. To temper continuing inflation, through Executive Order No. 10, the Philippines extended the validity of temporary duty reductions on rice, corn, and pork through the end of 2023. On January 13, 2023, the Philippine President signed Executive Order No. 13, extending the tariff reduction on mechanically deboned meat until the end of 2024. On December 22, 2023, through Executive Order No. 50, the Philippines extended its tariff reductions on rice, pork, and corn until December 31, 2024.

The Philippines continues to apply high tariffs on finished automobiles and motorcycles. A 30 percent tariff is imposed on completely built passenger vehicles with capacity of less than 10 persons (*i.e.*,

automobiles), as well as motorcycles. Passenger vehicles with a capacity of 10 or more (*i.e.*, buses) and commercial vehicles (*i.e.*, trucks) both incur a 20 percent tariff. The Philippines continues to extend duty-free treatment to imports of capital equipment, spare parts, and accessories by motor vehicle manufacturers and other enterprises registered with the Board of Investments under Executive Order No. 226.

On January 13, 2023, the Philippine President signed Executive Order No. 12, eliminating tariffs for completely built-up units of certain electronic vehicles (EVs), including passenger vehicles, buses, minibuses, vans, trucks, motorcycles, tricycles, scooters, and bicycles. The Executive Order, however, does not include hybrid EVs. Tariffs on certain EV parts and components were also reduced to 1 percent from 5 percent. Executive Order No. 12 is set to expire in 2028.

Non-Tariff Barriers

Quantitative Restrictions

The Philippines prohibits the importation of used motor vehicles, except in certain cases, which require prior authority to import from the Department of Trade and Industry. Importation of used motor vehicle parts is also regulated.

The Philippine DA regularly uses the Certificate of Necessity to Import (CNI), the Sanitary-Phytosanitary Import Clearance (SPSIC) system, or both to enact unscheduled quantitative restrictions to increase prices of sensitive agricultural and fishery products, especially during and near harvest periods. (*For further information on the SPSIC system, see the Technical Barriers to Trade / Sanitary and Phytosanitary Barriers section*).

The Philippine Secretary of Agriculture may prescribe the species type of fish to be imported and the volume to be imported. Importers must obtain a CNI to import these products.

The DA's Sugar Regulatory Administration sets the allowable import quota of sugar, typically at the beginning of each marketing year. The allowable volume applies to all sources, whether imported from an ASEAN or an MFN trading partner.

Customs Barriers and Trade Facilitation

The Philippine Bureau of Customs launched its modernization program in 2021 to address customs and corruption concerns. However, reports of corruption and irregularities in customs processing are widespread, including incidents of undue and costly delays, irregularities in the valuation process, 100 percent inspection and testing of some products, and inconsistent assessment of fees.

In 2020, the Bureau of Customs implemented the Enhanced Value Reference Information System, which is a database of information on the value and classification of imports for reference purposes in support of the implementation of the WTO Customs Valuation Agreement (CVA). Despite the submission of documentary evidence of payments (*e.g.*, contracts, purchase orders, telegraphic transfers, and letters of credits), some importers still report that the Bureau of Customs continues to use reference prices for the valuation of meat and poultry products.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Vehicle Standards

In conjunction with ASEAN harmonization efforts, the Philippines is working to align domestic motor vehicle standards and regulations with those set under the United Nations Economic Commission for Europe (UNECE) 1958 Agreement. Under the October 2018 United States–Philippines Joint Statement, both governments pledged to cooperate to implement a U.S. work program on automotive standards issues in the context of the TIFA. The United States also recognized the Philippines’ commitment to the continued acceptance of vehicles that meet multiple high-standard automotive standards, including U.S. Federal Motor Vehicle Safety Standards. However, as of December 31, 2023, the Philippines had not yet issued regulations to implement that commitment.

Meat Labeling

Following a surge in imports, the Philippines in July 2021 abruptly began enforcing meat and poultry labeling requirements without notice, resulting in many detained containers of U.S. products and delays of other container shipments enroute. The Philippine Government issued policy clarifications in November 2021 granting labeling flexibilities until the policies can be reviewed and revised, thereby allowing continued exports of U.S. meat and poultry. On November 25, 2022, the Philippines established the Philippine National Standard for Labeling of Prepackaged Fresh Chilled and Fresh Frozen Meat. The Philippines plans to draft revised labeling requirements based on this standard and to make them available for public comment.

Utilization Report

On June 25, 2022, the Philippine DA’s Bureau of Animal Industry (BAI) informed domestic stakeholders that it will enforce BAI Memorandum Circular No. 26 (MC 26), dated August 2021. MC 26 requires importers to submit a utilization report concerning their importation of ingredients used in the manufacture of animal feed to ensure such ingredients imported for animal feed are not diverted for human consumption or for other purposes. Stakeholders have expressed concern regarding the burdensome nature of this requirement. The measure has not been notified to the WTO.

The DA extended similar requirements to importation of fishery products in December 2022, through the issuance of DA Administrative Circular 11, Suspension of Issuance of SPS Import Clearance for Importation of Certain Fish Species under Fisheries Administrative Order No. 195.

Sanitary and Phytosanitary Barriers

Import Permits

The DA requires that importers obtain an import permit, known as an SPSIC, and transmit the permit to the exporter prior to shipment of any agricultural product. Each import permit is valid for only one shipment and has a limited validity period of 15 days to 90 days, depending on the commodity. Requiring one SPSIC per shipment with a limited validity period adds costs, complicates the timing of exports, and prevents the rerouting to the Philippines of products intended for other markets but not sold there for commercial reasons. It also prevents an exporter from reselling an imported product if the importer refuses to accept

delivery or abandons the shipment. The length of validity and issuance appear to be based on the political sensitivity of the products, rather than on sanitary and phytosanitary risk. In 2019 and 2020, the Philippines stopped issuing SPSICs for certain imported agricultural products, including U.S. table grapes, chipping potatoes, and whole birds, along with products not currently supplied by the United States, such as feed wheat, rice, and corn. The DA continues not to issue SPSICs for whole birds.

DA Administrative Circular 6, issued on June 23, 2022, made permanent the 90-day validity of SPSICs for meat and poultry. Meanwhile, must-ship-out requirements for garlic, onions, rice, wheat, corn, and fresh/chilled fruits and vegetables remain limited to 20 days. SPSICs for frozen fish expire within 30 days of issuance to institutional buyers and expire within 45 days of issuance to retail buyers. SPSICs for other plant, animal, and aquatic products are also still generally subject to 60-day validity.

The DA BAI issued Memorandum Circular No. 25 (2023), which reiterates that SPSICs are no longer needed for cured processed meat products from eligible countries, including the United States, provided they comply with the World Organisation for Animal Health (WOAH) standards for the inactivation of viruses. However, SPSICs are still required for uncooked/not-fully-cooked/non-heat-treated processed animal products.

Local Government Regulations

Since the onset of African Swine Fever in 2019, and the return of avian influenza in 2022, a number of local government units (LGUs) have maintained restrictions on the import and export of live pigs and birds, and products thereof, that exceed both international and national recommendations. LGU measures are not notified to the WTO.

However, to streamline regulatory processes among LGUs and align with WOH recommendations, the DA BAI issued Memorandum Circular No. 45 (2023) that enumerates requirements for the local movement of meat and processed meat products.

Cold Chain Regulations

The Philippines has long maintained a two-tiered system for regulating the handling of frozen and freshly slaughtered meat for sale in local wet markets. This system imposes more burdensome requirements on the sale of frozen meat, including imported meat, compared to the sale of freshly slaughtered meat, which is sourced predominantly from domestically raised animals. A U.S. Department of Agriculture Food for Progress project includes a cold chain component in its overall mission to improve Philippine sanitary and phytosanitary measures and facilitate agricultural trade.

In June 2020, the DA issued Administrative Order (AO) 24 to add conditions to approve SPSIC permits by requiring importers to obtain certificates of availability of space at accredited cold storage warehouses and usage reports for imported meat and poultry. While the DA subsequently suspended implementation of AO 24, this measure has not been repealed. In September 2020, the Philippines reinterpreted its existing regulations to expand its longstanding ban on the sale of imported frozen fishery products in traditional “wet” markets to include modern supermarkets and electronic commerce. As a result, the sale of frozen fish products is limited to institutional buyers, such as food processors and hotel and restaurant chains.

GOVERNMENT PROCUREMENT

The government procurement system in the Philippines generally favors Philippine nationals or Filipino-controlled enterprises for procurement contracts. Republic Act (RA) No. 9184, or the Government

Procurement Reform Act, specifies a minimum Filipino ownership requirement of at least 60 percent in the procurement of goods, consulting services, and infrastructure projects. Domestic goods are also given preferential treatment over imported products in the bid evaluation process. Additionally, Executive Order No. 120, issued in 1993, directs government departments and agencies, including government-owned and controlled corporations, to exert best efforts to negotiate countertrade equivalent to at least 50 percent of the value of contracts on foreign capital equipment, machinery, products, goods, and services worth at least \$1 million. Government Procurement Policy Board Resolution 14-2005 states that a government agency must comply with the provisions of RA 9184 if it decides to adopt countertrade as an internal procurement policy.

While U.S. cloud service providers are active in the Philippine market, they continue to face constraints that limit their participation, particularly in competing for government projects. The Philippines requires government agencies to procure cloud computing services from the Government Cloud (also known as GovCloud), a cloud infrastructure set up by the Department of Information and Communications Technology.

The Philippines is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 2019.

INTELLECTUAL PROPERTY PROTECTION

While the Philippines has made progress in intellectual property (IP) protection and enforcement since its removal from the Watch List in the 2014 Special 301 Report, the United States continues to have concerns, including limited enforcement activities. Stakeholders report issues with online piracy and sales of counterfeit goods, including apparel, shoes, watches, jewelry, perfume, and electronics. Such counterfeiting and piracy concerns led to the continued inclusion of Manila's Greenhills Shopping Center in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List). Other stakeholder concerns include slow prosecution and conviction of cases. The government is reportedly considering amending the IP Code to adapt to new technological changes and improve IP protection and enforcement.

The United States will continue to monitor the implementation of new regulations related to geographical indications (GIs) that entered into force in November 2022, including their potential impact on market access for U.S. products. As part of the October 2018 Joint Statement, the United States recognized that the Philippines committed “to protect GIs in a manner mutually beneficial to both countries by ensuring transparency, due process, and fairness in the laws, regulations, and practices that provide for the protection of GIs, including by respecting prior trademarks and no restriction of the use of common names.” In addition, the Joint Statement includes confirmation by the Philippines that it will not provide automatic GI protection, including to terms exchanged as part of a trade agreement. The United States will continue to monitor the implementation of this and other commitments related to GIs, including through engagement under the TIFA.

SERVICES BARRIERS

Audiovisual Services

The Philippine Constitution prohibits foreign ownership in mass media, including cable television and broadcasting, as well as film distribution and pay-television. Additionally, foreign ownership in private radio communications networks is limited to 40 percent under 2022 changes to the Foreign Investment Negative List (FINL).

Financial Services

Qualified foreign banks may own up to 100 percent of domestically incorporated banks, or enter the market as foreign branches. However, ownership restrictions apply to nonbank investors, regardless of their nationality. Nonbank foreign individuals and enterprises, like nonbank Filipino investors, are restricted from owning more than 40 percent of the total voting stock in a domestic commercial bank and more than 60 percent of the voting stock in a thrift or rural bank.

Banks that seek entry as foreign branches cannot open more than five subbranch offices. The Philippine Central Bank ensures that majority Filipino-owned banks control at least 60 percent of the total banking system assets.

Insurance Services

The Insurance Code provides that all insurance companies operating in the Philippines must seek to cede risks to reinsurance companies authorized to conduct business in the country before entering outward foreign reinsurance arrangements. Moreover, insurance companies operating in the country must cede 10 percent of outward reinsurance placements to the state-controlled National Reinsurance Corporation of the Philippines.

Generally, only the state-owned Government Service Insurance System may provide insurance for government-funded projects and coverage for all government properties, assets, contracts, rights of action, and other insurable risks to the extent of the government's interest.

Professional Services

The Philippine Constitution limits the practices of certain professions to Philippine citizens. However, various laws and regulations offer exceptions on a reciprocal basis, such as medicine, pharmacy, nursing, dentistry, accounting, teaching, architecture, and engineering. The practice of law is still reserved for Philippine citizens.

Advertising Services

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers must be Philippine citizens.

Retail Services

Philippine law restricts foreign investment in certain retail ventures to Philippine nationals; however, amendments to its Retail Trade Liberalization Act, enacted in December 2021, open the retail sector to greater foreign participation. These amendments lower the minimum investment required for foreign retailers from \$2.5 million to \$500,000 and lower the per-store investment requirement from \$830,000 to \$200,000. Foreign retailers remain prohibited from engaging in trade outside their accredited stores, such as through the use of carts, sales representatives, or door-to-door selling.

The March 2, 2022 amendments to the Foreign Investment Act reduced capitalization requirements for foreign-owned micro and small domestic enterprises from \$200,000 to \$100,000, if the business involves advanced technology, is registered as a startup or startup enabler, or the majority of its direct employees are Filipino (assuming the firm has at least 15 Filipino employees).

Telecommunications Services

Under the amended Public Services Act (PSA) which took effect in April 2022, public services engaged in the provision of telecommunications services are considered critical infrastructure. Foreign nationals may own more than 50 percent of public services engaged in the operation and management of critical infrastructure, subject to reciprocity requirements.

The Philippines allocates and manages spectrum through the Radio Control Law of 1931 (RA 3846 and its amendment, RA 584), Executive Order No. 546 1979, and the Public Telecommunications Policy Act of 1995 (RA 7925). These laws and directives provide the country's legal framework for spectrum enfranchisement, operation, and permitting in line with International Telecommunication Union requirements, and general provisions on the allocation and assignment of radio spectrum. While RA 7925 requires the conduct of open tenders in allocating spectrum, no public bidding has ever been carried out to allocate spectrum (*e.g.*, spectrum auctions). Evaluation of applications typically involves the submission by an applicant of a letter of request to the National Telecommunications Commission for its spectrum needs. This model is inherently non-transparent, constituting an administrative approach by which applicants are chosen based on the government's prioritization of certain criteria (like financial or technical capacity).

The proposed Open Access in Data Transmission bill, pending full congressional approval in the Philippines as of December 31, 2023, seeks to lower barriers to market entry, lower the cost of deploying broadband facilities, and make more spectrum available for Internet service.

INVESTMENT BARRIERS

Limitations on Foreign Ownership

The FINL, which is published every two years and was last updated in June 2022, enumerates foreign investment restrictions. Foreign investment in FINL-listed sectors may be prohibited outright (*e.g.*, mass media, marine resources, and small-scale mining cooperatives) or subject to limitation (*e.g.*, up to 40 percent foreign ownership in natural resource extraction; educational institutions; private radio communication networks; companies participating in government procurement; and public utilities such as electricity transmission and distribution, water and petroleum pipelines, seaports, and public utility vehicles). The 2022 FINL reflects amendments to the Retail Trade Liberalization Act, the PSA, and the Foreign Investment Act.

SUBSIDIES

Export Subsidies

The Philippines offers a wide array of fiscal incentives for export-oriented investments, particularly investments related to manufacturing. These incentives are available to qualified firms located in designated export processing zones, free port zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA). The available incentives include: income tax holidays or exemptions from corporate income tax for up to seven years; an option for either special corporate income tax or enhanced deductions for up to 10 years after the income tax holiday period; payment of a 5 percent special tax on gross income less allowable deductions in lieu of all national and local taxes; exemption from duties and taxes on imported capital equipment, machinery, spare parts, and raw materials; exemption from wharfage dues, imposts, and fees; and a zero percent value-added tax (VAT) rate on local purchases (including telecommunications, electricity, water, and building lease) directly and exclusively used in the

registered project or activity. The PEZA approves incentives for projects with investment capital of \$20 million and below, and the Fiscal Incentives Review Board (FIRB) approves incentives for projects above a \$20 million investment capital threshold.

The Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act introduced a sunset provision on the aforementioned preferential tax rates and benefits provided to activities currently registered with Philippine investment promotion agencies, including the PEZA. The CREATE Act grants a 10-year transition period to export enterprises registered prior to its enactment, with the option to reapply for special corporate income tax treatment subject to the conditions set in the Strategic Investment Priority Plan and a performance review by the FIRB. In response to VAT-related issues experienced by firms, the Philippines amended the CREATE Act's implementing rules and regulations on August 11, 2023, to clarify the applicability of VAT exemptions and refunds. Also in August 2023, a new tax reform bill, known as the CREATE More Act, was introduced to further lower corporate income tax from 25 percent to 20 percent and to harmonize VAT incentives in special economic zones. As of December 31, 2023, the CREATE More Act was pending congressional approval.

OTHER BARRIERS

Bribery and Corruption

Corruption is a pervasive and longstanding problem in the Philippines. National and local government agencies, particularly the Bureau of Customs, are beset with various corruption issues. Both foreign and domestic investors have expressed concern about the lack of transparency in judicial and regulatory processes. Investors have also raised concerns about courts being influenced by bribery and improperly issuing temporary restraining orders to impede legitimate commerce.

RUSSIA

SANCTIONS AND COUNTERSANCTIONS

In response to Russia's March 2014 invasion of Ukraine and self-proclaimed annexation of Crimea, the United States imposed sanctions on Russian Government officials, individuals who supported the annexation policy, and critical sectors of the Russian economy. In response, Russia enacted a variety of measures in retaliation. The initial measures banned the importation of a variety of agricultural and seafood products from the United States and other countries.

As a result of Russia's full-scale invasion of Ukraine beginning in February 2022, the United States imposed unprecedented further sanctions on Russia in 2022, ceased virtually all bilateral engagement on trade and investment issues with Russia, and continues to take steps to isolate Russia from the global economy and hold President Putin accountable for his war against Ukraine. Those measures include: withdrawal of Most-Favored-Nation (MFN) status for Russian goods; increased tariffs on certain imports from Russia; import and export bans and restrictions; financial and investment restrictions in certain industries; and, blocking measures against certain entities and individuals. In response, Russia has expanded its retaliation, imposing or proposing measures to impact financial transactions, protection and enforcement of intellectual property, exports and re-exports of certain goods, and foreign direct investment, which may extend to nationalization of foreign-owned assets. Russia has also accelerated and expanded its efforts to replace imports with domestic goods and services. As a result of the increased geopolitical tensions, hundreds of U.S. companies have withdrawn from or significantly reduced their presence in Russia.

Bilateral trade in goods has fallen from \$38.2 billion in 2013 to \$5.2 billion in 2023. While some of the decline in trade is undoubtedly due to the overall decline in global trade because of the COVID-19 pandemic, the decline also reflects the geopolitical tensions and Russia's increasingly inward-looking industrial and trade policies, as well as the impact of U.S. sanctions and export controls applied to Russia.

This chapter of the National Trade Estimate reports primarily on the significant trade and investment barriers in Russia before the full-scale invasion of Ukraine that began in February 2022. The United States continues to engage with U.S. stakeholders to analyze and assess the impact of the sanctions and counter sanctions on trade in the broader context of U.S. national interests. However, due to the near total cessation of engagement with Russia, engagement on significant trade barriers in Russia is severely limited.

TRADE AGREEMENTS

Membership in the World Trade Organization

On August 22, 2012, Russia became the 156th Member of the World Trade Organization (WTO). On December 14, 2012, following the termination of the application of the Jackson-Vanik Amendment to Russia, the United States and Russia consented to the application of the WTO Agreement between the two countries. Russia's accession to the WTO signaled its movement to adopt key WTO principles, including transparency. Despite its WTO commitments, as noted in the [2023 Report on the Implementation and Enforcement of Russia's WTO Commitments](#), the Russian Government has maintained restrictive at-the-border measures, instituted behind-the-border measures to inhibit trade, and pursued principles of import substitution and forced localization, taking it on a comprehensive trajectory away from the guiding principles of the WTO.

Eurasian Economic Union

Russia is a member of the Eurasian Economic Union (EAEU), a limited customs union that also includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. Moldova, Uzbekistan, and Cuba have observer status at the EAEU. The Eurasian Economic Commission (EEC) is the supranational body charged with implementing external trade policy for EAEU member states and coordinating economic integration among them. While tariff harmonization and standardized regulatory approvals across member states have eased the process of doing business within the customs union for some U.S. companies, some regulatory regimes such as those applying to medical devices and to pharmaceuticals have not been standardized and still require approvals by the individual member states. As a consequence of its membership in the EAEU, Russia's import tariff levels, trade-in-transit rules, non-tariff import measures (*e.g.*, tariff-rate quotas, import licensing, and trade remedy procedures), and customs policies (*e.g.*, customs valuation, customs fees, and country of origin determinations) are based on EAEU legal instruments. The EAEU member states are estimated to have harmonized approximately 90 percent of their tariffs governing trade with third countries.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Russia's average MFN applied tariff rate for all goods was 6.6 percent in 2022 (latest data available). Russia's average MFN applied tariff rate was 9.7 percent for agricultural products and 6.1 percent for non-agricultural products in 2022 (latest data available).

Russia has bound 100 percent of its tariff lines in the WTO, with an average WTO bound tariff rate of 7.5 percent. Russia's average WTO bound tariff rate for agricultural goods (10.7 percent) was slightly higher than its average applied rate of 9.7 percent in 2022 (latest data available). Russia's average WTO bound rate for non-agricultural products was 7.1 percent also slightly higher than its average applied rate of 6.1 percent. Russia's maximum WTO bound tariff rate was 113 percent in 2022 (latest data available). Although Russia has implemented all the tariff reductions required by its WTO commitments, some concerns remain.

In 2018, the Government of Russia adopted Decree No. 788 On Approval of Rates of Import Customs Duties In Respect of Certain Goods Whose Country of Origin Is the United States of America (amended April 26, 2022) imposing tariffs ranging from 25 percent to 40 percent on various industrial products (mainly certain types of construction machinery) imported from the United States. Russia took this action in retaliation against the U.S. President's decision to adjust duties on U.S. imports of Russian steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. § 1862). These retaliatory duties are being applied by Russia only, not by other EAEU member states. The United States had been urging Russia to work with the United States to address excess capacity in the global steel and aluminum sectors, rather than engage in unjustified retaliation designed to punish U.S. workers and companies. On August 27, 2018, the United States launched dispute settlement proceedings against Russia at the WTO and requested consultations with Russia. Following unsuccessful consultations in November 2018, a WTO dispute panel was established on December 18, 2018 and composed on January 25, 2019. On June 16, 2023, Russia requested that the panel suspend its work. Despite an objection from the United States, the panel accepted Russia's request and, effective June 23, 2023, the panel suspended its work.

Through Decree No. 1173, on July 20, 2023, Russia increased customs duties on imports of certain goods from “unfriendly” countries, including the United States. Specifically, Russia increased duties on wine (from 12.5 percent to 20 percent), purified glycerin (from 9 percent and 12 percent to 50 percent), and polyurethane (from 6.5 percent to 35 percent). These duty increases were authorized by Presidential Decree No. 973 signed in December 2022 and will stay in effect until December 31, 2025.

On August 3, 2023, Russia introduced amendments to the Federal Law On Customs Tariffs bill amending the Federal Law on customs tariffs to the State Duma (the lower chamber of Russia’s parliament) providing the government with the authority to lower export tariffs on grain, fertilizers, and raw materials to “friendly” countries. The bill was approved by the State Duma on December 12, 2023, and was pending in the upper chamber of parliament as of December 31, 2023.

Taxes

Russia applies a value-added tax (VAT) of 20 percent on goods, works, and services (with some limited exceptions). According to Article 149.2 (paragraph 21) of the Russian Tax Code, the 20 percent VAT payments on royalties paid for screening Russian movies (as defined in the Russian tax code) can be rebated, but not VAT payments on royalties for screening U.S. (or other non-Russian) films. However, following Russia’s full-scale invasion of Ukraine in February 2022, most major U.S. studios withdrew from and ceased screening movies in Russia. Similarly, Article 149 exempts from the 20 percent VAT the royalties paid on software included in the Unified Register of Russian Software (pursuant to Federal Law No. 188-FZ of June 29, 2015, and Resolution 1236 of November 16, 2015.) Because only Russian software is included in the Register, the cost of using non-Russian software can be automatically 20 percent higher than using Russian software. The United States has raised these discriminatory tax practices with the Government of Russia, but Russia has not changed its practices.

Russia’s Federal Law No. 89-FZ (as amended), imposes a recycling fee to be paid on automobiles and certain other wheeled vehicles that requires importers (since 2012) and manufacturers (since 2016) of automobiles and certain other wheeled vehicles (including self-moving agriculture and industrial vehicles). The fee is determined by the age, total mass, and engine size of the vehicle. Purportedly, the fee was imposed to offset the reduction in tariffs. The recycling fee has increased from between RUB 3,000 and RUB 110,000 (approximately \$41 and \$1,494) in 2012, depending on total mass and engine size of the vehicle, and between RUB 3,400 and RUB 1,235,000 (approximately \$36 and \$13,138) in 2023 for new passenger cars with no more than eight seats. For used passenger cars, the recycling fee increased from between RUB 5,000 and RUB 700,200 (approximately \$68 and \$9,507) in 2012 to RUB 5,200 and to RUB 1,623,800 (approximately \$55 and \$17,274) in 2023. Although the fee applies to both domestic and imported vehicles, concerns remain regarding the overall level and calculation of the fee for heavy-duty commercial vehicles.

Russia appears to apply a variable excise tax on automobiles based on their engine size. For example, in 2023, cars with engine power below 150 horsepower (hp) (e.g., a Lada, as well as some models of Fiats, Mini Coopers, and older Fords) are subject to an excise tax of RUB 55 (approximately \$0.60) per hp. For cars with engine power above 150 hp, the excise tax rate increased from RUB 531 per hp to RUB 1,584 per hp (approximately \$5.70 to \$16.90). Those rates translate to a maximum tax of approximately RUB 8,250 (approximately \$87.80) for a car with less than 150 hp, and RUB 80,181 (approximately \$852) for a car with 151 hp, and RUB 793,584 (approximately \$8,442) for a car with over 500 hp (e.g., certain models of Cadillacs, Ford Mustangs, Jaguars, Alfa Romeos or Mercedes Benz). Although the tax applies to both domestically produced and imported vehicles, it disadvantages foreign manufacturers as Russia produces a limited number of high horsepower cars. In its 2022 WTO Trade Policy Review, Russia acknowledged that it does not produce passenger cars with engine power over 300 hp.

Non-Tariff Barriers

Import Bans

Russia has maintained a ban on imports of certain food and agricultural imports from Australia, Canada, the member states of the European Union, Norway, and the United States since 2014. The list of banned food includes: certain beef, pork, poultry, fish and seafood products; fruits and nuts; vegetables; some sausages; and, most prepared foods. Russia has since amended the list of products and expanded the list of countries covered by the ban, adding Albania, Iceland, Liechtenstein, Montenegro, Ukraine, and the United Kingdom. In September 2023, Russia extended the ban until December 31, 2024 through Presidential Decree No. 693 On the Extension of Certain Special Economic Measures to Ensure the Russian Federation's Security (September 18, 2023).

Import Licensing

Even before Russia's full-scale invasion of Ukraine in February 2022, the Russian Government maintained barriers to the importation of products with cryptographic functionalities (encryption products). Although Russia has WTO commitments to allow the importation of "mass market" consumer electronics without an import license or other customs formalities (other than import duties), stakeholders report that Russia continues to require at a minimum a one-time notification or, for products with strong encryption, permission from the Russian security services in addition to an import license, which significantly increases import costs and often precludes imports altogether. In addition, pursuant to Government Resolution No. 313 (April 16, 2012), as amended, Russia requires an activity license to distribute encryption products, including many common consumer electronics, which further restricts U.S. exporters access to the Russian market. Only Russian legal entities or individual entrepreneurs may apply for a local (domestic) encryption license. Representative offices of foreign companies registered in Russia cannot apply for a local license. Prior to Russia's 2022 full-scale invasion of Ukraine, the U.S. Government had raised these concerns with the Russian Government about the import licensing regime for encryption products but Russia failed to respond to repeated outreach.

Customs Barriers and Trade Facilitation

In 2019, Russia began to implement a mandatory labeling regime (track and trace regime) in selected industry sectors that requires the application of an encrypted label to products, both imported and domestically produced, in an ever-widening list of industry sectors. The mandatory labeling regime applied initially to only certain industry sectors (*e.g.*, footwear, apparel, pharmaceuticals, and perfumery products), but now covers 16 groups of goods with the goal of making the majority of consumer goods digitally traceable by 2024. Various affected industry stakeholders have raised significant concerns about the regime, including: short implementation timelines; the risk of disclosure and misuse of sensitive commercial data collected under the regime; the lack of operational details from the Russian Government; the quantity of detailed data required for the labels; the possibility of national treatment and trading rights issues stemming from different procedures for importers to obtain these labels compared to domestic manufacturers; the requirement that the labels must be purchased from a single Russian company; the duplication with existing tracking regimes (*e.g.*, the system for tracking alcohol products); and, arbitrary misuse of the system to halt imports. Russia had shown some flexibility in response to stakeholder concerns and, in 2022, suspended some of the labeling requirements. The United States will work with stakeholders and, where possible, the Russian Government to ensure that the system does not create new trade barriers to U.S. exports, or undermine the benefits of the WTO Trade Facilitation Agreement.

U.S. stakeholders report that the Russian Government does not publish all regulations, judicial decisions, and administrative rulings of general application on customs matters. In addition, U.S. exporters report that

customs enforcement varies by region and port of entry, and that changes in regulations can be frequent and unpredictable, adding to costs and delays at the border. U.S. officials have pressed Russian officials to improve transparency in this area and ensure compliance with WTO commitments.

Import Substitution Policies

Russia's extensive import substitution policies posed a significant barrier to a wide variety of U.S. exports, even before the full-scale invasion of Ukraine in February 2022 caused a precipitous drop in trade. These policies have a long history in Russia, but have increased in prominence in the past few years and transformed into a set of policy initiatives to ensure Russia's technological sovereignty by reducing its dependence on foreign technologies. Sectors in which these policies have been developed and implemented over the last several years include: agriculture; transport vehicles; telecommunications; consumer goods; textiles; optical fiber; defense; banking; oil and gas; solar and wind energy; software; aircraft manufacturing; and, medical devices. *(For further information, see the sections on Investment Barriers, State-Owned Enterprises, and Government Procurement.)*

Initially, the Russian Government implemented these preferences primarily through government procurement, but since 2015 has increasingly extended the mandated preferences to purchases by state-owned enterprises (SOEs). For example, Russia's law governing SOE purchases expressly: (1) favors Russian-produced products; (2) grants the Russian Government the authority to establish plans and tender rules for the purchase of specific Russian goods, works, and services; (3) establishes a Government Import Substitution Commission with responsibility for determining which types of machinery and equipment must be sourced locally for large investment projects by SOEs, state corporations, or certain private businesses; (4) requires the coordination of SOEs' purchases of pharmaceutical, high technology, and innovative products with the government; and, (5) recommends that SOEs follow the more restrictive procurement rules that govern federal and municipal procurement. *(For further information, see the Government Procurement section.)*

Russia's import substitution requirements have not been limited to SOEs. Since December 2019, Russia has required the pre-installation of Russian software (e.g., search engines, Yandex browser, mapping and navigation software, anti-virus software, software that provides access to electronic government infrastructure, instant messaging and social network software, and national payment software) on certain consumer electronic products (e.g., smartphones, computers, tablets, and smart TVs) sold in Russia. (Law No. 425 On Amending Article 4 of Russian Federation Law 'On Protecting Consumer Rights' December 2, 2019.) Stakeholders contend that the law appears to be another effort by the Russian Government to disadvantage imports and increase control over technology. In August 2023, the Russian Government approved a new list of Russian software that must be pre-installed on smart TVs in 2024, adding several video streaming services. The list of programs for computers and mobile devices remained basically the same. In addition, technology companies are concerned that the law would expose devices and services to potentially unsafe, insecure, or unreliable technology. The United States raised concerns directly with the Russian Government prior to the full-scale invasion of Ukraine in 2022 and will monitor closely the implementation of this policy, which has the potential to seriously disrupt U.S. and other foreign suppliers of devices, software, and services.

Russia has expanded its localization policies beyond Russian-made goods to include Russian-origin services. *(For further information, see the Services Barriers section.)*

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

U.S. companies cite Russia's administration of technical regulations and related product-testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russia does not accept export certificates recognized by other countries, such as those issued by the Food and Drug Administration of the U.S. Department of Health and Human Services. Russia recognizes only the certificates issued by authorized agencies from one of the EAEU member countries with a representative office in Russia. Russian authorities require product testing and certification as a key element of the approval process for a variety of products; and, in many cases, only an entity registered and residing in Russia can apply for the necessary documentation for those product approvals. Consequently, opportunities for testing and certification performed by competent bodies outside Russia are limited, which is contrary to standard practice and inappropriately increases the burdens for companies exporting to Russia. Manufacturers of telecommunications equipment, oil and gas equipment, construction materials and equipment, and veterinary biologics, such as vaccines, have reported serious difficulties in obtaining product approvals within Russia. Other EAEU member states are in the process of adopting similar requirements.

Alcoholic Beverages

Stakeholders have raised concerns about legislative amendments that affect Russia's regulation of the wine market, particularly Federal Law No. 345-FZ of July 2, 2021. Stakeholders are concerned that certain definitions and provisions, such as limitations placed on wine exported to Russia in bulk and restrictions on the use of certain ingredients, could create barriers to exports from the United States and other producers of wine. Stakeholders have also raised concerns related to limitations on the right to use certain geographical indications (GIs) or appellations of origin, and the rules governing labeling (with follow-on implications for labeling approvals). In December 2022, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which contains requirements that can reduce safeguards for the use of common names, came into force in Russia.

In addition, stakeholders noted that Russia requires one or multiple certificates for imported wine from the United States, even when those wines conform to both U.S. and Russian standards. Often, these certificates must be an original document issued by the U.S. Department of Treasury (Alcohol and Tobacco Tax and Trade Bureau) or an officially accredited organization located in Russia. Stakeholders also expressed concerns about the Ministry of Industry and Trade's November 2022 decision to allow imports of premium liquor brands without the trademark owners' consent under Russia's parallel imports scheme. When appropriate, the United States will work to ensure that Russia's and the EAEU's alcoholic beverages control regime is consistent with Russia's WTO commitments, and also urge Russia and the EEC to adopt international standards or guidelines for such products.

Pharmaceuticals

U.S. stakeholders continue to raise concerns about the implementation of Russia's Good Manufacturing Practices (GMP) regime for pharmaceutical products. U.S. stakeholders are concerned that Russia treats domestic and foreign manufacturers differently in the implementation of its GMP regime for medicines. For example, stakeholders have highlighted the higher rate of unwarranted denials of foreign GMP certificates, the lack of a process for paper review of corrective actions for minor deficiencies, and the disparate, legislatively-mandated treatment of GMP procedures for local and foreign sites. Moreover,

industry stakeholders report that the GMP certificates for veterinary drugs, required since September 1, 2023, present a significant barrier to imports and could potentially close the Russian market to exports of U.S. veterinary drugs.

Toys

U.S. industry is concerned about the arbitrary exclusion of certain toys from the Russian market as a result of the “psychological assessment of toys, games and play structures” required under the 1998 Federal Law No. 124-FZ On Basic Guarantees of Children’s Rights to the Russian Federation. U.S. toy industry stakeholders have also raised a concern about the EAEU’s ban on recycled content in toys, which they claim contradicts global toy safety standards and undermines the growing focus of the U.S. toy industry on sustainability.

Sanitary and Phytosanitary Barriers

Russia has banned imports of most agricultural products since August 2014. The issues discussed below continue to be of concern to the United States and still constitute market access barriers in addition to the import ban.

Food Safety Standards

Russia maintains standards on a wide array of animal products that are inconsistent with international standards set by the World Organisation for Animal Health (WOAH), the International Plant Protection Convention (IPPC), or the Codex Alimentarius Commission (Codex) without an apparent scientific justification. Findings of veterinary drug residues during Russian border inspection of U.S. meat and poultry products have resulted in trade disruptions, including the suspension of previously-approved U.S. beef, pork, and poultry facilities. For example, in October 2013, the EEC adopted a zero-tolerance policy for beta-agonists, including ractopamine, and trenbolone acetate for beef and pork products. These standards are more stringent than the Codex’s maximum residue limits for these substances in both beef and pork. Russia notified this measure to the WTO in November 2017, and to date the United States is not aware of any complete risk assessment. Although the United States has established a Never Fed Beta Agonists Program, Russia’s prohibition of these veterinary drugs, including for products that are not affected by Russia’s import bans, prevents U.S. exporters of beef and pork products from accessing the Russian market.

Plant and Animal Health

U.S. exporters of agricultural products also continue to face systemic issues in Russia. For example, since August 2008, Russian and EAEU veterinary certificates require U.S. regulatory officials to certify that exported products satisfy EAEU sanitary and veterinary requirements and meet certain chemical, microbiological, and radiological standards. These requirements are problematic because many EAEU sanitary and veterinary requirements appear to be excessively restrictive and lacking in scientific justification. Similarly, Russia requests U.S. exporters to submit certifications stating that the United States is free from various livestock diseases, even where the product in question could pose no risk of transmission. In other cases, Russia requires sanitary or phytosanitary attestations on export certificates for low-risk food or agricultural products without providing scientific evidence of the risk justifying such measures. For example, Russia requires phytosanitary attestations for shipments of certain plant-origin products destined for further processing, such as corn for popcorn, even though such processing removes any potential plant health risk. The United States is also concerned with Russia’s failure to remove certain veterinary control measures for lower-risk products. Russia maintains a ban on cultivation of genetically engineered (GE) crops and the import of GE planting seeds, as well as stringent import restrictions on

animal feed and burdensome methodological guidelines for the registration of GE products. The United States has pressed and will, as appropriate, continue to press for the removal of these types of barriers to exports of U.S. plant and animal products.

Approved Exporter and Facility Listing Requirements

Pursuant to a June 2010 EEC regulation, Russia only allows imports of most products under veterinary control (*e.g.*, meat, poultry, dairy, and seafood) from facilities on a list approved by all EAEU member states. Pursuant to a bilateral agreement signed in November 2006, Russia agreed to grant U.S. regulatory officials the authority to certify new U.S. facilities and recertify U.S. facilities that have remedied any previously reported import noncompliance. In practice, however, Russia has not consistently recognized the authority of U.S. regulatory officials to certify additional U.S. facilities, and there have been delays in responding to U.S. requests to update the list of approved U.S. facilities. Russia justifies its approach based on the EEC Customs Union Commission Decision No. 834, dated October 18, 2011, On the Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision) and the subsequent EEC Decision No. 94, dated October 9, 2014, On the Regulation on the Harmonized Procedure of Joint On-Site Inspections and of Taking Samples of Goods (Products) Subject to Veterinary Control (Supervision). The EAEU has competence for facility inspections and approvals. The United States worked with Russian and EAEU authorities to negotiate an EAEU inspection regulation that allows the EAEU to accept the certification of additional facilities provided by sanitary and phytosanitary authorities in third countries that certify new facilities. However, implementation of this regulation has lacked predictability and transparency because EAEU member states often continue to insist on conducting their own inspections prior to approving a facility, without providing any rationale.

Similarly, Russia maintains exporter approved lists. Russia has effectively banned the importation of U.S. dairy products since September 2010, when Russia's Federal Service for Veterinary and Phytosanitary Surveillance (VPSS) instructed customs officials to allow shipments only from exporters on VPSS-approved lists. The EEC has now extended this listing requirement to most agricultural products. This directive appears to be inconsistent with EAEU legislation eliminating the requirement that a foreign producer be included on an approved list in order to be eligible to export dairy products to the EAEU. The listing requirement continues to prevent U.S. exports of heat-treated dairy products despite the fact that, in March 2014, the United States and the Russia–Kazakhstan–Belarus Customs Union (CU) concluded negotiations on a U.S.–CU veterinary certificate. Despite its WTO accession commitment to eliminate listing requirements for pet food and animal feed products, Russia also continues to require approved lists of exporting establishments for pet food of animal origin. The United States has worked, where possible, with Russia and the other EAEU member states to eliminate the listing requirement for exporters, including heat-treated dairy products.

GOVERNMENT PROCUREMENT

Russia is not a Party to the WTO Agreement on Government Procurement (GPA), but has been an observer to the WTO Committee on Government Procurement since May 2013. In 2013, Russia adopted Law No. 44-FZ On the Contract System for the Procurement of Goods, Works and Services for State and Municipal Needs establishing the basis for a broad range of requirements relating to federal or municipal government procurement that it argues are not subject to the national treatment obligations of the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. Given the breadth of the Russian Government's role in the economy and the scope of the numerous import substitution policies applicable across a broad swath of the Russian economy, such measures impede trade because U.S. exports are excluded from a broad section of the Russian economy. Notwithstanding legislation simplifying the public

procurement process, Russia's restrictions on its government procurement opportunities have accelerated since 2014 when Russia established a 15 percent preference for a variety of goods (including certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU for government use, and up to 30 percent for certain other products.

Since 2015, Russia has adopted increasingly autarkic measures reaffirming and expanding the ban on government procurement of a wide range of foreign-made products, including, but not limited to: furniture; vehicles; machinery and equipment; tools; appliances; paper and cardboard; and, shoes and clothing.

In addition, Russia has banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU, unless there are no domestic or EAEU alternatives. The Industrial Policy Law, dated December 31, 2014, specifically promotes import substitution, restricting government procurement (and SOE purchases) of foreign-made products. It provides a framework for the support of certain product manufacturing, research and development (R&D) subsidies, and infrastructure projects as well as implementation of the Buy Russia Law. The Industrial Policy Law also includes provisions for financial and material support to Russian companies to boost their export potential.

In addition, measures aimed at the healthcare industry, such as Russia extending its “three’s-a-crowd” localization policy (banning government procurement of certain imported goods if more than two companies from EAEU member states submitted a bid) to government tenders for many drugs, medical devices and health-related disposable goods, have been challenging for U.S. stakeholders. If the “three’s-a-crowd” rule is not applicable, a 15 percent price preference is applied. Russia has also adopted additional restrictions on government procurement of imported medicines and medical devices. An additional challenge to U.S. pharmaceutical producers is a reimbursement system that allows only domestic companies to request annual adjustment of prices registered by the Ministry of Health.

In February 2023, the Russian Government adopted Decree No. 318 further expanding the list of goods banned from government procurement and replaced the “three’s-a-crowd” localization policy with the “two’s-a-crowd” rule previously applied to public procurement of electronic equipment.

The so-called “two’s-a-crowd” rule requires public sector customers procuring products listed in the resolution to reject bids from foreign manufacturers if there is already one (or more) bids for the supply of the same product manufactured in the EAEU. The rule was first approved in August 2021 when the Russian Government issued a resolution that significantly strengthened restrictions on public procurements for over 170 groups of electronic equipment, including more than 30 groups of medical devices manufactured by foreign companies. For the medical devices listed in this measure, this requirement will replace the similar “three’s-a-crowd” rule, described above.

These measures follow restrictions imposed by Russia that ban government procurement of over 100 imported radio electronic products and components and establish a 30 percent price preference in purchases by state-owned enterprises. In June 2022, the Ministry of Industry and Trade (MoIT) announced it had prepared a draft government decree on the introduction of the “two’s-a-crowd” rule in public procurement of essential drugs providing procurement preferences to pharmaceutical companies in EAEU member states that engage in full-cycle pharmaceutical R&D and manufacturing. In 2023, the MoIT confirmed that the decree would apply to the entire list of strategically important medicines as of September 2024.

In 2016, the Russian Government issued Decree No. 832 (last amended in May 2022) banning certain food and dairy products from non-EAEU member states for federal and municipal government procurement, (including fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter, and sugar) and established minimum purchasing requirements of domestic goods. In

April 2020, with the adoption of Resolution No. 616, the Russian Government introduced another series of bans and restrictions on the admission of foreign industrial goods for the purpose of public procurement and procurement for the needs of national defense and state security. Resolution No. 616 was last amended on September 16, 2023, expanding the list of banned foreign industrial goods in public procurement to meet the needs of national defense and state security during “special military operations” and mobilization in Ukraine. In August 2023, Russia approved amendments to the Federal Procurement Law to further simplify uncompetitive sole-source public procurement for the needs of national defense and state security during the “special military operation” (Federal Law No. 443-FZ of August 4, 2023). Eligible government entities, approved by Government Resolution No. 3514 in November 2022, are now allowed to sign with winning bidders any type of contract provided for in Russia’s Civil Code without any restrictions.

Russia has expanded the reach of its import substitution policies into the technology sector. Pursuant to amendments to Russia’s national procurement law (Law No. 44-FZ), Russia has created a registry of Russian software. Foreign-made software not on the list will no longer routinely qualify for federal and municipal government procurement, unless no similar domestically produced software is available. In July 2016, the Russian Government went a step further and issued an order approving a three-year plan to switch government agencies to Russian-origin office software. According to U.S. stakeholders, because the move to domestic software was not moving fast enough, the Russian Government in 2020 proposed measures that would expand the list of companies considered Critical Information Infrastructure (CII), and thus extending to many private companies the import substitution requirements applied to government entities. In March 2022, the Russian President signed Decree No. 166 to ban SOEs from procuring foreign software and information technology (IT) services for the CII that they operate. The Decree also bans SOEs and public authorities from using foreign IT for CII starting on January 1, 2025. In August 2023, the MoIT released a detailed action plan to ensure SOEs and public authorities meet the January 2025 deadline.

The Ministry of Digital Development, Communications, and Mass Media drafted a bill to expand the current ban on the purchase and use of foreign IT products for CII operated by public authorities and SOEs to include privately-owned CII. If the bill becomes law, the ban on the purchase and the use of foreign IT products for CII will be applied to all CII operators, regardless of government or private ownership. This measure will likely severely limit the ability of foreign-controlled entities to provide IT services to CII operators, and require such operators to migrate toward the use of domestic software and hardware only.

INTELLECTUAL PROPERTY PROTECTION

Russia remained on the Priority Watch List in the [2023 Special 301 Report](#). Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs). The United States is also closely monitoring proposals and measures undertaken by Russia to target IP rights for foreign right holders based in countries that have sanctioned Russia. Some of these measures have been implemented, including Decree 299, which permits Russian companies and individuals to forgo compensation to right holders for the use of inventions, utility models, and industrial designs under Article 1360 of the Russian Civil Code, if the right holder is a national from a list of countries designated by Russia as “unfriendly” due to factors including publicly supporting or calling for sanctions against Russia. Another new measure, Decree 322, restricts the ability of foreign right holders from those same “unfriendly” states to collect license payments for most types of IP.

Russia’s inadequate and ineffective protection of copyright, including with regard to online piracy, continues to be a significant problem, damaging the market for legitimate content in Russia and in other countries. Despite adoption of anti-piracy legislation in 2017, Russia remains home to several sites that facilitate online piracy, as identified in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#)

(Notorious Markets List). Stakeholders continue to report significant piracy of video games, music, movies, books, journal articles, and television programming. While right holders are able to obtain court-ordered injunctions against websites and smartphone applications offering infringing content, investigations and prosecutions of the owners of the large commercial websites distributing pirated material, including software, are lacking.

Trade in counterfeit goods causes significant financial losses for U.S. right holders and legitimate businesses. Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Russian Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the “return to sender” policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

CMOs for copyright can play an important role in ensuring compensation for right holders when CMO practices are fair, efficient, transparent, and accountable. However, royalty collection by CMOs in Russia continues to lack transparency and lags behind international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs.

Finally, the United States is concerned about Russia’s implementation of its WTO commitments related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data and lacks an effective mechanism for the early resolution of potential pharmaceutical patent disputes. Stakeholders also continue to express concerns regarding certain evidentiary standards applied by the judiciary.

SERVICES BARRIERS

Russia has extended its import substitution policies beyond the provision of goods to include the provision of services.

Audiovisual Services

In January 2022, the Russian Government announced that it would require any streaming service with over 100,000 daily users to register as a Russian company and to add 20 Russian television channels to its service, including Russian news stations, thereby forcing U.S. suppliers to become platforms for Russian state propaganda. However, affected U.S. companies suspended operations in Russia due to the full-scale invasion of Ukraine before the measure went into effect.

Financial Services

Russia continues to prohibit foreign banks from establishing branches in Russia, which means that only local subsidiaries are allowed. In June 2023, the Ministry of Finance released for public discussion a draft bill that would allow foreign banks from “friendly” countries to open branches in Russia. If the bill is approved, they will be allowed to provide banking services in Russia to corporate entities, while individual clients will only be allowed to make fund transfers without opening a bank account. Branches of foreign banks will not be allowed to open demand and term deposits. Moreover, since 2014, Russia has required that foreign-based credit card companies transmit data for all transactions within Russia through the National System of Payment Cards, undermining a key competitive advantage of foreign payments suppliers, which market their self-owned processing facilities located outside of Russia as supporting their reputation for strong consumer and privacy protections. In addition, the Central Bank of Russia (CBR)

offers a domestic credit card (Mir) and a system which allows inexpensive peer-to-peer payments for Russian retail bank customers (Faster Payment System). Providing preferential treatment for Mir payment cards, the Government of Russia has passed mandates requiring public sector employees receiving state funds and welfare benefits to migrate to Mir payment cards and making pensions accessible only through Mir bank cards. U.S. stakeholders have raised concerns about Russia's creeping financial nationalism and the potential for unfair competition in the provision of these services because the CBR is the state regulator as well as the service provider.

BARRIERS TO DIGITAL TRADE

Data Localization Requirements

In 2016, Russia began to enforce the first step of its data localization regime. By 2020, the Russia Government had implemented a regime requiring certain electronically-collected data about Russian citizens be processed and stored in Russia, imposing significant operational challenges on providers of data-intensive services, as well as on manufacturers who rely on those services. The requirements also raise concerns about state surveillance. Russia also requires certain telecommunications and Internet service providers (ISPs) to store certain communications content locally for six months and to store metadata for such content for one year or longer, depending on the type of provider (Yarovaya law), giving the Russian security services the opportunity to request those data.

Other Digital Trade Issues

Russian ISPs must install a special device on their servers to allow the Russian security services to track all credit card transactions. Russia threatens to shut off market access to ISPs that allow their customers to use virtual private networks (VPNs). In addition to the obvious concerns over state surveillance, industry stakeholders contend that the effects of these laws limit their ability to offer a variety of services in Russia and increase the cost of doing business in Russia, particularly for small and medium-sized enterprises (SMEs). Moreover, the Russian law (the Yarovaya law) may require ISPs to provide excessive access to citizens' private information, which raises privacy concerns.

In 2021, Russia implemented the so-called Landing Law which requires certain IT companies (*i.e.*, any company with a website or an application with more than 500,000 daily users) to establish a physical presence in Russia. U.S. companies, particularly SMEs, contend that this local presence requirement, coupled with difficult compliance requirements, harsh penalties, and concerns about staff safety, can constrain their ability to operate their businesses in Russia.

INVESTMENT BARRIERS

With the imposition of sanctions by the U.S. Government, numerous U.S. companies have withdrawn from the Russian market or severely limited operations. For companies with a continued presence in Russia, corruption, lack of transparency, inability to repatriate capital, and the threat of creeping expropriation remain impediments to a stable and predictable investment environment. In 2022, Russia introduced significant restrictions on cross-border transactions, such as the sale of shares, payment of dividends, and liquidation of Russian entities controlled by persons from jurisdictions deemed "unfriendly" by the Russian Government. Further obstacles to investment in Russia include: problems with enforcing the rule of law; restrictions on foreign ownership of agricultural land and land in border areas and on investment in the mining and mineral extraction sectors; inadequate dispute resolution mechanisms; weak corporate governance, including the protection of minority shareholder rights; the absence of requirements for all companies and banks to adhere to accounting standards consistent with international norms. In 2023,

Russia continued to adopt a variety of measures restricting the business affairs of foreign investors from “unfriendly” states (*e.g.*, limiting disclosure requirements in certain sectors, allowing payment of financial obligations in rubles rather than dollars, limiting certain transactions in sensitive sectors, placing Russian assets of several foreign companies which Russia claims will be under temporary control of the Federal Agency for State Property Management, and setting additional conditions for the exit of foreign companies from Russia). Finally, despite the existence of an Anticorruption Council and anticorruption legislation, with the departure of many international companies and the growing role of the state in the domestic economy, corruption is an increasing concern in Russia.

Investment Taxes

U.S. companies have raised concerns about Russian tax authorities’ scrutiny of payments that cross Russia’s borders, but remain, for tax purposes, in the legal structure of the same Russian company. This issue has arisen when a multinational company transfers an employee temporarily to the company’s Russian office from an office outside Russia. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, Russian tax inspectors have in the past disputed such expenses as economically unjustified and, consequently, impermissible under the Russian Tax Code.

SUBSIDIES

Russia agreed to no longer subsidize exports of agricultural products pursuant to the WTO 2015 Nairobi Ministerial Decision. However, U.S. stakeholders have raised concerns about the potential cost advantage to certain Russian agricultural producers resulting from the provision of subsidies for the transportation of agricultural products, including for the transportation of wheat, barley, and corn from interior regions toward export destinations. Russia has provided this subsidy since 2017, stating the measure is intended to stimulate the movement of grain exports, stabilize domestic grain prices, and support profit margins of agricultural producers. In August 2023, Russia relaxed the eligibility criteria for railroad transportation subsidies available for producers of agricultural goods and fertilizers. The United States is concerned that this measure directly or indirectly subsidizes exports of Russian agricultural products. The implementing decree No. 1104, dated September 15, 2017, specifically mentions several border crossings with Mongolia and China and authorizes the Russian Export Center (REC) to administer the subsidy. According to Russia, the REC is a state export promotion institution that provides financial and non-financial export support both to agricultural and non-agricultural value-added products.

STATE-OWNED ENTERPRISES

Russia’s numerous SOEs play a prominent role across much of the Russian economy. The Russian Academy of National Economy and Public Administration (RANEPA) estimated in May 2023 that the state’s share in the economy had grown from 47.3 percent in 2016 to 56.2 percent in 2021. While private enterprises are theoretically allowed to compete with SOEs on the same terms and conditions, in practice, the competitive playing field is distorted in favor of SOEs. These advantages result from SOEs’ lack of transparency and lack of independence, the presence of senior Russian Government officials on their boards of directors, subsidization by the government, access to preferential lending by state-owned banks, unclear responsibilities of their boards of directors, misalignment of managers’ incentives and company performance, inadequate control mechanisms on managers’ total remuneration or their use of assets transferred by the government to the SOEs, and minimal disclosure requirements.

A specific variant of SOEs, state corporations, are completely owned by the government and operate under separate legislation and in a marketplace distorted in their favor. For example, state corporation holding

structures and management arrangements (*e.g.*, senior government officials as board members) create conditions for preferential treatment and leave much scope for discretion and lobbying by company insiders, which disadvantage private enterprises. There are six state corporations: Rosatom, VEB, Fund for Communal Housing, Deposit Insurance Agency, Roskosmos, and Rostec.

In order to spur growth and boost revenue through privatizations, the Russian Government in September 2023 decided to extend its existing three-year privatization program through 2026. Russia plans by 2026 to fully privatize 23 federal state unitary enterprises and sell its stakes in 166 joint stock companies and seven limited liability companies. As of June 2023, the Russian Government still owned 278 federal state unitary enterprises, as well as stakes of various sizes in 561 SOEs. In October 2023, the Government extended the program through 2025, with plans to fully privatize 23 federal state unitary enterprises and sell its stakes in 151 joint stock companies and 9 limited liability companies by 2025. As of December 2022, the Russian Government still maintained a list of 55 SOEs with “national significance” that are either wholly or partially owned by Russia and whose privatization is permitted only with a special governmental decree, including Aeroflot, Rosneft, Rosneftegaz, Transneft, Russian Railways, and VTB. However, Russia has been slow in implementing the privatization plan. The treatment of foreign investors in privatizations conducted to date has been inconsistent, with foreign participation at times confined to minority stakes, which creates concerns about protection for minority shareholders and corporate governance.

OTHER BARRIERS

Export Policies

Notwithstanding its stated intent of reducing export duties following its accession to the WTO in 2012, Russia in 2022 began to impose various export restrictions on a wide variety of products. For example, in March 2022, Russia imposed a temporary ban on exports of over 200 types of industrial products including technological, communications and medical equipment, vehicles, agricultural machinery, and electrical equipment covering over 1,600 items, in total. In November 2022, the Russian Government extended the ban through the end of 2023. In May 2023, the list of industrial products subject to the ban was narrowed by about 200 items. In addition, notwithstanding the global food security crisis, Russia has imposed temporary export restrictions (*e.g.*, export bans, export quotas, or export duties) on sunflower seeds, soybeans, grain crops, white sugar, raw cane sugar, rice and rice cereal, rapeseed, millet, buckwheat, meslin, cereal and cereal pellets, crude flour, barley, rye, corn, onions, garlic, turnips, sunflower oil and bagasse, fish products, sulfur used to produce sulfur-containing fertilizers, sulfur containing fertilizer, nitrogen-containing fertilizer. Other temporary export restrictions include non-agricultural products such as certain types of logs, ferrous waste and scrap, stainless scrap and waste, waste and scrap of other alloy steel, and waste and scrap of tungsten. Export restrictions for many of the agricultural goods continue to be extended.

In September 2023, the Russian Government, through Resolution 1538, introduced exchange rate-linked export duty rates for the period of October 1, 2023 through December 31, 2024. The new rates apply to wide range of export commodities and goods, including oil, gas, grains, timber, machine building and scrap metal, fertilizers, nickel, aluminum, ferrous metal products, ceramics, precious metals and jewelry, paper and cardboard, wool, cotton, chemical fibers, textile material, polymers, and rubber. The scope of this measure covers about 30 percent of Russia’s exports. Export duties vary from zero percent to 7 percent. Export duties on fertilizers were increased from 7 percent to 10 percent if the exchange rate remains above RUB 80 per \$1.00.

In September 2023, Russia temporarily banned diesel and gasoline exports to stabilize fuel prices in the domestic market. The ban was relaxed at the beginning of October 2023. However, restrictions on railway

diesel exports, as well as all previously introduced restrictions on gasoline exports, remain in place. Stakeholders claim that Russia has placed higher rail freight rates on certain raw materials intended for export, contrary to its WTO commitment to eliminate discrepancies in such rates by July 1, 2013.

SINGAPORE

TRADE AGREEMENTS

The United States–Singapore Free Trade Agreement

The United States–Singapore Free Trade Agreement (FTA) entered into force on January 1, 2004. The United States and Singapore meet regularly to review the implementation and functioning of the Agreement and to address outstanding issues.

INTELLECTUAL PROPERTY PROTECTION

Despite Singapore’s overall strong record on intellectual property (IP) protection and enforcement, U.S. stakeholders continue to raise concerns regarding enforcement efforts against infringing goods transshipped through Singapore, and the use of unauthorized streaming services and third-party illicit streaming devices to access pirated content. Since November 2021, amendments to the Copyright Act impose civil and criminal liability for knowingly making, importing for sale, commercially distributing, or selling illicit streaming devices, and also for providing a service to enable such devices to access content from unauthorized sources. The United States continues to monitor the implementation of these measures.

The United States continues to urge Singapore to implement its geographical indication (GI) system in a fair and transparent manner that does not undermine market access for U.S. producers and exporters who hold trademarks or rely on the use of common names, including in connection with trade agreement negotiations and implementation.

SERVICES BARRIERS

Financial Services

When considering certain mergers or takeovers of banks, the Government of Singapore has a policy of maintaining local banks’ market share at no less than 50 percent of total resident deposits. Regarding the expansion of business within Singapore, the Monetary Authority of Singapore (MAS) will consider awarding full bank privileges to new qualifying foreign banks from countries like the United States, with which Singapore has entered into a free trade agreement, provided there are substantial benefits to Singapore.

The MAS has issued digital bank licenses to two digital full bank firms and two digital wholesale bank firms since December 2020. For digital full banks, the MAS mandates the following requirements: applicants must be controlled and headquartered in Singapore; a majority of its employees must be Singapore citizens; and foreign entities must form a joint venture with a Singapore company.

Professional Services

Legal Services

Except in the context of international arbitration, U.S. and other foreign law firms with offices in Singapore are not allowed to advise on Singaporean law by employing, or entering into partnership with, Singapore-qualified lawyers. To advise on Singaporean law, foreign firms must either form a joint venture with a Singaporean law practice (licensed as a Joint Law Venture) or obtain licensing as a Qualifying Foreign Law

Practice (QFLP). QFLP licenses are limited. Ten licenses have been issued since 2008; nine are still active as of March 2022. According to the Ministry of Law, the QFLP scheme is not currently open for application, and there are no details available regarding future applications.

OTHER BARRIERS

Medical Products

U.S. stakeholders have expressed interest in greater transparency regarding the Ministry of Health's procurement process, subsidy policies, and procedural rules regarding medical devices and pharmaceuticals, notably for approvals of biopharmaceutical innovations.

Pharmaceuticals

In August 2021, Singapore introduced a list of government-approved drugs and treatments eligible for the country's basic health insurance plan available to citizens and permanent residents. It is important for Singapore to provide stakeholders with meaningful opportunities for input when considering changes to its reimbursement policies.

SOUTH AFRICA

TRADE AGREEMENTS

The United States and South Africa signed a Trade and Investment Framework Agreement (TIFA) on June 18, 2012, amending the original 1999 agreement. The Agreement is the primary mechanism for discussions of trade and investment issues between the United States and South Africa.

IMPORT POLICIES

Tariffs

South Africa's average Most-Favored-Nation (MFN) applied tariff rate was 7.6 percent in 2022 (latest data available). South Africa's average MFN applied tariff rate was 8.7 percent for agricultural products and 7.4 percent for non-agricultural products in 2022 (latest data available). South Africa has bound 93.8 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 19.0 percent, including 39.0 percent for agricultural products and 15.6 percent for non-agricultural products in 2022 (latest data available). South Africa's maximum WTO bound tariff rate for industrial products is 50 percent, and its maximum WTO bound tariff rate for agricultural products is 597 percent.

The European Union–South African Development Community (SADC) Economic Partnership Agreement (EPA), which has been provisionally applied since October 2016 but is pending entry into force while awaiting ratification by all EU Member States, has led to greater disparities in tariff rates between EU and U.S. exports. The United States has raised concerns about the tariff disparity in bilateral discussions with South Africa, noting the unilateral tariff benefits that the United States offers South African imports under preference programs such as the African Growth and Opportunity Act (AGOA).

The South African International Trade Administration Commission (SAITAC) is reviewing the poultry tariff structure and considering proposals that include instituting a specific tariff rate rather than *ad valorem* duties and redefining tariff lines to reflect tariffs at the Harmonized System 6-digit, 7-digit, or 8-digit level. This tariff line change would fold different product categories together, and the South African Government could then select the highest tariff from among the group to represent the new product set.

The antidumping tariff-rate quota (TRQ) established by U.S. and South African poultry industry groups in 2016 for U.S. frozen bone-in chicken meat initially led to significant growth in exports. The volume of U.S. exports, however, has fallen over the past three years as a result of unjustified administrative barriers, including slow approval processes, and late announcements of antidumping TRQ windows. The volume of U.S. poultry exports has not reached the TRQ allocation since South Africa increased the in-quota tariff rate on bone-in chicken portions from 37 percent to 62 percent. In 2023, SAITAC recommended the continuation of antidumping duties on U.S. products that exceed the TRQ allocation despite the decreasing volume of U.S. exports. In 2023, U.S. export challenges were compounded by South African restrictions on poultry exports from U.S. states due to highly pathogenic avian influenza. The United States continues to work with South Africa to improve access to the South African poultry market.

Non-Tariff Barriers

Import Bans and Import Restrictions

The South African Department of Trade, Industry, and Competition prohibits the importation of certain classes and types of goods into South Africa, but in some cases an importer may get an exemption from the prohibition by applying for an import permit from SAITAC. SAITAC also requires import permits on used goods if such goods are also manufactured domestically, significantly limiting importation of used goods. Other categories of controlled imports include waste, scrap, ashes, residues, and goods subject to quality specifications and regulations published by the Government of South Africa.

Customs Barriers and Trade Facilitation

South Africa ratified the WTO Trade Facilitation Agreement (TFA) on November 30, 2017. South Africa submitted three transparency notifications related to: (1) import, export, and transit regulations; (2) the use of customs brokers; and, (3) customs contact points for the exchange of information on March 10, 2023. These notifications had been due to the WTO on February 22, 2017, according to South Africa's self-designated TFA implementation schedule.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Certification for Electromagnetic Compatibility Goods

The South African Bureau of Standards (SABS) implements a program for the issuance of Certificates of Compliance (CoCs) for Electromagnetic Interference/Compatibility (EMI/EMC) of electrical and electronic goods, including an annual nonrefundable fee paid by manufacturers for each CoC, fees for registering factories, and fees for model name changes. The program also requires manufacturers to have EMI/EMC testing done at SABS-verified third-party labs. If testing is required from an independent lab that is not SABS verified, the manufacturer must request that the lab be verified through SABS at the expense of the lab. Ultimately, the regulation is meant to ensure that all electronic equipment entering South Africa meets the required quality-performance standards. Some stakeholders, however, have raised concerns that the five-fold increase in certification costs, the additional administrative burden, and the lack of resources in South Africa to support the new procedure will extend time to market for quickly evolving and obsolescing information and communications technology products. South Africa still accepts test results from International Laboratory Accreditation Cooperation-certified labs, but SABS also conducts a comprehensive review of the test results to ensure that the product meets South African EMC standards. The protracted review can take up to 18 months to complete, during which time the product may become obsolete.

Sanitary and Phytosanitary Barriers

Meat and Poultry

Following the conclusion of health certificate negotiations on poultry, pork, and beef in 2016, South Africa's Department of Agriculture, Land Reform and Rural Development (DALRRD) agreed to accept that U.S. Department of Agriculture (USDA) veterinarians are not authorized to certify container and seal information as required by DALRRD and that U.S. exporters must meet the requirement to include and

certify this information on a letterhead certificate that accompanies export certificates. DALRRD has not consistently accepted the agreed-upon certificate format, often requiring USDA intervention to correct any clerical errors made by exporters, which causes lengthy and costly delays. The U.S. Government has provided numerous and extensive explanations for U.S. export processes, noting that—although USDA veterinarians examine and certify consignments of USDA Food Safety and Inspection Service-regulated products intended for export—veterinarians are not present at each port to certify industry details such as container and seal information. Since 2016, DALRRD has declined granting new market access for additional meat, poultry, and egg products regulated by USDA, noting the compromise that allowed an exporter to provide container and seal information was a “one-time-exception.”

Pork

South Africa imposes multiple restrictions on the importation of pork. For example, South Africa imposes freezing requirements for imported pork and pork products that do not align with international standards. Additionally, South Africa requires certification that swine are free of pseudorabies, even though the United States eradicated pseudorabies in commercial pork herds in all 50 states in 2004. South Africa also imposes a restriction on pork cuts allowed for importation due to South Africa’s concerns related to the risk profile of specific cuts for Porcine Reproductive and Respiratory Syndrome. This restriction raises concerns of consistency with current international standards.

In January 2016, the U.S. Government and DALRRD reached agreement on the content of a USDA export health certificate for the importation of some U.S. pork and pork products into South Africa. South Africa maintains a list of U.S. eligible pork products and approves each one individually. In December 2017, DALRRD began allowing the importation of five additional pork cuts from the United States. An additional two cuts were approved on October 20, 2022. Many cuts, however, remain ineligible for import.

Poultry and Poultry Products

In October 2023, South Africa announced the lifting of restrictions on U.S. poultry and poultry product exports from 27 U.S. states that have been declared free from highly pathogenic avian influenza (HPAI). Prior to this announcement, South Africa had delayed the lifting of restrictions on U.S. states that had been declared free from HPAI, and met both World Organisation of Animal Health (WOAH) guidelines and South African sanitary and phytosanitary requirements. The United States continues to urge South Africa to follow the terms of the 2015 United States–South Africa Protocol for Poultry Meat and Day-old Chicks to ensure that safe U.S. poultry exports can resume in a timely manner after U.S. states have been declared free from HPAI. In 2023, U.S. poultry meat exports to South Africa were \$44 million. This was the lowest export value since 2016.

Meat and Poultry

South Africa imposes strict microbiological standards for imported meat and poultry products that are not based on international standards and are not enforced on domestically produced products. In 2016, South Africa signed the Agreement on Poultry Importation from the USA to South Africa, which noted specific procedures that would be followed for sampling. Noncompliant products are required to be returned to the country of origin, undergo heat treatment at a registered South African facility, or are destroyed. U.S. industry has raised concerns that South Africa does not use consistent test methods, which leads to a high level of product rejection.

GOVERNMENT PROCUREMENT

Some U.S. companies have reported challenges in competing for government tenders, noting issues with nontransparent cancellation of tenders or closed procedures for direct contract awards. On September 12, 2023, the South African Parliament's Standing Committee on Finance began hearings on proposed legislation to create a simplified national legislative framework for public procurement and outline regulatory procedures for procurement compliance.

South Africa is neither a Party to the WTO Agreement on Government Procurement nor an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

The South African Government has taken some positive steps toward more effective enforcement of intellectual property (IP), including increasing raids of physical markets, appointing additional enforcement officials, improving the training provided to these officials, and increasing public awareness of IP. However, stakeholders report significant concerns.

On February 29, 2024, South Africa's Parliament passed the Copyright Amendment Bill and Performers' Protection Amendment Bill that contain some needed modernizations of the copyright law, such as new performers rights from the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty. These bills, however, also contain provisions that some stakeholders assert would weaken the adequacy and effectiveness of copyright and related rights protection in South Africa. Specific concerns include broad and ambiguous exceptions to copyright and provisions regarding technological protection measures that include overly broad exceptions and lack prohibitions on the circumvention of access controls. Stakeholders raised concerns regarding these bills during the public hearing portion of the 2024 AGOA Annual Eligibility Review process. The United States continues to monitor these bills and any subsequent implementation.

Under the SADC EPA, South Africa agreed to prohibit the use of certain terms that may be common names by recognizing them as geographical indications in its domestic market. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each IP right being independently evaluated on its individual merits.

SERVICES BARRIERS

On September 28, 2021, South Africa's President signed the Private Security Industry Regulation Amendment Act, which prescribes that a security business may only be registered to render security services in South Africa if it is at least 51 percent owned and controlled by South African citizens. The Act also permits the police minister to prescribe different percentages of domestic ownership and control required as a prerequisite for the registration of security businesses operating in different market segments. South Africa has full commitments under the WTO General Agreement on Trade in Services with respect to investigation and security services, including with respect to national treatment for the commercial presence of foreign suppliers. The United States continues to engage South Africa on the issue.

INVESTMENT BARRIERS

Other Investment Restrictions

In September 2022, a draft bill that would explicitly allow expropriation of property, including land, without compensation was adopted by the South African National Assembly and was still undergoing the legislative process as of December 2023.

STATE-OWNED ENTERPRISES

State-owned enterprises play a significant role in the South African economy in key sectors such as electricity, transport (air, rail, freight, and pipelines), and telecommunications. Limited competition is allowed in some sectors (*e.g.*, telecommunications and air). The limited nature of the competition in these sectors discourages foreign investment.

SWITZERLAND

TRADE AGREEMENTS

The United States–Switzerland Trade and Investment Cooperation Forum Agreement

The United States and Switzerland signed the Trade and Investment Cooperation Forum Agreement on May 25, 2006. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Switzerland.

IMPORT POLICIES

Tariffs

Switzerland's average Most-Favored-Nation (MFN) applied tariff rate was 5.6 percent in 2022 (latest data available). Switzerland's average MFN applied tariff rate was 32.4 percent for agricultural products and 1.3 percent for non-agricultural products in 2022 (latest data available). Switzerland has bound 99.7 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 7.4 percent. The WTO bound tariff rate is 43.7 percent for agricultural products and 1.9 percent for non-agricultural goods.

In September 2021, the Swiss parliament approved amendments to the Customs Tariff Act that would abolish tariffs on all industrial imports, while leaving agricultural tariffs unchanged. The amendments entered into force on January 1, 2024. The elimination of industrial tariffs is expected to remove duties that currently apply to almost 26 percent of U.S. non-agricultural exports to Switzerland.

Agriculture

U.S. agricultural market access to the Swiss market is limited by high tariffs on certain products, preferential tariff rates for products from other trading partners, and certain government regulations.

Swiss agriculture is highly subsidized and regulated with price controls, production quotas, import restrictions, and tariffs, which all support domestic production. Imports of a broad range of agricultural products, particularly those that compete with Swiss products, are subject to seasonal import duties, quotas, and import licensing. Agricultural products not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs. Support to producers as a share of gross farm receipts remains high at 49 percent on average between 2020 and 2022, more than three times the Organization for Economic Cooperation and Development member state average.

Swiss trade groups and certification associations also impose some barriers on agricultural imports that compete with Swiss products. In particular, the registration fee for bovine genetics for U.S. bulls remains many times higher than the fee for domestic bulls.

Non-Tariff Barriers

Import Licensing

Switzerland maintains a complex import licensing regime, primarily to facilitate the allocation of tariff-rate quotas (TRQs). TRQ-related non-automatic licenses are required for imports of various animal, dairy, fresh fruit, and vegetable products.

SANITARY AND PHYTOSANITARY BARRIERS

Switzerland aligns many of its sanitary and phytosanitary (SPS) measures with those of the European Union (EU). As outlined in the SPS section of the EU Chapter in this National Trade Estimate Report, specific trade concerns include measures that unnecessarily restrict trade without furthering safety objectives because they are not based on science, are maintained without sufficient scientific evidence, or are applied beyond the extent necessary that negatively impact market access for U.S. agricultural products.

Agricultural Biotechnology

Switzerland's restrictive phytosanitary measures for agricultural biotechnology products have impeded access to the Swiss market. In particular, Switzerland maintains a moratorium on the planting of biotechnology crops and the marketing of products derived from animal biotechnology. In March 2022, the moratorium was extended, for the fourth time, until 2025. However, by mid-2024, the Swiss Government must present approval rules on how genetically modified organisms without foreign genetic material can be exempted from the moratorium. As of December 2023, Switzerland had approved only 1 biotechnology soybean product and 3 biotechnology corn products for food and feed use and only 11 total enzymes, vitamins, and sugars produced by or derived from modern agricultural biotechnology for food use.

INTELLECTUAL PROPERTY PROTECTION

Switzerland generally maintains high standards of intellectual property (IP) protection and enforcement and makes important contributions to promoting such protection and enforcement internationally. Although Switzerland was removed from the Special 301 Report in 2020 after many years of engagement, U.S. copyright holders continue to have concerns that Switzerland remains a host country for websites offering infringing content and the services that support them and about amendments to Switzerland's Copyright Act that came into force on April 1, 2020. These concerns include: continuing uncertainty regarding the application of the amended provisions of the Copyright Act; alleged difficulties in using IP addresses to pursue civil claims of copyright infringement; a "private use" exception that permits personal use of a single copy of a work even if derived from an unauthorized source; and a lack of sufficient "know-your-customer" protocols for data centers and Internet service providers. The United States is carefully monitoring the Swiss Government's implementation and interpretation of the new legislation as well as its effectiveness.

SERVICES BARRIERS

Audiovisual Services

A "unique distributor clause" in Switzerland's Film Act requires a single distributor to have exclusive control over all language versions of a film for all forms of distribution, including theatrical release, DVDs, and video-on-demand. In 2021, the Swiss Parliament passed a new law requiring non-domestic video-on-demand services to pay 4 percent of their revenues sourced from Switzerland into a fund to support Swiss

film production. The law also requires a 30 percent quota of European-produced content in their video-on-demand offerings, which applies as of January 1, 2024.

Insurance Services

Managers of foreign-owned insurance company branches must reside in Switzerland.

TAIWAN

TRADE AGREEMENTS

The United States and Taiwan have had in place a Trade and Investment Framework Agreement (TIFA), signed by the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) since 1994. This Agreement is an important mechanism for discussing a broad range of trade and investment issues between the United States and Taiwan. Meetings of the TIFA Council are typically co-led by a Deputy United States Trade Representative and Taiwan's Deputy Minister of Economic Affairs, under the auspices of AIT and TECRO. The last TIFA Council meeting was held virtually on June 29, 2021.

In addition to engagement under the TIFA, the United States and Taiwan, under the auspices of AIT and TECRO, announced the launch of the United States–Taiwan Initiative on 21st-Century Trade on June 1, 2022. The U.S.–Taiwan Initiative on 21st-Century Trade is intended to develop concrete ways to deepen the economic and trade relationship between the two economies, advance mutual trade priorities based on shared values, and promote innovation and inclusive economic growth for workers and businesses. On June 1, 2023, the two sides signed the first agreement under the U.S.-Taiwan Initiative on 21st-Century Trade. This agreement includes important commitments and outcomes in the areas of customs administration and trade facilitation, good regulatory practices, services domestic regulation, anticorruption, and small and medium-sized enterprises. Shortly after the signing of the first agreement under this trade initiative, the two sides began discussing remaining trade areas set forth in the negotiating mandate.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Taiwan's average Most-Favored-Nation (MFN) applied tariff rate was 6.5 percent in 2022 (latest data available). The average MFN applied tariff rate was 16.9 percent for agricultural products and 4.8 percent for industrial products in 2022 (latest data available). Taiwan has bound 100 percent of its tariff lines at the World Trade Organization (WTO), with an average WTO bound tariff rate of 6.8 percent.

Taiwan maintained tariff-rate quotas (TRQs) on multiple products when it became a WTO Member in January 2002, and then phased several of them out over the years. However, many TRQs on agricultural products remain in place today. Agricultural TRQs cover 16 products, including rice, and peanuts.

Taiwan has recourse to special safeguards (SSGs) for agricultural products covered by TRQs. SSGs, which are permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan previously did not import many of these products, its SSG trigger volumes are relatively low. In 2023, Taiwan had recourse to an SSG for 14 agricultural product categories, including poultry meat, certain types of offal, and milk.

Taxes

Taiwan taxes rice wine for cooking and distilled rice wine (*mijiu*) at a lower rate than that applied to alcoholic products consumed as beverages, even though *mijiu* is consumed as an alcoholic beverage. The United States and other trading partners continue to express their concerns to the Taiwan authorities that steps should be taken to ensure that imported alcoholic beverages are not taxed at a higher rate than domestically produced alcoholic beverages, including *mijiu*.

Non-Tariff Barriers

Quantitative Restrictions

In certain years, the Taiwan authorities have rejected bids from U.S. rice exporters under its country-specific quota (CSQ) regime, arguing that high U.S. prices exceeded Taiwan's ceiling price. Taiwan's ceiling price mechanism is not made public, raising concerns that prices are arbitrarily set lower than the levels bid by U.S. exporters, causing the tenders to fail. In 2022, Taiwan filled only 61 percent (39,355 metric tons) of the U.S. CSQ for rice with the remainder (25,279 metric tons) released to global tender, the biggest shortfall since 2014 given fluctuations in rice prices. In 2023, Taiwan filled 100 percent of the CSQ for U.S. rice, totaling 64,634 metric tons. Nevertheless, U.S. Government and industry concerns over rice market access persist.

Customs Barriers

Taiwan requires that genetically engineered (GE) and non-GE raw materials, such as corn and soybeans, enter under separate tariff lines. The GE products are evaluated by regulatory authorities in comparison to their non-GE counterparts and found to be as safe as their non-GE counterparts. Once approved, they are comingled with the non-GE products in the agricultural supply chain. There is no scientific or technical basis for Taiwan's separate tariff lines for GE and non-GE raw materials.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Pork

On January 1, 2021, Taiwan implemented country of origin labeling requirements for a range of pork products, including processed pork products. The relevant measures were notified to the WTO in September 2020. Taiwan's presentation of the labeling requirements to the public as a means to ensure the food safety of U.S. pork products, while simultaneously implementing maximum residue limits (MRLs) for ractopamine in imported pork, inaccurately implied that there is a food safety concern with U.S. pork products, including pork produced with ractopamine. (*For further information, see the Sanitary and Phytosanitary Barriers section.*) The United States submitted comments through the USA WTO Technical Barriers to Trade (TBT) Enquiry Point, raising concerns with these labeling requirements. The United States has raised concerns about the labeling requirements bilaterally with Taiwan, including on the margins of the October 2020 and the February 2021 WTO Committee on Technical Barriers to Trade meetings, the June 2021 TIFA Council meeting, and the 2022 meetings of the TIFA Agriculture Working Group.

Automobiles

Taiwan adopted the United Nations Economic Commission for Europe (UNECE) 1958 Agreement automobile standards when it became a WTO Member in January 2002. In April 2008, Taiwan's Ministry of Transportation and Communications (MOTC) introduced a regulation that allows the importation of a limited number of imported vehicles that are not UNECE-compliant but do comply with U.S. Federal Motor Vehicle Safety Standards (FMVSS), which provides an equivalent level of safety. The MOTC's regulation limited the number of FMVSS-compliant vehicles on the road in Taiwan to 100 units per car model in 2021, and this number was reduced to 75 units per car model in 2023. Some vehicle manufacturers in the United States want to introduce periodically unique new U.S.-made models in order to stimulate interest in their brands. However, if the vehicles are FMVSS-compliant but not UNECE-compliant, exports of those vehicles cannot exceed the limit set by the MOTC.

Sanitary and Phytosanitary Barriers

Agricultural Biotechnology

Taiwan has banned the use of biotechnology food ingredients and processed food with biotechnology food ingredients in school meals since December 2015. The United States continues to have concerns about the scientific basis for this ban and continues to urge Taiwan to rescind it.

Beef and Beef Products

Taiwan banned imports of U.S. beef and beef products following the detection of an animal with bovine spongiform encephalopathy (BSE) in the United States in 2003. In October 2009, the United States and Taiwan reached an agreement on a protocol, signed by AIT and TECRO, to expand market access to fully re-open the Taiwan market to all U.S. beef and beef products for human consumption. However, Taiwan subsequently implemented a number of barriers to U.S. beef and beef products.

On January 1, 2021, Taiwan lifted its ban on imports of U.S. beef and beef products from cattle 30 months of age and older, which had been in place since 2010.

Taiwan has not addressed other longstanding barriers to U.S. beef products. Claiming BSE concerns, Taiwan continues to ban imports of certain U.S. beef products (*e.g.*, ground beef) even though imports of these products are permitted under the 2009 AIT-TECRO beef protocol. Taiwan imposes onerous port-of-entry inspection procedures that are not science-based on certain U.S. beef offal products. The United States continues to urge Taiwan to open its market fully to U.S. beef and beef products based on science, the World Organisation for Animal Health (WOAH) guidelines, the United States' negligible risk status for BSE, and the 2009 AIT-TECRO beef protocol.

Animal Byproducts

Taiwan continues to restrict the importation of bovine blood products for animal consumption and bulk shipments of tallow from the United States, citing concerns related to BSE. The WOAH guidelines recognize these commodities as safe-to-trade, regardless of the BSE risk status of the exporting country. The United States continues to urge Taiwan to open its market to U.S. bovine blood products for animal consumption and bulk shipments of U.S. tallow consistent with the WOAH guidelines.

Maximum Residue Limits – Beta-Agonists

Taiwan has not implemented Codex Alimentarius Commission (Codex) maximum residue limits (MRLs) for ractopamine in imported beef products other than imported beef muscle (*e.g.*, offal). On January 1, 2021, Taiwan implemented Codex MRLs for ractopamine in imported pork muscle, fat, and liver. Taiwan also implemented MRLs for ractopamine in imported pork kidney and other edible parts (*e.g.*, offal other than kidney and liver) that are more restrictive than the Codex MRLs. The United States is concerned that Taiwan's MRLs for imported pork kidney and other edible parts do not reflect consumption exposure. The United States is also concerned that Taiwan's method of testing for ractopamine residue is not aligned with methods of analysis for ractopamine recommended by Codex, and could provide inaccurate results. The United States continues to ask that Taiwan align its methods of testing for ractopamine residue with the methods recommended by Codex.

Apart from ractopamine, Taiwan has not established MRLs for other beta-agonist compounds or provided a rationale to support this policy. The United States continues to urge Taiwan to implement science-based MRLs without undue delay and to accept and approve new applications for MRLs for beta-agonists based on science and in a timely manner.

Maximum Residue Limits – Agrochemicals

The United States has raised concerns with various aspects of Taiwan's process for establishing MRLs for pesticides, such as the limited opportunities for applicants to provide additional information during the review process and the inconsistent application of crop groups to import tolerances. The United States will continue to encourage Taiwan to further improve its MRL regulatory system for pesticides.

Chipping Potatoes

On occasion, Taiwan rejects shipments of U.S. chipping potatoes due to requirements put in place in 2018 that implemented specific restrictions on sprouting for imported potatoes. Entire shipments have been rejected, even though sprouting does not pose a food safety risk, and potatoes with sprouts were previously removed as part of a normal sorting process prior to 2018. The United States, in coordination with U.S. industry and with regulators in Taiwan, is pursuing technical engagement on this matter.

INTELLECTUAL PROPERTY PROTECTION

In May 2019, Article 87.1.8 and Article 93 of Taiwan's Copyright Act were amended to combat the use of illicit streaming devices. However, right holders report that online piracy remains widespread. Additionally, right holders continue to report serious challenges with respect to the unauthorized use of textbooks and copyrighted teaching materials, particularly via on-campus digital platforms. In May 2022, Taiwan further amended the Copyright Act to allow criminal prosecution without a complaint from the right holder for online piracy over the threshold of approximately \$32,800 in damages. As of December 31, 2023, the Executive Yuan had not yet announced an implementation date for the amended Copyright Act.

Draft amendments to other articles of the Copyright Act, which were sent to the Legislative Yuan in October 2017 for review, remain pending. While the draft amendments represented progress in some areas, they also contained potentially overly-broad exceptions to copyright protection and obstacles to criminal enforcement, in addition to troubling provisions relating to licensing and the role of collective management organizations. These draft amendments were resubmitted to the Legislative Yuan by the Executive Yuan in April 2021. As of December 31, 2023, they were still being reviewed by the Legislative Yuan.

In June 2022, the Legislative Yuan approved amendments to the National Security Act to establish misappropriation of trade secrets involving the national core key technologies as a violation of national security laws, with both criminal and administrative penalties. The amendments provide that obtaining trade secrets of national core key technologies by theft, embezzlement, fraud, duress, unauthorized reproduction, or by other improper methods, or using or disclosing such trade secrets, can be punished by imprisonment for between 5 years and 12 years. The amendments also authorize the possible imposition of fines ranging between approximately \$164,000 and \$3.28 million.

Amendments to the Patent Act entered into force in July 2022. A new Article 60-1 of the Patent Act clarified the legal basis for a patent owner's patent infringement suit and a generic drug applicant's declaratory judgment of non-infringement suit under the mechanism for early resolution of potential patent disputes.

SERVICES BARRIERS

Financial Services

In August 2023, the Insurance Bureau (IB) and the Securities and Futures Bureau (SFB) issued cloud outsourcing regulations for insurance, securities, and futures companies. These regulations duplicate the approach of the Banking Bureau (BB). However, the IB and the SFB did not provide a 60-day public comment period for interested parties, including cloud service providers and financial institutions, to review and comment on a draft of the regulations. The failure to provide a 60-day comment period is in contrast to the BB's customary approach. In addition, while the SFB issued a guideline with its cloud outsourcing regulations, the IB did not release any further guidance or instructions, which has created uncertainties for cloud service providers seeking to sell into the insurance market in Taiwan.

INVESTMENT BARRIERS

In Taiwan, no foreign investment is allowed in the manufacturing of certain chemical materials and metals, television and radio programming services, electricity transmission and distribution, and postal activities. Foreign ownership in the telecommunications sector is limited to 49 percent direct ownership. For foreign ownership of telecommunications, combined direct and indirect foreign ownership is limited to 60 percent. The foreign ownership ceiling on airline companies, airport ground handling companies, forwarders, air cargo terminals, and catering companies is 49 percent, with each individual foreign investor subject to an ownership limit of 25 percent. Taiwan's Cable Radio and Television Law limits foreign direct investment in domestic cable television services to 20 percent of the operator's total issued shares. Foreign investment in satellite television broadcasting services is also restricted to no more than 50 percent.

Taiwan also maintains government investment in certain key companies. For example, the MOTC owns 35 percent in Chunghwa Telecom, the largest domestic telecommunications company, and 43 percent in Taiwan High Speed Rail Corporation, the domestic high-speed rail provider.

OTHER BARRIERS

Pharmaceuticals

In the pharmaceuticals sector, although the National Health Insurance Administration (NHIA) has tried to improve engagement with concerned stakeholders, U.S. stakeholders continue to highlight the lack of transparency and predictability with respect to the NHIA's pricing approval procedures, including during

renegotiations of managed entry agreements and under recent applications of Health Technology Reassessments. The NHIA has shortened the pricing approval timelines effective January 2024 to respond to some concerns raised by stakeholders.

Medical Devices

In Taiwan, self-pay options are available for implanted medical devices and a range of other commonly used medical devices that are not approved for NHIA reimbursement. These medical devices must be issued a self-pay code. According to U.S. stakeholders, the NHIA imposes administrative penalties on hospitals that ask patients to self-pay for devices without a self-pay code. The NHIA began assigning temporary self-pay codes in April 2014, but it also requires a review of new therapeutic procedures for which the medical device is used before a temporary self-pay code can be issued. U.S. stakeholders have raised concerns with these procedures, highlighting that increased transparency and faster issuance of temporary self-pay codes are needed to be responsive to patient demand.

THAILAND

TRADE AGREEMENTS

The United States–Thailand Trade and Investment Framework Agreement

The United States and Thailand signed a Trade and Investment Framework Agreement (TIFA) on October 23, 2002. This Agreement is the primary mechanism for bilateral discussions of trade and investment issues.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Thailand's average Most-Favored-Nation (MFN) applied tariff rate was 9.7 percent in 2022 (latest data available). Thailand's average MFN applied tariff rate was 26.6 percent for agricultural products and 7.1 percent for non-agricultural products in 2022 (latest data available). Thailand has bound 75.9 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 26.8 percent.

Wine imports are subject to a 54 percent tariff and six different taxes; taken together, the effective duty and tax burden is nearly 400 percent. Stakeholders have raised concerns about the import tariffs on wine and disparate *ad valorem* taxes that appear to favor domestic white liquor.

Import Fees

Thailand imposes food safety inspection fees in the form of import permit fees on all shipments of uncooked meat. The current fee levels were set in October 2016 at 7 baht per kilogram (approximately \$201 per metric ton (MT)) for imported uncooked meat for food or feed and at 3 baht per kilogram (approximately \$86 per MT) for imported uncooked meat for purposes other than food or feed. Under the Thai Animal Epidemics Act of 2014, the Ministry of Agriculture and Cooperatives (MOAC) Department of Livestock Development (DLD) has discretionary authority to increase these import fees up to five-fold.

Non-Tariff Barriers

Import Restrictions

Despite its 20-year Alternative Energy Development Plan (2018-2037), which aims to increase biofuels consumption, Thailand restricts the importation of biofuels intended for fuel use. Fuel ethanol imports require approval and issuance of permits by Thailand's Ministry of Energy, which bases its decision on the availability of domestic ethanol supply. Thailand has not approved an import permit for fuel ethanol since 2005.

Import Licensing

Import licenses are required for the importation of many items, including: wood; petroleum; industrial machinery; textiles; pharmaceuticals; cosmetics; and food and agricultural items, such as plants, seeds, processed meats, and salt. In some cases, imports of certain items not requiring licenses are subject to extra

fees and certificate of origin requirements. Additionally, a number of products are subject to import controls under miscellaneous laws.

Thailand imposes domestic purchase requirements on imports of several products subject to tariff-rate quotas (TRQs), including coffee, tea, potatoes, corn, soybeans, and soybean meal.

Customs Barriers and Trade Facilitation

Thailand provides incentives to customs officials who initiate investigations or enforcement actions. Thailand is one of the only major U.S. trading partners that still has such an incentive system. This system has been a cause of concern for many years among Thailand's trading partners due to the potential for corruption and the cost, uncertainty, and lack of transparency associated with the customs penalty and reward system. Despite Thailand's amendment of the Customs Act in 2017, potential conflicts of interest or excessive personal incentives remain. The amendment caps incentives at 20 percent of the sale price of seized goods or of the fine, with a maximum incentive of 5 million baht (approximately \$144,700). The amendment also limits post-audit inspections to five years from the date of import or export.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling Requirements for Information and Communications Technology Products

In July 2023, Thailand issued a regulation prescribing unique labeling requirements for personal computers and computer devices (*e.g.*, keyboards, mice, monitors, and central processing units). The measure entered into force on November 1, 2023. U.S. industry has reported that since the measure has gone into effect, costs have increased for exporters due to the additional labeling requirements. In September 2023, Thailand also issued a regulation prescribing labeling requirements for products containing lasers, such as computers, CD and DVD players, recorders, barcode scanners, photocopiers, and fax machines. The measure entered into force on January 27, 2024.

Stakeholders are concerned that Thailand's labeling requirements diverge from relevant international standards and are overly prescriptive and unnecessarily burdensome for producers, given the amount of information required and the limited space for physical labels. Furthermore, the 120-day implementation periods following publication of the final measures are insufficient time in which to adapt to the new requirements.

The United States continues to encourage the Office of the Consumer Protection Board of Thailand to consider extending the implementation period to a minimum of one year and to accept electronic labeling as a voluntary option.

Sanitary and Phytosanitary Barriers

Animal-Derived Products

Thailand's Department of Livestock Development (DLD) requires audits of production facilities in the exporting country to allow the importation of several animal-derived products, including meat, bone meal, and feather meal. Each audit approval is valid for five years. In addition, the DLD imposes five-year facility audit approvals for imported animal feed ingredients derived from or containing poultry products.

The United States has recommended that Thailand adopt a systems approach, which would recognize the U.S. inspection system as equivalent to that of Thailand's, and reduce the expense and burden of the current Thai audit requirement. The DLD conducted a fact-finding trip to the United States in late 2019, but has not yet submitted the questionnaire to the U.S. Department of Agriculture (USDA) to proceed with the audit. The USDA Animal and Plant Health Inspection Service (APHIS) resubmitted the system audit request in August 2023.

Beef and Beef Products

Thailand restricts imports of beef offal treated with beta-agonists. The DLD confirmed that fresh tongue, cheek meat, oxtail, tendon, hanging tender, inside skirt, and outside skirt are categorized as muscle cuts; and are thus not affected by this restriction. In September 2018, the DLD conducted an audit of the U.S. production system and transmitted its draft findings to the United States in March 2019. In its report, the DLD informed the USDA that U.S. beef products for export to Thailand are not to be derived from cattle treated with beta-agonists, including ractopamine, as a condition for access to the Thai market, despite a determination by the Codex Alimentarius Commission (Codex) that the use of ractopamine is safe within its established maximum residue limits (MRLs). The United States continues to press Thailand to align its import requirements with science-based international standards.

Pork

In 2012, after the Codex established MRLs for ractopamine in cattle and pig tissues, Thailand indicated it would lift its ban on imports of pork from countries that allow ractopamine use, including the United States. However, Thailand has not yet established MRLs for ractopamine in pork, which effectively prevents the importation of U.S. pork products. In 2019, Thailand and the United States agreed to review potential risk management options for Thailand to develop an MRL for ractopamine. However, due to lack of progress on the issue, effective December 30, 2020, the United States revoked approximately one-sixth of Thailand's duty-free trade preferences under the U.S. Generalized System of Preferences (GSP) program.

Poultry

Since 2014, Thailand has, at various times, and most recently in February 2022, imposed a ban on U.S. live poultry and poultry meat imports due to the sporadic presence of highly pathogenic avian influenza in the United States. The ban applies to all such U.S. products, notwithstanding World Organisation for Animal Health (WOAH) guidelines that recommend importing countries regionalize their bans, rather than apply them on a country-wide basis. In addition, Thailand has banned U.S. turkey meat imports since late 2014. Thailand sent officials to conduct a production-system audit of U.S. turkey in July 2019 and determined in November 2020 that the United States failed the systems approach audit. The United States continues to negotiate with the DLD to regain market access for uncooked U.S. turkey.

New Processed Meat Products

The DLD's regulatory authority was extended in 2018 to include "processed foods made or derived from animal carcass," including: sausage; salami; ham; bacon; smoked meat products; pickled meat products; cured meat products; honey and related products; and, salty/processed eggs and egg yolks. Other than a single product approved in early 2022, the DLD has not approved any new processed meat products. The DLD claims that a new import protocol has been under development since 2018, and that market access requests could be submitted either through government-to-government channels, or by individual stakeholders. As of December 2023, the DLD had not yet published or notified import requirements and procedures that allow individual U.S. suppliers to access the establishment-by-establishment approval process.

INTELLECTUAL PROPERTY PROTECTION

Thailand remained on the Watch List in the [2023 Special 301 Report](#). Thailand continues to make progress on intellectual property (IP) protection and enforcement. For example, Thailand acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty in 2022. In September 2022, Thailand established the Thai Customs IPR Recordation System, a new online database that allows right holders to file confidential information that would allow Thai customs officers to verify the authenticity of copyrighted or trademarked goods being imported, being exported, or in transit. Right holders continue to use Thailand's 2021 memorandum of understanding with electronic commerce platforms to report online listings of counterfeit products.

While Thailand is making progress in these areas, concerns remain. Counterfeit and pirated goods are still readily available, particularly online. The [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) included the MBK Mall as a physical market with a large number of counterfeit goods in Bangkok. Other U.S. concerns include: online piracy by devices and applications that allow users to stream and download unauthorized content; a process established by the 2022 Copyright Act amendments that may lead to overly broad exceptions to technological protection measures; unauthorized collective management organizations; the continued use of unlicensed software in the private sector; the backlog in pending pharmaceutical patent applications; lengthy civil IP enforcement proceedings; and, low civil damages. The United States will continue to monitor these issues.

The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. In addition, the United States continues to urge Thailand to engage in a meaningful and transparent manner with all relevant stakeholders before adopting new IP laws, regulations, or guidelines.

SERVICES BARRIERS

Audiovisual Services

The 2008 Motion Picture and Video Act authorizes Thailand's Film Board to establish ratios and quotas limiting the importation of foreign films. The Film Board had not exercised this authority, however, as of December 31, 2023. Foreign investment in terrestrial broadcast networks is limited to 25 percent of registered capital and voting rights.

Financial Services

Thailand limits the number of licenses for foreign bank branches and subsidiaries, and only sporadically accepts applications for new foreign banking operations. Thailand has not held a round of applications for new licenses for traditional banks since 2013, when Thailand granted new subsidiary licenses to two foreign banks.

Since 2013, Thailand has required in-country processing of all domestic retail electronic payment transactions for debit cards issued in Thailand. As a result, foreign electronic payment service suppliers are precluded from supplying these services across borders and must establish a local presence and build processing facilities in Thailand. When a card is accepted on more than one network, at least one of those networks must be a domestic debit card network. Under the 2016 Thai Bank Chip Card Standard, the Bank of Thailand requires financial institutions that issue debit cards to issue cards with local-standard chips.

Foreign ownership in insurance companies is initially limited to less than 25 percent of outstanding voting shares. Foreign directors may hold no more than 25 percent of the initial board seats. The Thai Government allows a company to increase the foreign equity in the company up to 49 percent and up to half the seats on the board be held by foreign directors, if the company meets conditions relating to improving efficiency and competitiveness. In addition, the Ministry of Finance, with the recommendation of the Office of Insurance Commission, may permit a company to have foreign ownership exceeding 49 percent, or foreign directors comprising more than one-half of the board, or both, under certain circumstances, such as for the purpose of strengthening the overall stability of the insurance sector.

BARRIERS TO DIGITAL TRADE

Internet Services

According to U.S. stakeholders, including human rights organizations, Thailand's Computer Crime Act raises particular concerns for online services that host non-IP-protected, user-generated content. The concern is that it provides the government with authority to regulate online content that is so expansive it could restrict legitimate activities. The Act establishes a liability shield for online service providers with respect to non-IP-protected, user-generated content if they comply with requirements to remove certain content within specified timeframes. However, the mandated timeframes vary across content types and are as short as 24 hours for some types of content. Without strict compliance, service providers may be subject to penalties and treated as if they had created the offending content themselves.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the framework governing foreign investment in Thailand. Under the FBA, non-Thai nationals and majority foreign-owned entities are prohibited from holding more than 50 percent ownership in many sectors; but U.S. investors registered under the United States–Thailand Treaty of Amity and Economic Relations (AER) are generally exempt. Nevertheless, the privileges under the AER do not exempt U.S. investments from the prohibitions on majority foreign ownership in the following areas: telecommunications; transportation; fiduciary functions; banking involving depository functions; exploitation of land or other natural resources; and, the practice of certain professions reserved for Thai nationals. The United States has encouraged Thailand to extend the exemptions available to U.S. investors registered under the AER to these sectors, or to amend the FBA to remove barriers to foreign ownership in these sectors. In particular, stakeholders report interest in investing in Thailand's telecommunications sector, but the Telecommunications Business Act prohibits majority foreign-owned entities from receiving the necessary operating licenses.

LABOR

In April 2020, the United States partially suspended Thailand's tariff benefits under the GSP program due to Thailand's failure to take steps to afford workers in Thailand internationally-recognized worker rights, particularly with regard to freedom of association. Approximately one-third of Thailand's GSP-eligible trade, for which the United States is a relatively important market for Thailand, were excluded from duty-free treatment. As of December 31, 2023, partial suspension of duty-free treatment under GSP remained in effect.

TUNISIA

TRADE AGREEMENTS

The United States–Tunisia Trade and Investment Framework Agreement

The United States and Tunisia signed a Trade and Investment Framework Agreement (TIFA) on October 2, 2002. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Tunisia. The most recent meeting of the United States–Tunisia Trade and Investment Council, established under the TIFA, was held in May 2021.

IMPORT POLICIES

Tariffs

Tunisia's average Most-Favored-Nation (MFN) applied tariff rate was 19.5 in 2022 (latest data available). Tunisia's average MFN applied tariff rate was 30.3 percent for agricultural products and 17.8 percent for non-agricultural products in 2022 (latest data available). Tunisia has bound 58.0 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 57.9 percent.

Goods imported into Tunisia can be subject to tariff rates as high as 200 percent. Agricultural goods are subject to tariffs ranging from zero percent to 50 percent, with most agricultural imports within the 36 percent to 50 percent range. All imported goods subject to tariffs are assessed a customs administrative fee amounting to 3.0 percent of the total duties paid on the imported good.

The 2022 Budget Law instituted 20 percent to 50 percent tariff increases on consumer products that have locally-manufactured equivalents. The law also included higher tariffs on some goods with no local equivalent such as bananas (from zero percent to 50 percent), mobile phones (from zero percent to 20 percent), coffee (from 36 percent to 50 percent), and cosmetic products and perfumes (from 30 percent to 43 percent). Tariffs increased to 50 percent on imported apparel and bedding, shoes, and food products such as cheese, honey, chocolate, candies, juices, beer, and wine. Tariffs also increased to 43 percent on construction materials and products with local equivalents such as marble, gypsum, paint, wood, aluminum, ceramics, glassware, and tools.

The 2023 Budget Law, passed on December 22, 2022, eliminated tariffs on milk powder and butter.

The 2024 Budget Law, passed on December 27, 2023, imposed tariffs on selected dairy products, including cheeses and fresh cream; reduced tariffs on nuts; and, increased tariffs on nut flour.

Non-Tariff Barriers

Import Licensing

Approximately 3 percent of imported goods, including agricultural products, automobiles, and textiles, require an import license issued by the Tunisian Ministry of Trade and Export Development. Tunisia also imposes certain quotas, especially for imported consumer goods that compete with local products. Importers of these goods must request an allotment from the Tunisian Government to receive an import license. The licenses are typically valid for 12 months after issuance by the Ministry of Trade and Export

Development. Several agricultural products are also subject to burdensome technical import requirements established in a Book of Specifications.

Tunisia maintains a control system on imports of consumer goods, under which the importer must provide several documents in order to acquire an import license. The required documents include an invoice from the exporting factory, a certificate from an official authority in the exporter's country attesting to the factory's legal status, proof of product trademark, and documents affirming the product's safety and quality. The list of controlled products includes fragrances, cosmetics, underwear, shoes, household appliances, vegetables and fruits, spices, flour, chocolate, and non-alcoholic drinks. Imports of raw materials; semi-finished products; and, equipment and spare parts for industries, services, and handicrafts are exempted.

Agricultural Subsidies and Domestic Support

Since 2016, Tunisia has not responded to questions raised by the United States in the WTO Committee on Agriculture in connection with its agricultural domestic support and export subsidy outlays.

Customs Barriers and Trade Facilitation

Customs processing remains cumbersome and, for the most part, reliant on paper documents, despite some steps to digitize certain procedures. Inconsistent application of customs processes within the Tunisian Customs Administration can be a significant obstacle for importers. Although Tunisia expanded its simplified customs clearance process for authorized operators to 152 companies in 2023, risk management and other targets are primarily conducted manually by reviewing large volumes of entry documents in paper form.

Tunisia notified the latest update to its customs valuation legislation to the WTO in May 2011 but has not yet responded to the WTO Checklist of Issues describing how the Customs Valuation Agreement is being implemented.

Tunisia ratified the WTO Trade Facilitation Agreement (TFA) in July 2020. Tunisia submitted two transparency notifications related to: (1) import, export, and transit regulations; and (2) customs contact points for the exchange of information on March 9, 2023. Those notifications had been due to the WTO on February 22, 2017, according to Tunisia's self-designated TFA implementation schedule.

INTELLECTUAL PROPERTY PROTECTION

Tunisia has made some progress with respect to intellectual property (IP) protection and enforcement. However, the presence of and trade in counterfeit and pirated goods, including illicit Internet Protocol Television content, remain a concern. Stakeholders have expressed concerns about the lack of an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to engage with Tunisia to improve IP protection and enforcement in the region.

BARRIERS TO DIGITAL TRADE

The Tunisian dinar is convertible for a limited number of current account transactions. This limits Tunisians' ability to purchase goods and services online or receive payments from foreign digital firms. Individual users of "Digital Technology Charge Cards" (the government-approved method for certain firms and entities to make purchases of foreign goods and services online) are limited to the equivalent of 1,000 dinars (approximately \$320) in annual purchases, while companies are limited to 10,000 dinars

(approximately \$3,200) and startups are limited to 100,000 dinars (approximately \$32,000). These relatively low thresholds are fixed in dinars so the actual value of the allotments has been impacted by currency fluctuations.

INVESTMENT BARRIERS

Entering Tunisia's domestic market, particularly the services sector, remains difficult for foreign investors. Foreign ownership is limited to 49 percent in most nonindustrial sectors, and the process of investing is particularly challenging in areas that are not government priorities (*i.e.*, where there are no public tenders). Under Tunisia's investment code, high-value joint ventures with a foreign investor must be approved by the Tunisian Government, which assesses the potential benefit of the investment to the Tunisian economy. U.S. investors in Tunisia frequently raise concerns about delays, lack of transparency regarding rules and fees, unfair competition from state-owned enterprises, and other bureaucratic complications in the process of registering a business. One hundred percent foreign ownership of businesses in the agricultural sector is allowed, although foreign investors do not directly own agricultural land.

OTHER BARRIERS

Foreign Exchange

Tunisian law prohibits the use of foreign currency from export of foreign currency from Tunisia for import payments until the importer's bank receives documents confirming the shipment of merchandise from the country of origin. These requirements remain a source of confusion and difficulty for some U.S. companies.

Centralized Control of Imported Pharmaceuticals

The Tunisian Central Pharmacy maintains a monopoly on pharmaceutical imports. Some U.S. companies complain that they encounter reimbursement and payment delays of up to one year.

TÜRKİYE

TRADE AGREEMENTS

The United States–Türkiye Trade and Investment Framework Agreement

The United States and Türkiye signed a Trade and Investment Framework Agreement on September 29, 1999. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Türkiye.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Türkiye's average Most-Favored-Nation (MFN) applied tariff rate was 16.8 percent in 2022, up from 10.0 percent in 2019. Türkiye's average MFN applied tariff rate was 41.6 percent for agricultural products and 13.0 percent for non-agricultural products in 2022. Türkiye has bound 50.5 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 28.9 percent in 2022. Türkiye has taken advantage of substantial differences between its applied and WTO bound tariff rates to increase tariffs significantly across multiple sectors.

In accordance with its customs union agreement with the European Union (EU), Türkiye exempts from tariffs non-agricultural products imported from the EU and applies the EU common external tariff to non-agricultural products imported from third-countries, including those from the United States. Türkiye also exempts from tariffs non-agricultural products imported from the European Free Trade Association (EFTA) and other trading partners with which it has a free trade agreement and also exempts non-agricultural products from countries with which the EU maintains a free trade agreement.

Despite Türkiye's use of the EU common external tariff, in 2020, the Turkish Government announced additional temporary tariffs of between 2 percent and 50 percent for more than 4,000 products. Türkiye removed approximately 500 of these 4,000 additional tariffs in February 2022, in response to specific requests from importers. In 2023, Türkiye removed tariffs on 47 products, introduced new tariffs on an additional 38 products, and increased tariffs for 40 products. None of the additional tariffs exceed Türkiye's WTO bound tariff rates. These additional tariffs are not applied to imports originating in the EU, the EFTA, countries with which the EU maintains free trade agreements, or other countries that have preferential trade agreements with Türkiye.

On May 1, 2023, Türkiye increased tariffs on certain flat steel products, ostensibly to protect Turkish steel producers and encourage local production following Türkiye's 2023 earthquakes, which disrupted domestic steel production. The tariff on unalloyed hot-rolled sheet increased to 15 percent, and the tariff on alloyed hot-rolled sheet increased to 13 percent. The tariff on plate products increased from 9 percent, 10 percent, and 15 percent, respectively, to between 15 percent to 20 percent. The tariff on unalloyed cold-rolled sheet increased to 17 percent.

In June 2018, Türkiye imposed additional duties on multiple U.S. exports in retaliation for the United States' March 2018 decision to impose tariffs on imports of Turkish steel and aluminum articles under Section 232 of the Trade Expansion Act of 1962, as amended. The retaliatory duties were levied on 22

goods of U.S. origin, including an additional 60 percent tariff on passenger cars and parts, a 70 percent tariff on distilled spirits, a 30 percent tariff on skin care and make-up materials, a 25 percent tariff on rice, and a 10 percent tariff on wood products and tree nuts. In December 2023, a WTO panel ruling, recognizing that the U.S. Section 232 actions on steel and aluminum are security measures, found that Türkiye violated WTO rules by adopting retaliatory tariffs disguised as safeguard measures.

Türkiye continues to maintain high tariff rates on many imported food and agricultural products. The average tariff on fresh fruit imports is 39.3 percent, with a maximum WTO bound duty of 146.0 percent. Tariffs on imported chicken and chicken products are 65 percent and 121 percent, respectively. Effective June 1, 2023, Türkiye raised the tariff on imported sunflower seeds and sunflower oil from zero percent to 27 percent and 36 percent, respectively. Türkiye's Trade Ministry also instituted a reference price for imports of sunflower seed (\$700 per metric ton) and crude sunflower oil (\$1,350 per metric ton) to protect local sunflower growers during the harvest season.

In November 2023, tariffs for walnuts and almonds from all origins were increased to 15 percent. This tariff is in addition to the 10 percent retaliatory tariff on U.S.-originated walnuts and almonds. The "Additional Financial Liability" (AFL), an additional tax paid by the importer to import shipments, also increased for multiple products on November 1, 2023. The AFL for in-shell walnuts increased to \$416 per metric ton (MT); for shelled walnuts the AFL increased to \$1,099 per MT; for in-shell almonds the AFL increased to \$580 per MT; and the AFL for shelled almonds increased to \$942 per MT. Türkiye has insisted that the AFL is not a separate charge, but rather part of the MFN applied tariff rate. The United States continues to engage on this issue to understand the administration of the tariff for applicable agricultural products. U.S. stakeholders remain concerned about the complex structure of the AFL, its lack of transparency and predictability, and the general level of duty imposed by Türkiye.

In May 2023, the Turkish Government implemented a 130 percent tariff on grains aimed at protecting the local agricultural industry. The tariff on chickpeas and lentils increased to 19.3 percent in July 2023, and the tariff on milled rice increased to 45 percent in September 2023. These tariffs on staple commodities have helped maintain the high domestic cost of food products and persistently high food inflation in Türkiye.

Taxes

Türkiye maintains an excise duty known as a Special Consumption Tax (OTV) that is levied at one stage of the consumption process of luxury products, certain beverages, petroleum products, natural gas, automobiles and other vehicles, as outlined in four lists annexed to Law No. 4760. On May 27, 2022, Türkiye increased the OTV tax on "List 3" items, including alcoholic beverages, fruit juices, and soft drinks, in line with the domestic producer price index (PPI) inflation rate determined by the Turkish Statistical Institute. U.S. stakeholders note that an OTV tax is added to the value-added tax (VAT) and tariffs on imported alcohol, and accounts for approximately 65 percent of the price of beer and distilled spirits in Türkiye. In 2020 the Turkish Tobacco and Alcohol Market Regulatory Authority published a rule requiring importers to pay three months excise taxes in advance of sale to obtain the necessary tax stamp strips (these stamps are applied to bottles by hand), whereas domestic producers need only pay the excise tax within 30 days after sale. U.S. companies have noted a significant increase in the number of counterfeit products on the Turkish market in the last year due to the rapidly increasing cost of alcohol in Türkiye and the additional tariffs on U.S. brands.

Türkiye imposed new OTV rates on electric vehicles (EVs) on March 2, 2023. As with the OTV rates for internal combustion vehicles, the tax rate is determined through a combination of the vehicle's engine size and sale price. EVs with engine power below 160 kilowatts (kW) face a 10 percent OTV rate if their sale price is less than 1,250,000 Turkish lira (TL) (approximately \$40,340), and 40 percent if their sale price

exceeds 1,250,000 TL. EVs with engine power above 160 kW face a 50 percent OTV rate if their sale price is below 1,350,000 TL (approximately \$43,570) and a 60 percent OTV rate if their sales price exceeds 1,350,000 TL (approximately \$43,560). Türkiye's domestically produced TOGG is one of the few EVs that would qualify for the lowest tax threshold.

Non-Tariff Barriers

Agricultural Subsidies and Domestic Support

Although Türkiye has large agricultural support programs in place, which include price supports and input subsidies, Türkiye is significantly overdue on submitting its required WTO notifications regarding agricultural domestic support and export subsidies. Türkiye's most recent domestic support notifications were submitted in 2020, covering the years 2014 to 2016, and raised concerns that Türkiye had exceeded its WTO commitments regarding trade-distorting domestic support in those years. Türkiye's most recent export subsidy notifications were submitted in 2019, covering the calendar years 2010 to 2013. Türkiye has yet to notify changes in export subsidy measures pursuant to the 2015 Nairobi Ministerial Decision on Export Competition (Nairobi Decision). The United States and several other WTO Members regularly raise concerns at the WTO about the accuracy, completeness, and timeliness of Türkiye's domestic support notifications, as well as the amount of Türkiye's domestic support.

U.S. exporters have expressed concerns about Türkiye's subsidies, inward processing program for wheat, and Türkiye's reimbursement of freight costs for certain exports. They report that they do not believe a monitoring system exists to ensure that the quality and characteristics of imported wheat are the same as the domestic wheat used in exported flour and wheat products. Such monitoring is an important component of an inward processing scheme as described by the WTO Agreement on Subsidies and Countervailing Measures.

Import Restrictions

Since 2015, Türkiye has banned the importation of nearly all refurbished parts, which affects products in several sectors, including computer equipment and medical devices. Türkiye also requires that construction equipment, tractors, and agricultural equipment be imported during the year in which individual units are manufactured, effectively limiting the volume of U.S. exports of such equipment to Türkiye, given the long lead times associated with these types of orders.

Import Licensing

Türkiye requires import licenses for some agricultural products and for various products that need after-sales service, such as photocopiers, advanced data processing equipment, and diesel generators. U.S. firms complain that a lack of transparency in Türkiye's import licensing system results in costly delays and demurrage charges.

Customs Barriers and Trade Facilitation

Turkish documentation requirements for many imports are onerous, inconsistent, and non-transparent, often resulting in delayed shipments at Turkish ports. U.S. exporters of certain industrial goods and food products such as rice, dried beans, pulses, sunflower seeds, wheat, and walnuts, have reported concerns regarding decisions by Turkish customs authorities on the valuation of selected products. Further, the Ministry of Trade periodically requires tracking and monitoring of certain imports, which includes an onerous registration process that must be completed annually, with limited guidance for exporters throughout the registration process. In March 2020, the Ministry of Trade expanded its mandatory foreign exporter

registration process to a list of 31 agricultural commodities including almonds, walnuts, peanuts, peanut butter, tea, garlic, bananas, fresh peppers, flaxseed, rapeseed, and sunflower seed products.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Food and Feed Products – Traceability Requirements

Türkiye’s 2010 Biosafety Law mandates traceability procedures for movement of animal feed products produced using agricultural biotechnology, including a requirement that each supply-chain entity maintains traceability records for 20 years. Those that have not kept such records have been prosecuted by Turkish authorities for both criminal and civil violations.

Pharmaceuticals – Good Manufacturing Practices Certification

Türkiye’s amended Regulation on the Pricing of Medicinal Products for Human Use, which took effect in March 2010, requires foreign pharmaceutical producers to secure a Good Manufacturing Practices (GMP) certificate based on a manufacturing plant inspection by Turkish Ministry of Health (MOH) officials before their products will be authorized for sale in Türkiye. The amended measure requires that Turkish authorities themselves perform the inspections, rather than the previous practice of allowing inspections by authorities from the exporting country, such as the U.S. Food and Drug Administration of the U.S. Department of Health and Human Services or the European Medicines Agency, has led to severe delays in obtaining GMP certifications for many pharmaceutical products. An MOH inspection backlog has prolonged the already lengthy processes for granting final approvals for pharmaceutical products to be sold on the Turkish market.

Since 2016, following repeated U.S. requests to Türkiye that it accelerate approvals, the MOH has authorized parallel (rather than sequential) submissions of GMP inspection and marketing approval applications for MOH-designated “Priority One” (*i.e.*, highly innovative and/or lifesaving) pharmaceutical products imported from U.S. and EU firms. While a positive step, as of December 2023, the MOH had not uniformly applied this approach to all pharmaceutical product applications. As a result, U.S. stakeholders report that GMP inspection-related delays have effectively closed the Turkish market to certain new drugs.

Sanitary and Phytosanitary Barriers

Food Safety Standards

Türkiye’s national food safety laws are not necessarily based on or aligned with international standards and science-based decision-making. The Ministry of Agriculture and Forestry (MAF) plans to adopt a pesticide reduction schedule outlined in the EU strategies.

The importation of live animals, certain animal-sourced products, and certain plant materials requires a Control Certificate that grants permission for import of the product, obtained from the MAF only after the importer submits an application and provides documents related to the product. The issuance of this certificate is not automatic and has presented challenges for U.S. exports of live cattle, meat products, hides and animal genetics upon arrival at Turkish ports.

Plant Health

Türkiye rejects imports of U.S. unmilled rice (rough or paddy) if white tip nematodes are detected. Türkiye considers the white tip nematode to be a quarantine pest, even though it is widespread in Türkiye. Due to the risk of nematode detection upon arrival and Türkiye's rejection of any available post-entry mitigation, southern U.S. rice exporters have stopped shipping to Türkiye. The United States continues to engage Türkiye on this phytosanitary issue at a technical level and points out that the pathogen is widespread in Türkiye.

Animal Health

Despite guidelines from the World Organisation for Animal Health (WOAH) that countries should limit any trade restrictions on animals and animal products that pose a risk of spreading disease to other animals within a defined region, Türkiye does not accept regionalization at the county level for imports of live poultry or poultry products from the United States, though it implements regionalization within its own territory and for its own poultry exports. Türkiye has banned the import of poultry and poultry meat from an entire U.S. state if high pathogenic avian influenza (HPAI) occurs in a single area of that state, as well as, but also the transit of poultry from HPAI-affected U.S. states, up to six months after regions have been declared disease free. As Türkiye had been an important transit point for U.S. poultry shipped to the broader Middle East region, this policy has inhibited U.S. exports of animals and animal products. The United States has raised this issue extensively with Türkiye. However, Türkiye refuses to alter their interpretation of regionalization.

Türkiye requires certificates for dairy product imports to be signed by a veterinarian. In 2018, U.S. and Turkish officials agreed that Türkiye would accept certificates for a limited number of dairy products signed by inspectors from the U.S. Department of Agriculture Agricultural Marketing Service. However, U.S. exports of other dairy products not covered by these certificates are not allowed by Türkiye, despite commercial demand.

Agricultural Biotechnology

Although Türkiye notified the 2010 Biosafety Law to the WTO Committee on Sanitary and Phytosanitary Measures prior to its enactment, the Turkish Government has failed to notify any subsequent revisions to the law, its implementing regulations or its various regulatory controls. U.S. agricultural biotechnology stakeholders have expressed reluctance to seek regulatory approvals in Türkiye for individual products due to onerous liability requirements imposed by the Biosafety Law, unclear assessment procedures required to receive approval, and concerns regarding the protection of applicants' confidential information.

The agricultural biotechnology oversight authority within the Turkish Government rests with the MAF, which assesses agricultural biotechnology products through both a Scientific Risk Assessment Committee and a Socio-Economic Assessment Committee under the Ministry's Agricultural Research and Policies Directorate General. The Ministry has approved no agricultural biotechnology products for human consumption and rejected several applications for animal feed use without providing scientific justification. As of December 2023, only 36 products produced using agricultural biotechnology can be imported into Türkiye for animal feed use (15 soybean products and 21 corn products). Türkiye has maintained the total number of approved products at 36, without providing justification for that limit. Nine additional applications are outstanding, five of which have been pending since 2015, despite the law's official 270-day review timeline. Several Turkish agricultural associations that previously submitted applications for the approval of these products have declined to sponsor their renewals, citing the challenging and non-science-based review system.

Türkiye's delays in completing science-based reviews are especially burdensome considering its impractical low-level presence policy (LLP). The current zero-tolerance threshold is difficult to meet for food and feed imports. In general, if a shipment tests positive for any amount of unapproved agricultural biotechnology product or ingredient, the cargo is rejected and cannot be used for feed or food. However, there are two exceptions to this prohibition: 1) unapproved products pending biotechnology approval in Türkiye for feed use are allowed to be present in shipments up to a 0.1 percent threshold, and 2) shipments containing up to 0.9 percent presence of approved (but not declared) agricultural biotechnology products intended for feed use. Discriminatory testing requirements for U.S. food and feed imports can lead to entire shipments being rejected when trace amounts of unrelated products such as genetically-engineered soy or corn are found.

GOVERNMENT PROCUREMENT

Turkish Government contracting officials are authorized to issue tender documents that restrict foreign companies' participation and that provide price advantages of up to 15 percent (particularly for high technology products) to domestic bidders. Although the Turkish procurement law requires government contracting agencies to consider best value pricing, the lowest-cost bids are selected in most tenders. In a scenario involving the procurement of highly technical goods or services, this may prevent consideration of bids from firms with the highest capacity and best abilities, including U.S. firms, (*i.e.*, those that provide a greater number of services, lower life cycle costs, and higher quality products).

Other features of the Turkish procurement system severely limit the ability of U.S. companies to participate in government tenders. Turkish procurement law mandates the use of model contracts, which make it difficult for U.S. companies to formulate proposals that are fully responsive to procuring agencies' requirements. In addition, foreign companies, including those with Turkish subsidiaries, have reported difficulties complying with onerous documentation requirements imposed by contracting agencies. Türkiye frequently issues regulations that exempt urgent projects and procurements from requirements of the Turkish Public Tender Law, allowing entities to conduct tenders or negotiations on an invitational basis. While these exempted tenders technically are open to foreign and domestic firms, in practice few of these have been awarded to foreign firms unless they were offering goods or services that were urgently needed and not available in Türkiye.

In the energy generation sector, the Ministry of Energy and Natural Resources requires producers to source most of their equipment from manufacturers located in Türkiye in order to obtain a license to generate solar or wind electricity above five megawatts (MW). Power generation operations producing less than five MW of electricity for consumption within the organized industrial zone are exempt from this requirement.

Türkiye's Industrial Cooperation Program gives civilian ministries the authority to impose commercial offset requirements in procurement contracts. A foreign company awarded a government procurement contract may be required to produce a share of the locally produced products or services with a local partner, or it must transfer technology in order to provide the products or services. The Turkish government has imposed offsets in the transportation, telecommunications, pharmaceuticals, aerospace, and energy sectors, among others. Turkish military procurement policy generally mandates the inclusion of various "commercial offset" requirements in contracts. These specifications typically encourage domestic sourcing commitments by bidding firms, including by requiring foreign investors to partner with local companies and transfer technology.

Since July 2019, the Turkish Government has prohibited public institutions and organizations from using cloud-computing services.

Türkiye is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since June 1996.

INTELLECTUAL PROPERTY PROTECTION

Türkiye remained on the Watch List in the [2023 Special 301 Report](#) due to deficiencies in its intellectual property (IP) regime that represent barriers to U.S. exports and investment.

U.S. industry sources report significant problems involving the export from and trans-shipment through Türkiye of counterfeit goods, as well as software piracy, piracy of printed works, and online piracy. These sources report that the enforcement system, including judges, prosecutors, and police, fails to adequately address IP-related crime. IP enforcement additionally suffers from a lack of prioritization among government bodies to combat IP crimes. The Tahtakale market in Istanbul is listed in the [2023 Review of Notorious Markets for Counterfeiting and Piracy](#) (Notorious Markets List) as a major transit hub for counterfeit goods coming from China into European and Middle Eastern markets.

Türkiye's 2016 Industrial Property Law consolidated in a single law the provisions for protecting trademarks, designs, utility models, patents and geographical indications, and improved the legal framework for technology commercialization and transfer. The United States encourages Türkiye to fully implement its obligations under the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, and develop effective mechanisms to address online piracy.

U.S. pharmaceutical companies continue to raise concerns that Türkiye does not adequately protect against the unfair commercial use as well as unauthorized disclosure of test or other data submitted to obtain marketing approval for pharmaceutical products. They have also reported concerns about the timing of resolving pharmaceutical patent disputes.

SERVICES BARRIERS

Professional Services

Turkish citizenship is required to practice as an accountant, a certified public accountant, or a lawyer representing clients in Turkish courts.

Audiovisual Services

Türkiye's 2019 Regulation on the Transmission of Radio, Television, and On-Demand Services on the Internet requires providers of Internet streaming services to establish a commercial presence in Türkiye and obtain a broadcasting license. The law also imposes substantial requirements for providers of streaming services to censor content and provide the government with data about their subscribers on request.

Financial Services

Türkiye's Law on Payments and Security Settlement Systems, Payment Services, and Electronic Money Institutions (E-Payment Law) requires information systems used by financial firms for keeping documents and records to be physically located within Türkiye. Many U.S. firms, which utilize a globally distributed network architecture, view these requirements as unworkable. The implementation of the E-Payment Law has led one prominent U.S. firm to suspend its operations in Türkiye.

BARRIERS TO DIGITAL TRADE

Internet Services

The 2022 Law Amending Press Law and Certain Laws criminalizes publishing what the Turkish Government considers disinformation on social media and raises potential privacy concerns and risks for third-party social media companies. The law covers information and communication technology firms, with fines that could reach up to 3 percent of global revenue and throttling of bandwidth by up to 95 percent. As of December 2023, implementing regulations were still being drafted.

The Law on the Regulation of Broadcasts via the Internet and Prevention of Crimes Committed through Such Broadcasts gives the Ministry of Transport and Infrastructure Information and Communication Technologies Authority (BTK) the responsibility to enforce bans on Internet content deemed offensive by the Turkish courts. BTK has used its authority to block access to various Internet-based service suppliers, including U.S. suppliers. Most noticeably, Türkiye restricted access to a social media service provider in the days following the February 2023 earthquakes and pursued expanded limitations on the use and operation of social media services. As of July 2020, Law No. 5651 also requires social media platforms with more than one million daily visits from users in Türkiye to appoint a representative physically located within Türkiye and to rapidly respond to content removal requests. Social media platforms are also required to store user data in Türkiye. BTK issued a new decision in April 2023 updating these requirements, including affirming the requirements for local presence and the storage of user data in Türkiye. Penalties for noncompliance include escalating fines, blocking of advertisement, and restricting bandwidth.

Digital Services Taxation

Since 2020, Türkiye has implemented a digital services tax of 7.5 percent that applies to companies offering Internet-based services in Türkiye without having a physical presence there. The implementing legislation covers revenue from various digital services and grants the President the power to adjust the tax rate (up to 15 percent) and the revenue level at which the tax is applicable.

The United States and Türkiye are among the 134 jurisdictions to have joined the 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#) in reaching a political agreement on a two-pillar solution to address tax challenges arising from the digitalization of the world economy. As part of Pillar 1, all parties would remove existing digital services taxes and other relevant similar measures, and would coordinate the withdrawal of these taxes. The United States and Türkiye issued a [joint statement](#) in November 2021 on a transitional approach to existing Unilateral Measures while implementing Pillar 1 of the Two-Pillar Solution. According to the joint statement, digital services taxation (DST) liability that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future income taxes due under Pillar 1. In return, the United States terminated a Section 301 trade action on Turkish goods and committed not to take further trade actions against Türkiye for its existing DST until the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the November joint statement was extended to June 30, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor implementation of the political agreement and the transitional approach as provided in the joint statement.

OTHER BARRIERS

Export Restrictions and Prohibitions

Türkiye bans exports of sunflower seed oil. Türkiye never notified this export ban to the WTO, despite requests from the United States and other WTO Members to do so.

Türkiye imposed a ban on olive oil exports, initially for three months starting on August 1, 2023, and extended the decision indefinitely on October 18, 2023. The Turkish Ministry of Trade introduced the measure to prevent a price increase in the domestic market as a drought in Europe had caused olive oil production in Mediterranean countries to decrease by 20 percent in the 2022/2023 season. Türkiye's production increased by 62 percent in the 2022/2023 season, but greater demand from Europe drove up prices domestically.

Restrictions on Reimbursement and Official Exchange Rate for Government Purchases

Since 2017, the Turkish Government has instituted a reimbursement regime for pharmaceutical products that substantially decreased reimbursements. U.S. pharmaceutical companies have raised concerns that they are unable to market next-generation drugs in Türkiye due to the government's maintenance of an artificially low official exchange rate for reimbursement for pharmaceutical products.

The Turkish Government maintains two lists totaling approximately 200 pharmaceuticals for which government reimbursement is denied unless the products are manufactured in Türkiye. Since government reimbursement covers most pharmaceutical products sold in Türkiye, U.S. firms have raised concerns that denying reimbursement has undermined their ability to market their products in Türkiye because they are not manufactured locally. The Turkish Government has previewed plans to “delist” three tranches of products, but has not specified a timeline nor taken any action to implement these further measures.

Delayed Reimbursement for Medical Devices and Pharmaceuticals

The lack of prompt payments by Turkish hospitals (ostensibly due to budgetary restraints) remains a concern for U.S. pharmaceutical and medical device companies.

The Turkish Government has tasked the State Procurement Institute (DMO) with the authority to open tenders to procure pharmaceuticals, as well as medical and laboratory disposables for public hospitals. According to U.S. stakeholders, DMO has honored its commitment to make payments within 90 days, and delayed payments are no longer an issue with public hospitals. However, some stakeholders have reported that, as of December 2023, university hospitals that make direct purchases from medical device manufacturers still had payments outstanding for over 12 months.

UKRAINE

NOTE: *This chapter of the National Trade Estimate Report inventories primarily the significant trade and investment barriers in Ukraine before Russia’s full-scale invasion of Ukraine in February 2022. The U.S. Government recognizes that the ability of the Government of Ukraine and the U.S. Government to engage on or address these barriers remains limited and unpredictable.*

TRADE AGREEMENTS

The United States–Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Ukraine.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Ukraine’s average Most-Favored-Nation (MFN) applied tariff rate was 4.4 percent in 2022 (latest data available). Ukraine’s average MFN applied tariff rate was 9.1 percent for agricultural products and 3.7 percent for non-agricultural products in 2022 (latest data available). Ukraine has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.8 percent.

Taxes

The standard value-added tax (VAT) rate in Ukraine is 20 percent, which applies to all transactions subject to VAT except specific transactions subject to a 14 percent VAT rate (applies to import and supply of certain agriculture products including soybeans, corn, and sunflower seeds), a 7.0 percent VAT rate (applies to supply and import of qualifying medicines and specific medical goods), and a zero percent VAT rate (applies to export and re-export of goods). Ukraine employs an automated VAT refund system, but the efficacy of that system has been inconsistent, and U.S. companies continue to report that the State Tax Service delays or rejects VAT refunds. In addition, the State Tax Service continues to request original documents confirming business transactions within very short deadlines. Companies also report requests for documentation that go beyond what is required by law. The United States has raised concerns about such delays and requests.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

While Ukraine’s MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that Ukraine’s State Customs Service (SCS) assigns higher and seemingly inconsistent customs values to imports than are reflected in the transaction price as provided in the import documentation. Such practices may raise concerns under WTO rules and appear contrary to the Ukrainian law that requires the SCS to rely primarily on the transaction price in determining customs value. Furthermore, it appears that the SCS uses its internal valuation database as a mechanism to establish the minimum values of the goods, rather than

for risk analysis purposes only. Specifically, even a slight decrease in the invoice value (as compared to historical prices), or the mere fact that the declared value is lower than the “risk indicators” (which are not publicly available), may result in an increased declared value of the goods. U.S. businesses also report that the SCS has been sending goods for laboratory tests or additional risk audits more frequently, delaying shipments and raising costs. The United States has frequently raised concerns about these practices with the SCS.

Other Market Access Barriers

Importers of U.S. products have complained about inspection officials at ports of entry taking larger numbers of samples than needed for laboratory testing due to a faulty and arbitrary definition of “uniform allotment” (*i.e.*, batches identified for sampling). Sampling and testing, particularly of expensive products, such as caviar, fish, or chilled meat, and the associated testing fees, poses a significant burden on importers. In 2018, Ukraine adopted legislation establishing the main principles for a governmental food and feed control system, including rules governing sampling at the border. Nevertheless, stakeholders claim that testing continues to be excessive. The United States has asked that Ukraine ensure these regulations are consistent with Ukraine’s WTO obligations.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY MEASURES

Technical Barriers to Trade

Conformity Assessment Procedures – European Union Technical Regulations and Regimes

As part of its Association Agreement with the European Union (EU), including the provisions to establish a Deep and Comprehensive Free Trade Area since being granted candidate status for EU membership in June 2022 and opening EU accession negotiations in December 2023, Ukraine is moving to approximate EU technical regulations and the EU’s regulatory regime (including the EU’s conformity assessment procedures). Some U.S. industry stakeholders have expressed concerns that this process may lead Ukraine to adopt measures that raise technical barriers to trade. U.S. trade could be negatively affected if Ukraine follows EU practice by refusing to accept any standards as a basis for technical regulations except unique EU regional standards. The United States continues to press Ukraine to ensure that, as it approximates its legislation to that of the EU, it does so in a manner that is consistent with its WTO obligations. Further, the U.S. Government has urged Ukraine to make full use of the WTO notification procedure to ensure that new regulations and conformity assessment practices are transparent and comply with Ukraine’s international obligations. Separately, Ukraine has launched a pilot program to create an electronic platform to publicize draft regulatory measures, accept public comments, and provide its responses to those comments.

Sanitary and Phytosanitary Barriers

Import Certification

To enforce import requirements for food products of animal origin, Ukraine maintains requirements for 72 generic veterinary certificates for the relevant products. The certificates capture product-specific requirements that do not appear to be science-based and require the exporting country’s regulators to certify that exports are in compliance with “Ukrainian regulatory provisions” rather than in compliance with the attestations contained within the certificate itself. While the Government of Ukraine accepts previously-negotiated U.S.–Ukrainian export certificates for products of animal origin, these certificates can no longer

be amended, new certificates cannot be negotiated, and generic certificates cannot be modified. The United States continues to work with Ukraine to ensure that market access for U.S. agricultural exports is not disrupted as Ukraine continues to implement its import regulations.

Approved Exporters List

Under Article 61 of the Law On State Control over Enforcement of Regulations on Food and Feed Safety, Animal Byproducts, Animal Health and Wellbeing, U.S. establishments (*e.g.*, facilities, farms, genetics centers) can export animal-based products (including live animals, reproductive materials, composite products, animal feed, and seafood) to Ukraine only if they are on Ukraine's Approved Exporters List. Only those facilities that exported to Ukraine historically (between 2013 and 2018) or are approved to export to the EU are included on the list. Ukraine has cited the need to harmonize its legislation with that of the EU, as well as its preference to maintain its trading relationship with historical exporters, as the rationale. However, Ukraine's procedure for adding "historical exporters" is lengthy and problematic, requiring establishments to collect and confirm data on historical exports between 2013 and 2018. In order to add a new-to-market establishment to Ukraine's list, that establishment must undergo an audit. Although basic principles of foreign individual audits are published, specific rules and requirements for the procedure are unclear, and the process itself is cost-prohibitive for small and medium-sized producers. As a result, some U.S. establishments will be unable to export to Ukraine until they complete an expensive and time-consuming EU approval process, or the United States undergoes a country-wide food safety systems audit. The United States has engaged Ukraine on this topic in various meetings and continues to work with Ukraine to resolve this issue.

Food Safety Standards

Ukraine has adopted food safety requirements that mimic EU standards as it deepens its economic relationship with the EU. These measures were notified to the WTO between 2018 and 2023. U.S. exporters (primarily exporters of products of animal origin) are concerned that Ukraine's adoption of EU standards as its national standards, particularly those that are not in line with international standards or based on a risk assessment, could make it significantly more difficult to export certain products to Ukraine. Many of these Ukrainian requirements are related to agrochemicals, veterinary drugs, and hygiene requirements, among others. The United States is working with Ukraine to introduce science-based international practices into Ukraine's rule-making process. In addition, the United States has encouraged Ukraine to make full use of the WTO sanitary and phytosanitary (SPS) notification procedure to ensure that Ukraine's process for adopting new SPS measures is transparent and complies with Ukraine's international obligations.

U.S. industry has raised concerns with the Government of Ukraine about Ukraine's biotechnology regime, largely due to the fact that Ukraine's regulatory system for biotechnology products is still in development. Ukraine has not yet implemented a holistic regulatory regime for registration of biotechnology products either for cultivation or trade of food and feed. Without a fully developed regulatory system, U.S. biotechnology and biotechnology-derived products that could benefit Ukrainian farmers, such as U.S. seeds and genetics, cannot be imported into Ukraine. By law, cultivation of biotechnology products is limited to only registered agricultural biotechnology products. As of December 2023, Ukraine's official registry of biotechnology products did not contain any entries. As a result, no biotechnology product can be legally cultivated in Ukraine or imported into Ukraine from the United States or any other third country. Ukraine committed to moving towards regulating its biotechnology sector in line with EU norms by adopting in August 2023 the Law of Ukraine #3339-IX On State Regulation of Genetic Engineering Activities and State Control of the Circulation of Genetically Modified Organisms and Genetically Modified Products to Ensure Food Safety (GE Law). The law will enter into force in September 2026. The law contains provisions noting that cultivation of genetically engineered (GE) rapeseed and GE sugar will be postponed

until after five years of the GE Law's entry into force, while totally banning GE corn. The steps related to GE product registration and implementation of GE trade are unclear at this stage, and new specific regulations and guidelines will need to be developed.

The United States continues to work with the Government of Ukraine to facilitate the development and implementation of an effective, science and risk-based regulatory framework for products of biotechnology, and to help meet Ukraine's economic and sustainability goals since biotechnology crops can help farmers adapt to climate change, increase yields on existing farmland, and strengthen global food security.

GOVERNMENT PROCUREMENT

On July 14, 2022, amendments to Ukraine's law on public procurement entered into force, establishing local content requirements in public procurement of urban transport, utility equipment, railway transport, aerospace products, and energy engineering products by giving preference to domestic producers in government tenders. Following consultations with the U.S. Government, and consistent with Ukraine's WTO commitments, the law exempts from the preference provisions those procurements subject to the WTO Agreement on Government Procurement (GPA). U.S. stakeholders remain concerned that the opaque mechanism for determining compliance with the preference provisions could increase the risk of corruption in the procurement process.

Ukraine is a Party to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY PROTECTION

Due to Russia's full-scale invasion of Ukraine in February 2022, the 2022 and 2023 Special 301 reviews of Ukraine were suspended. During 2021, the United States had engaged with Ukraine on concerns regarding Ukraine's intellectual property (IP) regime, including in the areas of: (1) the administration of the system for collective management organizations that are responsible for collecting and distributing copyright royalties to right holders; (2) the use of unlicensed software by government agencies; and (3) the implementation of effective means to combat widespread online copyright infringement. The United States continues to monitor Ukraine's IP regime and welcomes opportunities to engage with Ukraine on the protection and enforcement of IP.

INVESTMENT BARRIERS

While Ukraine generally affords foreign investors the same treatment as domestic investors, foreign investors are prohibited from owning agricultural land, producing bioethanol, engaging in certain publishing activities, and investing in certain energy sector assets, such as gas transmission systems, electricity grids, and various plants and factories.

OTHER BARRIERS

Bribery and Corruption

The United States will continue to work with Ukraine to establish strong anticorruption institutions, drive law enforcement reform, and create a business environment that is transparent and firmly grounded in the rule of law. Although Ukraine's judiciary has in the past been regarded as one of the country's least trusted institutions, Ukraine in 2023 undertook important steps to reform its judiciary, including the reestablishment of key judicial institutions for vetting, evaluating, and disciplining judges.

UNITED KINGDOM

TRADE AGREEMENTS

Following a June 2016 referendum, the United Kingdom (UK) formally left the European Union (EU) on January 31, 2020 (“Brexit”). To avoid any break in existing legal coverage and mechanisms, the UK Government enacted the European Union (Withdrawal) Act 2018 to incorporate EU laws and regulations into domestic UK law, replacing references to EU entities and laws and regulations with corresponding UK references. As a result, beginning January 1, 2021, the UK and EU had virtually identical legal and regulatory structures, although the UK is now generally free to change its laws and regulations independent of the EU.

The UK and EU negotiated a new trade agreement, the United Kingdom–European Union Trade and Cooperation Agreement (TCA), which, as of January 1, 2021, continues tariff-free and quota-free access to each other’s markets without binding each other’s regulatory regimes. Under the TCA, if domestic regulatory systems diverge in ways that significantly affect trade, either side may seek to rebalance the agreement by modifying market access commitments.

On December 31, 2020, the United States and the UK completed the transition of five existing United States–European Union agreements to new United States–United Kingdom agreements. These five agreements covered areas of bilateral trade in wine, distilled spirits, marine equipment, telecommunication equipment, electromagnetic capability, pharmaceutical products (good manufacturing practices), and covered insurance and reinsurance. Additional information about the agreements can be found on the Office of the United States Trade Representative’s [website](#). The United States and the UK have also ensured the transition of mechanisms supporting trade in organic products and recognition of veterinary health certificates.

IMPORT POLICIES

Tariffs

United Kingdom Global Tariff

The UK’s average Most-Favored-Nation (MFN) applied tariff rate was 3.8 percent in 2022 (latest data available). The UK’s average MFN applied tariff rate was 9.4 percent for agricultural products and 2.9 percent for non-agricultural products in 2022 (latest data available). The UK has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 5.1 percent.

The UK has duties on approximately 5,000 tariff lines, including on certain agricultural products, ceramics, chemicals, bioethanol, and vehicles. Tariffs on some products such as bananas, raw cane sugar, and apparel, which tend not to be import sensitive for the UK, have been maintained to provide for preferential access for imports from certain developing countries into the UK compared to the MFN rate. The UK has some high tariffs that affect U.S. exports, such as rates of up to 25.0 percent for some fish and seafood products, 10.0 percent for trucks, 10.0 percent for passenger vehicles, and up to 6.5 percent for certain mineral or chemical fertilizers.

Tariff-Rate Quotas

Under the UK Global Tariff, some products are covered by a tariff-rate quota (TRQ). TRQs apply to a variety of agricultural products that the United States exports in significant quantities, including beef, pork, cereals, and rice.

Non-Tariff Barriers

Northern Ireland-Specific Border Controls

Northern Ireland is subject to separate arrangements under the Windsor Framework – formerly known as the Protocol on Ireland/Northern Ireland (the Protocol) – that forms part of the agreement between the UK and the EU that addresses the UK’s withdrawal from the EU. On February 27, 2023, the UK and the EU jointly announced the Windsor Framework to address certain issues regarding the Protocol. The introduction of new trade easements for goods moving from Great Britain to Northern Ireland under the Windsor Framework began on October 1, 2023, and will continue to be implemented in phases through 2025. When fully implemented, the Windsor Framework will apply UK regulations regarding food safety, value-added tax and excise rates, and medical licensing for goods and services remaining within Northern Ireland.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Upon withdrawal from the EU, the UK transposed existing EU technical regulations into UK law in 2021, thus creating close initial alignment between UK and EU technical regulations and requirements. Several specific trade concerns outlined in the technical barriers to trade (TBT) section of the EU Chapter in this National Trade Estimate Report therefore remain with respect to the UK. Additional divergences between the two regimes will likely continue because changes to some EU regulations have not been, or will not be, automatically reflected in the UK regulatory regime and vice versa.

Sanitary and Phytosanitary Barriers

Upon withdrawal from the EU, the UK transposed existing EU sanitary and phytosanitary (SPS) measures into UK law in 2021, thus creating close initial alignment between UK and EU SPS measures. Some trade concerns outlined in the SPS section of the EU Chapter in this National Trade Estimate Report therefore remain with respect to the UK. The United States is concerned that these measures may unnecessarily restrict trade without furthering safety objectives, because they appear to be applied beyond the extent necessary to protect human, animal, or plant life or health, not based on science, or maintained without sufficient scientific evidence. Specifically, the UK remains closely aligned to EU policy on pesticide approvals, regulation, and maximum residue limits (MRLs). However, there have been divergences between the two regimes as changes to some EU SPS measures have not been automatically reflected in the UK SPS measures (with the exception of Northern Ireland) and vice versa.

Agricultural Biotechnology

U.S. exports of processed foods and beverages to the UK have been constrained in part by local legislation pertaining to genetically modified (GM) food products. Due to long-standing negative perceptions in the UK of agricultural biotechnology, UK supermarkets and food manufacturers formulate their grocery

products to exclude GM ingredients. The UK retained EU legislation post-Brexit, and there has been no attempt to amend the legislation to allow GM products into the UK market, with the exception of specific agricultural biotechnology products for animal feed that require approval. The UK now has the autonomy to establish its own regulatory and policy approach for agricultural biotechnology products, including crops and animals. The UK is working to transition away from the retained EU policy approach for agricultural biotechnology products, beginning with genome-edited products, with the intention of subsequently addressing GM products.

In March 2023, the Genetic Technology (Precision Breeding) Act received Royal Assent, confirming it as an Act of Parliament. The Act intends to simplify the process by which precision breeding technologies (*i.e.*, targeted genetic changes to produce beneficial traits that can also occur through traditional breeding and natural processes) can be authorized and brought to market more easily. This approach paves the way for the modernization of the UK's full suite of agricultural biotechnology regulations. The next stage in the implementation of the new legislative framework began in November 2023 with a consultation on proposals for a new framework for the regulation of precision-bred organisms used for food and animal feed.

Agricultural Chemicals, Pesticide Regulations

In May 2021, UK officials indicated that the UK would follow a risk-based approach to reviewing and approving agricultural chemicals and pesticides, when they established their post-Brexit regulatory policies. In November 2022, the UK noted it will continue to follow the EU's hazard-based approach to MRLs while it develops its own regulatory processes. In August 2023, the UK notified to the WTO Committee on Sanitary and Phytosanitary Measures a proposed measure to reduce the MRL for chlorpropham for fresh and frozen potatoes. In this case, rather than relying on risk assessments that were completed while the UK was a member of the EU, the UK's approach appears even more restrictive than the EU's.

U.S. agricultural exporters are increasingly concerned that the UK might retain the EU's approach to regulating agricultural chemicals and pesticides, which often results in restrictions that do not appear to be science-based and that could result in reductions of MRLs important to U.S. growers, creating excessive barriers to trade and disrupting U.S. crop, food, and agriculture exports to the UK.

GOVERNMENT PROCUREMENT

The UK is a Party to the WTO Agreement on Government Procurement.

UK Space Agency

Participation in European Space Agency (ESA) procurements, to which the UK contributes funding, is generally only open to economic operators in ESA Member States. U.S. companies are generally prohibited from competing on ESA contracts. A significant amount of money is allocated by the UK to ESA. For example, the UK Space Agency allocated £553 million (approximately \$681 million) to ESA in its 2022–2023 budget, which is approximately 85 percent of the UK Space Agency's total budget.

INTELLECTUAL PROPERTY PROTECTION

The UK generally maintains high levels of intellectual property (IP) protection and enforcement. However, U.S. stakeholders have expressed concern that the UK music copyright collective fails to remunerate U.S. artists for radio broadcasts and public performances of their music in the UK. The United States will continue to monitor developments with the UK's IP system.

Geographical Indications

The UK geographical indications (GI) program limits the use of the geographical names for food, drink, and agricultural products (including beer, cider, and perry), spirit drinks, wine, and aromatized wine. The UK schemes use the following designations: Protected Designation of Origin (PDO); Protected Geographical Indication (PGI); and Traditional Speciality Guaranteed (TSG).

The UK schemes are open to producers from the UK and other countries. All existing products that were registered under the EU GI schemes as of December 31, 2020, remain covered under the UK GI schemes, including both UK and EU GIs.

The United States is monitoring the impact of the UK's schemes for the protection of GIs on prior trademark rights and on market access for U.S. goods that rely on the use of common names.

SERVICES BARRIERS

Professional Qualifications

Permission to act as a chartered accountant requires the applicant to have professional experience in the UK, thus limiting experienced U.S. certified public accountants (CPAs) from obtaining authorization to practice in the UK. Efforts are being made to address this through professional bilateral arrangements.

BARRIERS TO DIGITAL TRADE

Digital Services Taxation

The United States and the UK are among the 137 member jurisdictions to have joined the October 8, 2021 OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting [Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy](#), which called for all Parties to commit not to introduce digital services taxes (DSTs) in the future. On October 21, 2021, the United States, Austria, France, Italy, Spain, and the UK issued a [joint statement](#) “on a transitional approach to existing Unilateral Measures while implementing Pillar 1.” According to the statement, DST liability that accrues to Austria, France, Italy, Spain, or the UK during a transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future corporate income tax liability due under Pillar 1. In return, the United States terminated the existing Section 301 trade actions on goods with respect to each country and committed not to take further trade actions against each country with respect to existing DSTs, provided that the country follows through on the agreement described in the joint statement, until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. The arrangement set out in the October 21 joint statement was extended to June 30, 2024, according to a [joint statement](#) issued on February 15, 2024. In coordination with the U.S. Department of Treasury, USTR continues to monitor implementation of the political agreement and the transitional approach as provided in the joint statement.

SUBSIDIES

Government Support for Airbus

In October 2019, after 15 years of litigation, the WTO authorized the United States to take \$7.5 billion in countermeasures in the dispute against the EU, France, Germany, Spain, and the UK regarding their illegal subsidies for the Airbus consortium.

On June 17, 2021, the United States and the UK announced a cooperative framework to address the large civil aircraft disputes and agreed to future cooperation to overcome any disagreements in the sector. Over many years, the UK, together with France, Germany, and Spain, provided subsidies to Airbus-affiliated companies to aid in the development, production, and marketing of Airbus's large civil aircraft. As part of the cooperative framework, the United States and UK will not impose countermeasures in the form of tariffs for five years and will work together to address nonmarket practices in the aircraft sector. The United States and the UK established a working group to address these issues on an ongoing basis.

URUGUAY

TRADE AGREEMENTS

The United States and Uruguay signed a Trade and Investment Framework Agreement on January 25, 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Uruguay.

IMPORT POLICIES

Tariffs

Uruguay's average Most-Favored-Nation (MFN) applied tariff rate was 10.1 percent in 2022 (latest data available). Uruguay's average MFN applied tariff rate was 10.0 percent for agricultural products and 10.1 percent for non-agricultural products in 2022 (latest data available). Uruguay has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 31.5 percent.

Uruguay is a founding member of the Southern Common Market (MERCOSUR), formed in 1991, which also includes Argentina, Brazil, and Paraguay. MERCOSUR's Common External Tariff (CET) ranges from zero percent to 35.0 percent *ad valorem* and averages 11.7 percent. In July 2022, MERCOSUR countries agreed to a 10 percent reduction of the CET for over 80 percent of product lines. The decision reduced the block's average CET to 10.3 percent. Any good imported into Uruguay (not including free trade zones) is subject to the payment of the CET to Uruguay's customs authority. If the product is then re-exported to another MERCOSUR country, the CET must be paid again to the second country. MERCOSUR approved a Common Customs Code (CCC) in 2010 and launched a plan to eliminate the double application of the CET within MERCOSUR in 2021. However, only Argentina has ratified the CCC, and it has not taken effect.

Non-Tariff Barriers

Customs Barriers and Trade Facilitation

Uruguay charges a consular fee on imports, currently at 5 percent *ad valorem*, up from 2 percent in 2018. The imposition of consular fees disadvantages U.S. exports to Uruguay by increasing costs and imposing additional formalities that are unrelated to the services provided by the customs authority.

U.S. poultry exporters have reported serious challenges in receiving necessary import documentation from Uruguay, effectively closing the market to U.S. poultry exports for most of 2023.

INTELLECTUAL PROPERTY PROTECTION

The United States urges Uruguay to ensure transparency and due process in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Uruguay proceeds with the European Union–MERCOSUR Trade Agreement.

VIETNAM

TRADE AGREEMENTS

The United States–Vietnam Trade and Investment Framework Agreement

The United States and Vietnam signed a Trade and Investment Framework Agreement in June 2007. This Agreement is the primary mechanism for discussions of trade and investment issues between the United States and Vietnam.

IMPORT POLICIES

Tariffs and Taxes

Tariffs

Vietnam's average Most-Favored-Nation (MFN) applied tariff rate was 9.6 percent in 2022 (latest data available). Vietnam's average MFN applied tariff rate was 17.1 percent for agricultural products and 8.4 percent for non-agricultural products in 2022 (latest data available). Vietnam has bound 100 percent of its tariff lines in the World Trade Organization (WTO), with an average WTO bound tariff rate of 11.7 percent. Vietnam also maintains import tariff-rate quota regimes for salt, eggs, and sugar.

Although the majority of U.S. exports to Vietnam face tariffs of 15 percent or less, consumer-oriented food and agricultural products continue to face higher rates. In recent years, Vietnam has increased MFN applied tariff rates on a number of products, including: sweeteners (such as fructose and glucose); shelled walnuts; ketchup and other tomato sauces; inkjet printers; soda ash; and, stainless steel bars and rods. Most of the products for which tariffs have increased are also produced by companies in Vietnam.

In May 2023, Vietnam enacted Decree 26/2023/ND-CP, which updated detailed tariff rates for each Harmonized System code, effective July 15, 2023. The primary change from the decree was a reduction in ethanol tariffs from 15 percent to 10 percent. Despite this decrease, the tariff on ethanol continues to be significantly higher than Vietnam's tariffs on other substitutable fuel additives, which are either zero percent or 3 percent.

Taxes

In 2016, Vietnam's Law 106/2016/QH13 increased the special consumption taxable base for imported alcoholic beverages from the import price to the sales price received by the importer, thereby significantly increasing the tax burden on importers relative to domestic producers.

Non-Tariff Barriers

Import Bans and Restrictions

Vietnam prohibits the commercial importation of some products, including: certain children's toys; second-hand consumer goods; used parts for vehicles; used internal combustion engines of less than 30 horsepower; certain encryption devices and encryption software; refurbished medical devices; and certain cultural products.

Vietnam maintains import prohibitions on certain used information technology (IT) products. Decision 18/2016/QĐ-TTg eases import prohibitions on some used IT products, if these products meet various technical regulations and standards. The products covered under the decision include used IT goods that are: (1) imported in conjunction with the relocation of means of production of a single organization; (2) imported for the control, operation, and inspection of activities in one or all parts of a system or production line; (3) imported for software production, business outsourcing, or data processing for foreign partners; or, (4) reimported after overseas repairs under warranty. The decision also covers refurbished goods and components no longer in production that are imported to replace or repair those being used domestically.

Product Registration Requirements – Imported Pharmaceuticals

Decree No. 54/2017/ND-CPD, which came into effect in July 2017, permits foreign pharmaceutical companies to establish importing entities. The international business and pharmaceutical communities welcomed this step but continue to have concerns about warehousing, distribution, and licensing requirements.

Circular 08/2022/TT-BYT, effective on October 20, 2022, regulates drug registration and Certificate of Pharmaceutical Product (CPP) content requirements and harmonizes with international practice, specifically following the World Health Organization's CPP template. Under Circular 8, the Vietnam Ministry of Health (MOH) no longer has a blanket requirement to verify CPP authenticity. Instead, a risk-based approach is applied and that verification can be done via different channels and in parallel with the market authorization (MA) review process. The Circular also simplified several administrative procedures following international practices. Some challenges remain as, in practice, the MOH requires foreign competent authorities and Vietnam's diplomatic missions to authenticate or consular legalize electronic CPPs. Companies can amend the dossier for product registration up to three times the maximum; otherwise, the dossier is rejected. This is in order to meet the MOH's objective of ensuring the dossier quality. However, submissions of quality application dossiers will require regulator-industry consultations to ensure Circular 8 regulatory requirements are understood.

In response to the ongoing backlog of drug registration renewals and applications, the Vietnam National Assembly issued Resolution 80/2023/QH15 in January 2023. This measure allows MAs of drugs and drug raw materials that are expiring between January 1, 2023, and December 31, 2024, and MAs that have been previously extended, to continue until December 31, 2024, if those drugs and drug raw materials meet certain requirements. The MOH is responsible for reviewing and publicizing the list of MAs that meet the requirements in a public and transparent manner. The United States will continue to monitor the implementation of the drug registration process in Vietnam.

Medical Devices

In March 2023, Vietnam issued Decree 07/2023/ND-CP (Decree 07), amending and supplementing Decree No. 98/2021/ND-CP. Decree 07 allows all existing import licenses to be automatically extended to December 31, 2024, and regulates outstanding lodged dossiers for import licenses to be reviewed and approved under the legal framework of this new decree. The United States will continue monitoring developments related to the implementation of the new decree.

Ethanol

Vietnam currently only allows blends of 5 percent ethanol in one of its three grades of gasoline. Vietnam's Ministry of Industry and Trade (MOIT) is the lead ministry on ethanol policy. The United States continues to seek the expansion of ethanol blending to all grades of gasoline sold in Vietnam, the reduction of tariffs on ethanol to at least match tariff rates on other fuel additives currently used in Vietnam, as well as the

eventual migration to a 10 percent ethanol blend (E10). The MOIT had previously sought to expand to E10 in all grades of gasoline, but this has not occurred.

TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

Technical Barriers to Trade

Labeling

Decree 111/2021/ND-CP, which revised Decree 43/2017/ND-CP on Goods Labeling and became effective on February 15, 2022, requires imported goods to have a label added by merchants. The updated decree requires significantly more information to appear on all labels and imposes a range of additional specific requirements that vary depending on the product category. Importers have reported challenges to entering imported goods due to uncertainty and inconsistency in product classifications, which make it difficult for importers to comply with labeling requirements.

Sanitary and Phytosanitary Barriers

Approvals for the Importation or Commercialization of Genetically Engineered Products

In 2023, after several years of inactivity, Vietnam resumed its acceptance of new applications of genetically engineered (GE) products for cultivation. As of December 31, 2023, Vietnam had approved 10 GE corn hybrids for cultivation; made progress on an application for a GE corn product (MIR162) that is resistant to Fall Army Worm; and was actively reviewing seven new applications of biotechnology corn, soybean, canola, and cotton. Vietnam remains a major importer of biotechnology products and a key market for cultivation approvals as part of the commercialization process. The United States will continue to engage with Vietnam on the approval of pending applications.

Imports under the Food Safety Law

In February 2018, as part of enforcement of its Food Safety Law, Vietnam adopted Decree 15/2018/ND-CP (Decree 15), which provides guidance on self-declaration, labeling, import inspection, and registration for export to Vietnam of food products of plant and animal origin. Although Decree 15 simplified self-declaration for importation of food products, some aspects of the decree created uncertainty, with different line ministries, and even departments within the Ministry of Agriculture and Rural Development (MARD), appearing to have contradictory interpretations. For example, the MARD and the MOH have provided contradictory interpretations regarding Vietnam's definition of "processed products," which are exempt from the facility registration process under Decree 15. Despite requests by the United States and other trading partners, Vietnam refused to notify Decree 15 to the WTO.

In March 2021, Vietnam issued a draft decree that would revise Decree 15. The new draft decree covers foods and agricultural products and would create a two-step registration for import inspection by merging the self-declaration (for food safety) and conformity announcement (for quality inspection) into the registration for import inspection. Vietnam notified the draft decree to the WTO in July 2021. As of December 31, 2023, the draft decree remains under review by the Government of Vietnam and has not been finalized.

In 2023, the MOH was assigned to collaborate with the MARD and the MOIT on the review of the Food Safety Law's implementation. According to Decision 426/DQ-TTg, the Food Safety Law's review will be

conducted from 2023 to 2025, after which line ministries will draft proposals to amend and supplement the law. The MOH was also assigned to review the implementation of Decree 15 in coordination with MARD and MOIT. The United States will continue to monitor Vietnam's review of its Food Safety Law and Decree 15 to avoid any potential disruptive effects on U.S. agricultural exports.

Ban on Offal Products

Despite the MARD lifting Vietnam's ban on the importation of so-called "white offal," such as poultry gizzards and beef and pork stomach and intestines, Vietnam has not approved new U.S. facilities to export these products since September 2013. The United States continues to raise concerns about Vietnam's lack of a science-based justification for not approving new U.S. facilities seeking to export offals. Plans for Vietnam to conduct onsite audits of U.S. facilities were indefinitely postponed purportedly due to the outbreak of African Swine Fever in Vietnam. The United States will continue to discuss this issue with Vietnam.

GOVERNMENT PROCUREMENT

Vietnam's 2013 Law on Procurement provides the basic framework for government procurement and generally promotes the purchase of domestic goods or services in government procurement when they are available. U.S. exporters do not receive any guaranteed access to the Vietnamese Government procurement market.

Vietnam is not a Party to the WTO Agreement on Government Procurement, but has been an observer to the WTO Committee on Government Procurement since December 2012.

INTELLECTUAL PROPERTY PROTECTION

Vietnam remained on the Watch List in the 2023 Special 301 Report. Despite positive developments, such as reported improvements on border enforcement in some parts of the country and the amended Law on Intellectual Property, which took effect in January 2023, the United States remains concerned about intellectual property (IP) protection and enforcement in Vietnam, including in the digital environment.

Capacity and resource constraints, corruption, and poor coordination among enforcement agencies continue to pose challenges to effective IP enforcement. Piracy and sales of counterfeit goods online and in physical markets continue to be a concern. Two physical markets in Vietnam—Saigon Square Shopping Mall in Ho Chi Minh City, and Tan Thanh Market and the sub-market Viet Trung Trade Center, both in Lang Son Province—are included in the [2023 Review of Notorious Markets for Counterfeiting and Piracy \(Notorious Markets List\)](#). There are almost no criminal investigations or prosecutions, even though Vietnam has criminal laws imposing substantial fines and years of incarceration for copyright and trademark infringement. Vietnam continues to rely heavily on administrative actions and penalties to enforce IP, but these have failed to deter counterfeiting and piracy. In addition, the United States has concerns about the lack of clarity in Vietnam's system for protecting against the unfair commercial use and unauthorized disclosure of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

The United States continues to discuss these issues with Vietnam. The United States also continues to monitor the implementation of IP provisions pursuant to Vietnam's commitments under trade agreements with third parties.

SERVICES BARRIERS

Audiovisual Services

Decree 71/2022 (Decree 71), amending Decree 06/2016 on the Management, Provision and Use of Radio and Television Services, was enacted on October 1, 2022. Decree 71 expands the scope of regulation of Decree 06 from traditional broadcasting services to Internet-enabled subscription video services. Decree 71 imposes new licensing requirements, with forced local presence or forced joint venture, on online, over-the-top (OTT) radio and television services, the definition of which includes films. The Authority of Broadcasting and Electronic Information (ABEI) has requested certain U.S. platforms, in the absence of a local office or a submitted licensing plan, to leave the market. The Law on Cinema and its implementing decree allow foreign OTT suppliers to offer films without having to obtain a license or establish locally. However, under pressure from the ABEI, the Ministry of Culture, Sports, and Tourism is developing a system to classify online content with a specific focus on “sensitive categories” that would require operating licenses.

Financial Services

Foreign investors may establish 100 percent foreign-owned bank subsidiaries and may take ownership interests in domestic “joint stock” banks (*i.e.*, commercial banks with any percentage of private ownership) or “joint venture” banks (*i.e.*, banks set up by joint venture agreement, typically between domestic and foreign partners). Total equity held by foreign institutional and individual investors in domestic joint stock banks is limited to 30 percent, while total equity held by a foreign strategic investor (defined as a foreign credit institution meeting certain criteria related to capacity to help develop the Vietnamese banking partner) is limited to 20 percent. Foreign equity in joint venture banks is limited to 50 percent. Over the last two years, foreign banks have raised concerns about provisions in the Law on Credit Institutions, which limits the lending of foreign bank branches in Vietnam based on their local charter capital, rather than the global capital of the parent bank. The State Bank of Vietnam has also proposed amendments that would lower the limits for ownership by individual and institutional shareholders in banks.

Electronic Payment Services

In 2016, two Vietnamese payment processing networks were consolidated into a *de facto* monopoly, the National Payments Corporation of Vietnam (NAPAS), which is partially owned by the State Bank of Vietnam. Since January 2021, Circular 28 requires that domestic retail electronic payment transactions be processed through NAPAS when a payment card, including an internationally-branded payment card, is presented at the merchant point of sale. This requirement does not apply to online transactions.

Telecommunications Services

Vietnam permits foreign participation in the telecommunications sector, with varying equity limitations depending on the sub-sector. According to the Law on Telecommunications (Telecom Law) 41/2009/QH12, for domestic companies that provide basic telecommunication services with infrastructure, foreign ownership is generally capped at 49 percent; for companies that supply telecommunications services without infrastructure, foreign ownership is capped at 65 percent. Vietnam allows foreign ownership of up to 70 percent for virtual private network (VPN) services suppliers. Facilities-based operators are required to be state-controlled firms, meaning that the state, through the relevant line ministry, must hold 51 percent or more of equity. The revised Telecom Law was passed by Vietnam’s National Assembly on November 24, 2023. The final draft submitted to the National Assembly’s approval session seems to address some

U.S. concerns but may still raise uncertainty around the scope of the law. The United States will continue to monitor the issue.

BARRIERS TO DIGITAL TRADE

Law on Cybersecurity

Vietnam's Law on Cybersecurity (No. 24/2018/QH14) took effect in June 2018, and Decree 53/2022/ND-CP on Implementing the Law on Cybersecurity (Cybersecurity Decree) became effective on October 1, 2022. This law and regulation create uncertainty around the scope of specific requirements for businesses as they apply broadly to domestic and foreign enterprises that provide services on telecommunications networks or the Internet, or that provide other value-added services in cyberspace in Vietnam. The Cybersecurity Law requires foreign service suppliers to establish a branch or representative office in Vietnam. The Ministry of Public Security is also drafting a Decree on Administrative Penalties for Violations of Cybersecurity Laws that will impose fines and administrative penalties (including "technical measures," such as bandwidth limits and blocking of sites) for violations of regulations concerning cybersecurity, personal data protection, information security, and network protection. Stakeholders have expressed concern with a lack of certainty with respect to compliance with Vietnamese laws and regulations. The latest draft of this decree was shared with stakeholders in May with a deadline for public comment by June 20, 2023.

Internet Services

Internet-Based Content Services

Vietnam continues to allow access to the Internet only through a limited number of Internet service providers, all of which are state-controlled companies to some extent. Vietnam restricts or blocks access to certain websites that it deems politically or culturally inappropriate. Decree 72/2013/ND-CP (Decree 72) on the management, provision, and use of Internet services and online information prohibits the use of Internet services to, among other things, oppose the government. In March 2018, Vietnam issued Decree 27/2018/ND-CP (Decree 27) to amend and supplement Decree 72. Decree 27 consolidates existing content, server localization, and data retention requirements for social networks and information websites.

In July 2023, the Authority of Broadcasting and Electronic Information, at the Ministry of Information and Communications (MIC), released a draft measure to replace Decree 72 (and Decree 27) that would impose problematic requirements on a wide range of suppliers of Internet services and content providers. The draft decree contains content censorship measures and data localization requirements that are likely to overlap with the Cybersecurity Decree and the Personal Data Privacy Decree. It also contains a burdensome registration and licensing regime for the electronic gaming and social media industries and would broaden the scope of regulation to include data center and cloud services.

Personal Data Protection Regulation

Vietnam's Personal Data Protection Decree (Decree 13/2023/ND-CP) was promulgated on April 17, 2023 and went into effect on July 1, 2023. This measure does not provide clear scope of which industries or businesses will be subject to it. Personal data controllers must maintain a log or diary of the cross-border data transfer processes.

Electronic Transactions

Vietnam's Law on Electronic Transactions was passed by the National Assembly on June 22, 2023, as Law No. 20/2023/QH15. The language of the law remains ambiguous concerning compliance obligations for "digital platforms" and registration requirements for cross-border electronic signature and electronic transaction services providers. The MIC is in the process of drafting decrees and circulars to implement the law.

INVESTMENT BARRIERS

Vietnam maintains statutory restrictions on foreign ownership in certain enumerated sectors, such as joint partnerships and projects in banking, network infrastructure services, non-infrastructure telecommunications services, transportation, and energy. Decree 31/2021/ND-CP, promulgated in 2021, lists 25 business sectors in which foreigners are prohibited from investing. It also lists 59 other business sectors subject to market access conditions, which includes: banks and non-bank credit institutions; aviation; land and sea transportation; film production and distribution; and, logistics. The market access conditions may include: foreign ownership caps; joint venture and local partnership requirements; and, other conditions on investments involving foreign investors imposed by the relevant ministry. Certain foreign investments also require the Prime Minister's approval, including: projects involving airports and certain seaports; casinos; oil and gas exploration, production, and refining; telecommunications and network infrastructure; forestry; publishing; and other projects requiring approval from more than one Vietnamese province.

ENVIRONMENT

In October 2020, the U.S. Trade Representative initiated a Section 301 investigation into Vietnam's acts, policies, and practices related to the import and use of illegal timber, and in particular, to examine reports that Vietnam's wood processing industry relies upon imported timber that may have been illegally harvested or traded. On October 1, 2021, the United States and Vietnam signed an agreement (Timber Agreement) that addresses U.S. concerns in the investigation. The agreement secures commitments that will help keep illegally harvested or traded timber out of the supply chain, and protect the environment and natural resources.

The United States held working group meetings with Vietnam in 2022 and 2023 and will continue to monitor Vietnam's implementation of its commitments under the Timber Agreement.

OTHER BARRIERS

U.S. stakeholders continue to have concerns about the lack of transparency and accountability in the Government of Vietnam's regulatory process due to different line ministries' overlapping mandates and other governance issues in Vietnam. The United States will continue to work with Vietnam to support reform efforts and to promote greater transparency.

Export Taxes

Vietnam imposes export taxes (ranging from 5 percent to 40 percent) on goods indicated in Decree 125/2017/ND-CP, which are primarily goods produced from minerals and natural resources in which the cost of energy, minerals, and natural resources is more than 51 percent of the value of the product. These goods include: plants and botanical parts; ore; coal; crude oil; chemicals; skins; wood; charcoal; gems; silver and gold; jewelry; and, metals and metal products. Decree 57/2020/ND-CP, revising and

supplementing Decree 125, increased export tax rates for copper tubes and pipes (Harmonized System heading 7411) from zero percent to five percent.

APPENDIX I

APPENDIX I

Report on Progress in Reducing Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies

This Appendix provides an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,¹ the Office of the United States Trade Representative (USTR) prepared a report that identified trade barriers that U.S. exporters of GHGIRTs face in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade. The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first [annual progress report](#) in October 2007. USTR will continue to submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report,² barriers to the exports of GHGIRTs are generally similar to those identified in the NTE Report with respect to other exports to the 25 developing countries, for example: lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, that are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; investment restrictions, including requirements to partner with domestic firms; lack of adequate and effective intellectual property rights protections; and, in some countries, high applied tariff rates. Progress in removing such barriers is noted in the appropriate country chapters of this NTE Report. USTR's Special 301 Report, pursuant to section 182 of the Trade Act of 1974, identifies those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access for persons that rely on intellectual property protection. The [2023 Special 301 Report](#) was published in April 2023.

The global market in environmental goods and services, including GHGIRTs, is estimated to be over \$1.1 trillion annually, and the United States exported \$275 billion of environmental goods in 2023.³

¹ Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. Section 734 calls on the United States Trade Representative “(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers.”

² The Department of State's 2006 “Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment” identified the following 25 countries: Algeria; Argentina; Azerbaijan; Bangladesh; Brazil; Chile; China; Colombia; Egypt; India; Indonesia; Iraq; Kazakhstan; Libya; Malaysia; Mexico; Nigeria; Pakistan; Philippines; South Africa; Thailand; Turkmenistan; Uzbekistan; Venezuela; and Vietnam.

³ Based on 2023 U.S. Bureau of Census data and includes U.S. exports and re-exports. Re-exports are defined as exports of foreign goods without significant modification.

APPENDIX II

APPENDIX II

U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2022-2023
(Values in Millions of Dollars)

Country	Goods Balance		Change	Exports	Exports	Change 2022-23		Imports	Imports	Change 2022-23	
	2022	2023	2022-23	2022	2023	Value	Percent	2022	2023	Value	Percent
World	-1,177,369	-1,061,667	115,702	2,065,154	2,050,739	-14,415	-0.7	3,242,523	3,112,406	-130,117	-4.0
Canada	-80,109	-67,861	12,248	356,453	353,235	-3,218	-0.9	436,562	421,096	-15,466	-3.5
Mexico	-130,465	-152,379	-21,914	324,310	323,228	-1,082	-0.3	454,774	475,607	20,833	4.6
China	-382,296	-279,415	102,881	154,012	147,813	-6,199	-4.0	536,308	427,229	-109,080	-20.3
Netherlands	38,659	43,735	5,076	73,207	82,182	8,975	12.3	34,548	38,447	3,899	11.3
Germany	-74,077	-83,021	-8,944	72,553	76,699	4,146	5.7	146,630	159,720	13,090	8.9
Japan	-67,884	-71,175	-3,292	80,180	76,165	-4,015	-5.0	148,064	147,340	-724	-0.5
United Kingdom	12,256	9,804	-2,451	76,208	74,090	-2,118	-2.8	63,952	64,285	333	0.5
South Korea	-43,278	-51,401	-8,123	72,116	64,834	-7,282	-10.1	115,394	116,235	841	0.7
Brazil	14,926	5,685	-9,240	53,841	44,808	-9,033	-16.8	38,915	39,122	207	0.5
France	-11,279	-13,393	-2,114	46,025	44,257	-1,768	-3.8	57,303	57,649	346	0.6
Singapore	14,571	2,053	-12,518	46,177	42,392	-3,784	-8.2	31,606	40,340	8,734	27.6
India	-38,377	-43,628	-5,251	47,160	40,140	-7,020	-14.9	85,537	83,768	-1,769	-2.1
Taiwan	-47,483	-47,975	-493	44,242	39,776	-4,466	-10.1	91,725	87,752	-3,973	-4.3
Belgium	9,192	15,801	6,609	35,810	38,829	3,018	8.4	26,618	23,027	-3,590	-13.5
Australia	14,381	17,724	3,343	30,552	33,678	3,127	10.2	16,171	15,954	-216	-1.3
Italy	-41,362	-44,012	-2,651	27,713	28,930	1,217	4.4	69,075	72,942	3,868	5.6
Switzerland	-22,677	-24,320	-1,643	36,727	27,870	-8,857	-24.1	59,404	52,189	-7,215	-12.1
Hong Kong	21,149	23,562	2,413	25,828	27,746	1,918	7.4	4,678	4,184	-494	-10.6
Spain	3,704	1,881	-1,823	26,695	25,001	-1,694	-6.3	22,992	23,120	129	0.6
United Arab Emirates	13,953	18,279	4,325	20,837	24,857	4,020	19.3	6,884	6,579	-305	-4.4
Malaysia	-36,006	-26,705	9,301	18,195	19,442	1,247	6.9	54,201	46,147	-8,054	-14.9
Chile	6,689	3,182	-3,507	22,257	18,724	-3,533	-15.9	15,568	15,542	-26	-0.2
Colombia	2,335	1,394	-941	20,819	17,552	-3,267	-15.7	18,484	16,159	-2,326	-12.6
Ireland	-66,558	-65,342	1,216	16,011	16,949	938	5.9	82,569	82,290	-279	-0.3
Thailand	-42,836	-40,720	2,116	15,818	15,653	-165	-1.0	58,654	56,374	-2,281	-3.9
Türkiye	-3,638	-805	2,833	15,194	14,694	-500	-3.3	18,832	15,498	-3,333	-17.7
Israel	-7,230	-6,787	443	14,199	14,034	-166	-1.2	21,429	20,820	-609	-2.8
Saudi Arabia	-11,874	-2,004	9,870	11,400	13,873	2,473	21.7	23,274	15,877	-7,397	-31.8
Dominican Republic	7,115	6,004	-1,111	14,023	13,063	-960	-6.8	6,908	7,059	151	2.2
Peru	4,988	3,304	-1,684	13,613	12,039	-1,574	-11.6	8,625	8,735	110	1.3
Argentina	6,062	5,004	-1,058	12,980	11,442	-1,538	-11.8	6,918	6,438	-480	-6.9
Panama	11,418	10,681	-737	11,941	11,208	-734	-6.1	523	527	4	0.7
Poland	-493	-2,160	-1,667	11,380	11,015	-365	-3.2	11,873	13,174	1,301	11.0
Indonesia	-24,743	-16,863	7,880	9,802	9,944	142	1.5	34,545	26,807	-7,738	-22.4
Vietnam	-116,125	-104,628	11,496	11,356	9,812	-1,544	-13.6	127,481	114,440	-13,041	-10.2
Guatemala	4,900	4,902	2	10,210	9,742	-468	-4.6	5,310	4,840	-470	-8.9
Philippines	-6,825	-3,981	2,844	9,331	9,288	-43	-0.5	16,155	13,269	-2,887	-17.9
Costa Rica	-240	-1,315	-1,075	8,499	9,144	645	7.6	8,739	10,459	1,720	19.7
Sweden	-9,346	-9,788	-442	7,742	8,615	873	11.3	17,088	18,403	1,315	7.7
Ecuador	-2,526	-652	1,874	7,875	7,948	74	0.9	10,400	8,600	-1,800	-17.3
South Africa	-8,068	-6,814	1,254	6,516	7,156	640	9.8	14,584	13,971	-614	-4.2
Honduras	1,894	1,229	-664	7,964	6,794	-1,170	-14.7	6,070	5,564	-506	-8.3
Bahamas	3,822	3,757	-64	5,543	5,582	39	0.7	1,721	1,825	104	6.0
Austria	-13,040	-13,609	-569	4,770	5,530	760	15.9	17,810	19,139	1,329	7.5
Denmark	-8,412	-6,379	2,032	4,558	5,255	697	15.3	12,969	11,634	-1,335	-10.3
Norway	-1,964	-1,084	879	4,690	5,034	344	7.3	6,653	6,118	-535	-8.0
Qatar	796	2,611	1,814	3,669	4,658	990	27.0	2,872	2,048	-825	-28.7
Czech Republic	-3,710	-2,960	750	3,797	4,537	739	19.5	7,507	7,497	-11	-0.1
Egypt	3,565	2,103	-1,462	6,369	4,494	-1,875	-29.4	2,804	2,391	-413	-14.7

U.S. Goods Trade for Select Trade Partners in Rank Order of U.S. Goods Exports, 2022-2023
(Values in Millions of Dollars)

Country	Goods Balance		Change	Exports	Exports	Change 2022-23		Imports	Imports	Change 2022-23	
	2022	2023	2022-23	2022	2023	Value	Percent	2022	2022	2023	2022-23
New Zealand	-1,211	-1,191	19	4,164	4,359	195	4.7	5,375	5,551	176	3.3
El Salvador	2,058	1,811	-247	4,957	4,266	-690	-13.9	2,899	2,455	-443	-15.3
Morocco	2,024	2,055	32	3,718	3,752	34	0.9	1,694	1,697	3	0.2
Hungary	-4,834	-7,712	-2,879	2,872	3,120	248	8.6	7,705	10,832	3,127	40.6
Kuwait	1,354	1,201	-153	3,394	2,919	-475	-14.0	2,040	1,718	-322	-15.8
Finland	-6,039	-4,467	1,572	2,649	2,906	257	9.7	8,688	7,373	-1,315	-15.1
Lithuania	19	766	747	2,603	2,875	272	10.4	2,584	2,109	-475	-18.4
Paraguay	1,851	2,507	656	2,121	2,765	645	30.4	270	259	-11	-4.1
Jamaica	2,265	2,235	-31	2,615	2,624	9	0.4	350	390	40	11.5
Nigeria	-1,424	-3,097	-1,673	3,360	2,599	-760	-22.6	4,783	5,696	913	19.1
Venezuela	1,779	-1,092	-2,871	2,192	2,501	310	14.1	413	3,594	3,181	770.3
Nicaragua	-3,069	-2,374	696	2,655	2,371	-284	-10.7	5,724	4,744	-980	-17.1
Luxembourg	915	1,675	760	1,650	2,365	715	43.3	735	690	-44	-6.1
Portugal	-3,231	-4,226	-994	2,927	2,282	-646	-22.1	6,159	6,507	349	5.7
Iraq	-9,157	-6,237	2,920	899	2,259	1,360	151.3	10,056	8,495	-1,561	-15.5
Bangladesh	-8,191	-6,030	2,162	2,962	2,252	-710	-24.0	11,153	8,282	-2,872	-25.7
Trinidad and Tobago	-1,788	-909	880	3,629	2,250	-1,379	-38.0	5,417	3,159	-2,259	-41.7
Pakistan	-2,837	-2,812	26	3,157	2,075	-1,082	-34.3	5,995	4,887	-1,108	-18.5
Uruguay	2,016	1,004	-1,011	2,921	1,879	-1,042	-35.7	905	875	-31	-3.4
Oman	-1,224	211	1,435	1,487	1,862	376	25.3	2,710	1,651	-1,059	-39.1
Greece	101	-272	-373	2,382	1,785	-596	-25.0	2,280	2,057	-223	-9.8
Trinidad and Tobago	-1,788	-909	880	3,629	2,250	-1,379	-38.0	5,417	3,159	-2,259	-41.7
Bahrain	-952	496	1,448	950	1,676	726	76.4	1,902	1,180	-722	-38.0
Jordan	-1,463	-1,382	81	1,580	1,532	-48	-3.0	3,043	2,915	-128	-4.2
Georgia	896	1,400	505	1,236	1,513	277	22.4	341	113	-228	-66.9
Guyana	-1,637	-1,904	-267	1,181	1,368	187	15.8	2,818	3,272	454	16.1
Romania	-2,430	-2,695	-265	1,350	1,304	-45	-3.4	3,779	3,999	219	5.8
Haiti	358	471	113	1,403	1,290	-113	-8.1	1,045	819	-226	-21.7
Cayman Islands	1,426	1,252	-174	1,474	1,282	-192	-13.0	48	30	-18	-37.2
Algeria	-1,810	-1,829	-19	1,198	1,214	16	1.3	3,009	3,043	35	1.1
Ethiopia	366	720	353	1,084	1,211	127	11.7	718	491	-227	-31.6
Kazakhstan	-1,625	-1,073	552	1,080	1,160	80	7.4	2,705	2,233	-472	-17.4
Ukraine	-69	-256	-187	1,428	1,048	-380	-26.6	1,498	1,305	-193	-12.9
Croatia	721	131	-590	1,581	1,032	-549	-34.7	860	901	41	4.7
Latvia	-330	377	707	418	997	579	138.7	748	620	-128	-17.1
Antigua and Barbuda	1,024	964	-60	1,033	977	-56	-5.4	9	13	4	47.0
Sint Maarten	619	761	143	698	851	153	21.9	80	90	10	12.6
Ghana	-1,793	-821	971	975	851	-125	-12.8	2,768	1,672	-1,096	-39.6
Barbados	761	668	-93	813	716	-98	-12.0	52	48	-4	-8.3
Saint Lucia	888	647	-241	900	658	-242	-26.9	11	10	-1	-9.4
Belize	447	593	146	508	649	141	27.8	61	55	-5	-8.8
European Union - 27	-202,475	-208,232	-5,758	350,791	368,749	17,958	5.1	553,266	576,981	23,715	4.3

Goods trade data on U.S. Census basis.

U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2021-2022 (latest data available)
(Values in Millions of Dollars)

Country	Services Balance		Change	Exports	Exports	Change 2021-2022		Imports	Imports	Change 2021-2022	
	2021	2022	2021-22	2021	2022	Value	Percent	2021	2022	Value	Percent
World	241,938	231,823	-10,115	801,143	928,530	127,387	15.9	559,205	696,707	137,502	24.6
Ireland	54,993	61,895	6,902	76,108	84,292	8,184	10.8	21,115	22,397	1,282	6.1
United Kingdom	5,769	8,533	2,764	68,270	81,985	13,715	20.1	62,501	73,452	10,951	17.5
Canada	20,029	26,621	6,592	57,093	71,268	14,175	24.8	37,064	44,647	7,583	20.5
Switzerland	19,817	21,541	1,724	48,846	55,643	6,797	13.9	29,029	34,102	5,073	17.5
China	17,986	14,872	-3,114	39,430	41,494	2,064	5.2	21,444	26,622	5,178	24.1
Germany	-1,866	-2,153	-287	32,247	40,863	8,616	26.7	34,113	43,016	8,903	26.1
Japan	5,153	-2,438	-7,591	36,648	38,334	1,686	4.6	31,495	40,772	9,277	29.5
Mexico	2,761	-631	-3,392	31,054	37,700	6,646	21.4	28,293	38,331	10,038	35.5
Singapore	22,311	23,683	1,372	31,856	34,308	2,452	7.7	9,545	10,625	1,080	11.3
Netherlands	11,080	13,210	2,130	23,452	27,848	4,396	18.7	12,372	14,638	2,266	18.3
India	-10,516	-7,366	3,150	18,491	25,881	7,390	40.0	29,007	33,247	4,240	14.6
France	-1,514	-4,325	-2,811	17,045	22,391	5,346	31.4	18,559	26,716	8,157	44.0
South Korea	6,637	7,589	952	19,212	22,249	3,037	15.8	12,575	14,660	2,085	16.6
Brazil	9,906	15,732	5,826	15,144	21,859	6,715	44.3	5,238	6,127	889	17.0
Australia	10,251	12,721	2,470	16,497	21,550	5,053	30.6	6,246	8,829	2,583	41.4
Hong Kong	1,978	437	-1,541	13,917	13,073	-844	-6.1	11,939	12,636	697	5.8
Taiwan	95	-3,517	-3,612	10,018	10,261	243	2.4	9,923	13,778	3,855	38.8
Saudi Arabia	9,072	8,571	-501	10,340	10,233	-107	-1.0	1,268	1,662	394	31.1
Luxembourg	6,629	7,295	666	9,131	9,771	640	7.0	2,502	2,476	-26	-1.0
Denmark	-504	-2,402	-1,898	9,151	9,367	216	2.4	9,655	11,769	2,114	21.9
Italy	534	-1,413	-1,947	6,497	9,342	2,845	43.8	5,963	10,755	4,792	80.4
Bermuda	-21,005	-23,251	-2,246	9,565	8,772	-793	-8.3	30,570	32,023	1,453	4.8
Spain	1,374	581	-793	5,711	8,525	2,814	49.3	4,337	7,944	3,607	83.2
Colombia	3,336	1,544	-1,792	7,536	7,853	317	4.2	4,200	6,309	2,109	50.2
Sweden	3,558	3,392	-166	6,738	7,197	459	6.8	3,180	3,805	625	19.7
Argentina	2,941	3,983	1,042	4,905	6,670	1,765	36.0	1,964	2,687	723	36.8
Chile	2,637	2,554	-83	5,300	6,651	1,351	25.5	2,663	4,097	1,434	53.8
Israel	-2,627	-3,455	-828	4,990	5,763	773	15.5	7,617	9,218	1,601	21.0
Belgium	-678	-162	516	4,055	5,347	1,292	31.9	4,733	5,509	776	16.4
Türkiye	1,238	536	-702	3,366	4,254	888	26.4	2,128	3,718	1,590	74.7
Peru	2,678	2,291	-387	3,971	3,822	-149	-3.8	1,293	1,531	238	18.4
Philippines	-2,774	-3,613	-839	2,368	3,518	1,150	48.6	5,142	7,131	1,989	38.7
Malaysia	588	855	267	2,850	3,375	525	18.4	2,262	2,520	258	11.4
Dominican Republic	-2,807	-3,670	-863	2,567	2,968	401	15.6	5,374	6,638	1,264	23.5
Russia	2,434	1,549	-885	4,238	2,847	-1,391	-32.8	1,804	1,298	-506	-28.0
Poland	-495	-340	155	1,819	2,833	1,014	55.7	2,314	3,173	859	37.1
South Africa	1,093	1,198	105	2,209	2,821	612	27.7	1,116	1,623	507	45.4
Thailand	1,406	939	-467	2,436	2,807	371	15.2	1,030	1,868	838	81.4
Panama	887	208	-679	2,306	2,608	302	13.1	1,419	2,400	981	69.1
New Zealand	1,025	1,225	200	1,837	2,546	709	38.6	812	1,321	509	62.7
Norway	-795	-1,614	-819	1,726	2,483	757	43.9	2,521	4,097	1,576	62.5
Vietnam	1,460	1,553	93	1,925	2,427	502	26.1	465	874	409	88.0
Indonesia	1,333	1,490	157	1,851	2,299	448	24.2	518	809	291	56.2
Costa Rica	-1,486	-2,143	-657	1,670	1,965	295	17.7	3,156	4,108	952	30.2
Nigeria	1,137	1,247	110	1,577	1,854	277	17.6	440	607	167	38.0
Guatemala	603	549	-54	1,666	1,782	116	7.0	1,063	1,233	170	16.0
Finland	263	72	-191	1,632	1,748	116	7.1	1,369	1,676	307	22.4
Greece	-1,611	-3,593	-1,982	1,296	1,640	344	26.5	2,907	5,233	2,326	80.0
Austria	175	208	33	1,091	1,630	539	49.4	916	1,422	506	55.2
Venezuela	1,393	1,505	112	1,496	1,596	100	6.7	103	91	-12	-11.7
El Salvador	267	169	-98	1,349	1,487	138	10.2	1,082	1,318	236	21.8
Portugal	35	-596	-631	816	1,388	572	70.1	781	1,984	1,203	154.0

U.S. Services Trade for Select Trade Partners in Rank Order of U.S. Services Exports, 2021-2022 (latest data available)
(Values in Millions of Dollars)

Country	Services Balance		Change	Exports	Exports	Change 2021-2022		Imports	Imports	Change 2021-2022	
	2021	2022	2021-22	2021	2022	Value	Percent	2021	2021	2022	2021-22
Honduras	584	457	-127	1,381	1,362	-19	-1.4	797	905	108	13.6
Czech Republic	-130	-73	57	1,023	1,338	315	30.8	1,153	1,411	258	22.4
Cyprus	-1,307	-1,033	274	1,130	1,058	-72	-6.4	2,437	2,091	-346	-14.2
Hungary	359	302	-57	934	1,010	76	8.1	575	708	133	23.1
Romania	94	125	31	619	849	230	37.2	525	724	199	37.9
Jordan	60	-102	-162	646	775	129	20.0	586	877	291	49.7
Morocco	97	98	1	499	734	235	47.1	402	636	234	58.2
Oman	273	305	32	471	539	68	14.4	198	234	36	18.2
Malta	-322	-311	11	355	532	177	49.9	677	843	166	24.5
Bahrain	-145	-271	-126	558	453	-105	-18.8	703	724	21	3.0
Nicaragua	48	71	23	354	448	94	26.6	306	377	71	23.2
Bulgaria	-62	-115	-53	318	381	63	19.8	380	496	116	30.5
Slovakia	28	126	98	245	356	111	45.3	217	230	13	6.0
Croatia	-53	-172	-119	231	315	84	36.4	284	487	203	71.5
Lithuania	63	85	22	178	269	91	51.1	115	184	69	60.0
Latvia	37	63	26	114	161	47	41.2	77	98	21	27.3
Slovenia	50	80	30	121	158	37	30.6	71	78	7	9.9
European Union - 27	71,184	71,153	-31	202,642	241,198	38,556	19.0	131,458	170,045	38,587	29.4

Services trade data on balance of payments basis.

U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2021-2022 (latest data available)
(Values in Millions of Dollars)

Country	FDI Stock		Percent Change	Leading FDI Categories Reported
	2021	2022	2021-22	
World	6,368,797	6,581,044	3.3	Nonbank Holding Companies, Manufacturing, Finance and Insurance
United Kingdom	1,036,753	1,077,519	3.9	Nonbank Holding Companies, Finance and Insurance, Information Services
Netherlands	851,236	944,604	11.0	Nonbank Holding Companies, Manufacturing, Finance and Insurance
Luxembourg	616,698	605,304	-1.8	Nonbank Holding Companies, Finance and Insurance, Manufacturing
Ireland	537,239	574,323	6.9	Nonbank Holding Companies, Manufacturing, Information Services
Canada	398,548	438,766	10.1	Manufacturing, Nonbank Holding Companies, Finance and Insurance
Singapore	284,630	309,441	8.7	Nonbank Holding Companies, Manufacturing, Wholesale Trade
Switzerland	220,435	212,235	-3.7	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Bermuda	236,363	206,389	-12.7	Nonbank Holding Companies, Finance and Insurance, Manufacturing
Germany	174,510	190,237	9.0	Nonbank Holding Companies, Manufacturing, Depository Institutions
Australia	176,552	173,653	-1.6	Nonbank Holding Companies, Mining, Manufacturing
Mexico	121,114	130,274	7.6	Manufacturing, Nonbank Holding Companies, Finance and Insurance
China	115,734	126,104	9.0	Manufacturing, Wholesale Trade, Finance and Insurance
France	107,702	112,017	4.0	Manufacturing, Nonbank Holding Companies, Finance and Insurance
Hong Kong	92,479	89,437	-3.3	Nonbank Holding Companies, Finance and Insurance, Wholesale Trade
Brazil	72,285	80,963	12.0	Manufacturing, Finance and Insurance, Nonbank Holding Companies
Japan	109,543	77,489	-29.3	Manufacturing, Finance and Insurance, Wholesale Trade
Belgium	64,543	61,456	-4.8	Manufacturing, Finance and Insurance, Nonbank Holding Companies
Sweden	58,394	60,280	3.2	Nonbank Holding Companies, Manufacturing, Finance and Insurance
India	44,793	51,553	15.1	Professional, Scientific, And Technical Services, Manufacturing, Information Services
Israel	43,475	42,521	-2.2	Manufacturing, Information Services, Professional, Scientific, And Technical Services
South Korea	41,081	36,655	-10.8	Manufacturing, Finance and Insurance, Wholesale Trade
Spain	37,549	35,625	-5.1	Manufacturing, Nonbank Holding Companies, Professional, Scientific, And Technical Services
Chile	27,473	29,160	6.1	Finance And Insurance, Mining, Manufacturing
Barbados	32,540	28,332	-12.9	Finance And Insurance, Manufacturing, Mining
Italy	26,604	26,107	-1.9	Manufacturing, Wholesale Trade, Finance and Insurance
United Arab Emirates	15,986	16,862	5.5	Mining, Manufacturing, Wholesale Trade
Taiwan	16,218	16,653	2.7	Manufacturing, Finance and Insurance, Wholesale Trade
Thailand	15,320	15,755	2.8	Manufacturing, Depository Institutions, Wholesale Trade
Hungary	14,043	14,354	2.2	
Denmark	14,508	14,016	-3.4	Manufacturing, Nonbank Holding Companies, Information Services
Norway	15,802	13,484	-14.7	Mining, Information Services, Manufacturing
Malaysia	12,591	13,165	4.6	Manufacturing, Wholesale Trade, Nonbank Holding Companies
Egypt	11,701	12,708	8.6	
Argentina	13,122	12,645	-3.6	Manufacturing, Information Services, Nonbank Holding Companies
Saudi Arabia	12,453	12,212	-1.9	Nonbank Holding Companies, Mining, Wholesale Trade
Poland	12,375	11,960	-3.4	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
Indonesia	12,803	11,913	-7.0	Mining, Manufacturing, Nonbank Holding Companies
New Zealand	11,861	10,630	-10.4	Nonbank Holding Companies, Finance and Insurance, Manufacturing
Cyprus	10,381	10,408	0.3	
Russia	12,268	9,637	-21.4	Manufacturing, Wholesale Trade, Professional, Scientific, And Technical Services
Curacao	7,822	9,236	18.1	
Peru	7,244	9,125	26.0	Mining, Wholesale Trade, Manufacturing
South Africa	6,607	7,394	11.9	Manufacturing, Finance and Insurance, Mining
Colombia	6,748	7,074	4.8	Mining, Manufacturing, Finance and Insurance
Mauritius	6,637	6,989	5.3	
Philippines	5,327	6,163	15.7	Manufacturing, Professional, Scientific, And Technical Services, Wholesale Trade
Malta	3,053	5,869	92.2	
Türkiye	6,223	5,761	-7.4	Manufacturing, Wholesale Trade, Finance and Insurance
Nigeria	6,004	5,621	-6.4	
Czech Republic	4,951	5,386	8.8	Manufacturing, Wholesale Trade, Information Services
Finland	4,046	4,429	9.5	Manufacturing, Professional, Scientific, and Technical Services, Wholesale Trade
Austria	4,058	4,051	-0.2	Manufacturing, Wholesale Trade, Nonbank Holding Companies
Qatar	3,487	3,917	12.3	
Portugal	1,945	3,830	96.9	

U.S. FDI Abroad (Stock) for Select Trade Partners in Rank Order of FDI, 2021-2022 (latest data available)
(Values in Millions of Dollars)

Country	FDI Stock		% Change	Leading FDI Categories Reported
	2021	2022	2021-22	
Panama	3,546	3,775	6.5	Nonbank Holding Companies, Wholesale Trade, Manufacturing
Marshall Islands	3,633	3,613	-0.6	
Vietnam	2,764	3,504	26.8	
Equatorial Guinea	2,817	3,280	16.4	
Venezuela	3,089	3,246	5.1	Manufacturing, Nonbank Holding Companies, Wholesale Trade
Romania	3,487	2,925	-16.1	
Costa Rica	2,525	2,906	15.1	Manufacturing, Wholesale Trade, Information Services
Dominican Republic	2,440	2,531	3.7	Manufacturing, Information Services, Wholesale Trade
Oman	2,104	2,269	7.8	
Greece	782	2,245	187.1	Manufacturing, Wholesale Trade, Professional, Scientific, and Technical Services
Tanzania	1,355	1,403	3.5	
El Salvador	1,399	1,390	-0.6	
Honduras	1,064	1,371	28.9	
Ghana	1,407	1,265	-10.1	
Ecuador	902	1,000	10.9	Finance and Insurance, Manufacturing, Wholesale Trade
Iraq	1,450	997	-31.2	
Algeria	2,237	963	-57.0	
Seychelles	897	902	0.6	
Azerbaijan	(D)	748	-	
Kuwait	621	685	10.3	
Slovakia	689	661	-4.1	
Bangladesh	671	575	-14.3	
Macao	961	552	-42.6	
Bulgaria	596	514	-13.8	
Liechtenstein	468	447	-4.5	
Serbia	412	384	-6.8	
Morocco	385	379	-1.6	
Libya	325	355	9.2	
Nicaragua	287	334	16.4	
Lebanon	281	304	8.2	
Bolivia	163	296	81.6	
Kenya	306	277	-9.5	
Angola	-35	255	-828.6	
Lithuania	229	242	5.7	
Zimbabwe	345	238	-31.0	
Croatia	225	234	4.0	
European Union - 27	2,550,271	2,691,329	141,058	Nonbank Holding Companies, Manufacturing, Finance and Insurance

(D) indicates that the data in the cell have been suppressed to avoid disclosure of data of individual companies.

UNITED STATES TRADE REPRESENTATIVE

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20508

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PRONÓSTICOS DE LAS IMPORTACIONES PROVENIENTES DE CHINA, TAIWÁN Y SINGAPUR, Y EL CONSOLIDADO DEL RESTOS DEL MUNDO¹

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1. INTRODUCCIÓN

Actualmente, existe la necesidad de nuevamente solicitar las medidas antidumping para la importación de vajillas de loza y porcelana provenientes de China (subpartidas arancelarias No. 6912.00.00.00 y No. 6911.10.00.00). Esta medida ha sido implementada desde 2004, pero se ha solicitado e implementado nuevamente en 2017, lo que ha traído como consecuencia una contracción significativa en dichas importaciones: en porcelana, pasó de poco más de 3 millones de kilos trimestrales en 2005 a alrededor de 300 mil kilos en 2023; por su parte, en loza, de un promedio aproximado de 1.5 millones de kilos trimestrales entre 2012 y 2015, pasó a cerca de un millón de kilos en 2023.

Al observar este cambio en el volumen de importaciones, el interés de la industria de vajillas de loza y porcelana es la renovación de los derechos antidumping con el fin de contraer o al menos mantener el volumen que se ha observado en los últimos años. Para esto, resulta necesario mostrarle de manera objetiva y

rigurosa los efectos de las medidas antidumping a la autoridad correspondiente.

Por tanto, en el siguiente reporte se desarrolla un ejercicio prospectivo con el cual no sólo se haga el pronóstico teniendo en cuenta las actuales condiciones del mercado, sino en el que también se construya con técnicas estadísticas escenarios contrafactuales que simulen un universo sin medida para las importaciones proveniente de China, Taiwán y Singapur, y el agregado del resto del mundo. Esto con el fin de tener insumos para un análisis comparativo que evidencie el efecto que las medidas antidumping tuvieron sobre las importaciones de vajillas de loza y porcelana.

En consecuencia, el presente reporte está compuesto por 4 secciones, incluyendo esta introducción. En la segunda sección se reseña la metodología utilizada, tanto para los pronósticos como para los escenarios contrafactuales, y finaliza con algunos hechos estilizados. En la tercera sección se exponen los resultados de los modelos estimados, los estadísticos de prueba que se utilizaron para su validación estadística y los pronósticos obtenidos. Por último, el

¹ Ejercicio prospectivo realizado para contar con un referente cuantitativo del posible efecto de las medidas antidumping sobre las importaciones de vajillas, tanto de porcelana y loza, proveniente de China, Taiwán y Singapur, y el consolidado del resto del mundo. Este ejercicio es solicitado y realizado para la firma Araujo Ibarra Consultores Internacionales SAS.

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documento finaliza con las respectivas conclusiones del ejercicio.

2. METODOLOGÍA

En primer lugar, se puede concordar que las series de importaciones de vajillas de loza y de porcelana provenientes de China, Taiwán-Singapur y el agregado del resto del mundo (y_t), son susceptibles de seguir procesos autorregresivos o de media móvil, haciendo posible identificar y estimar las series con modelos univariados de series de tiempo. Por tanto, dichas series pueden seguir la siguiente forma funcional:

$$y_t = \alpha_0 + \alpha_1 t + \Phi'Y + \Theta'E + \xi_t$$

En donde α_0 es una constante o intercepto (condiciones iniciales), $\alpha_1 t$ es un componente asociado a la tendencia, $\Phi'Y$ son los componentes autorregresivos con su respectivo vector de coeficientes asociados a cada rezago, $\Theta'E$ son los componentes de media móvil asociados a su vector de coeficientes y ξ_t es una perturbación estocástica.

Para determinar si la serie tiene componentes autorregresivos, de media móvil y la forma funcional para la estimación, se utiliza la metodología Box y Jenkins (1970), la cual ofrece una ruta que permite la identificación, estimación, validación y obtención de pronósticos utilizando modelos de series de tiempo univariadas.

El procedimiento se desarrolla bajo las siguientes fases (Box y Jenkins, 1970; Hamilton, 1994; Rosales *et al.*, 2008):

1. *La transformación e identificación del proceso:* se debe constatar que el volumen de las importaciones siguen un proceso $I(0)$ o estacionario. Si no es así, se deben transformar, ya sea con logaritmos o diferencias entre sus rezagos. De otra parte, se debe observar qué procesos explican las series: autorregresivos, de media móvil o una combinación de los dos. También se debe identificar si resulta necesario controlar los efectos asociados a la estacionalidad, datos atípicos, cambios estructurales, etc.
2. *La estimación del modelo:* se suele utilizar la técnica de Mínimos Cuadrados Ordinarios para estimar los coeficientes asociados a los procesos que sigue las series (vector Φ y/o vector Θ , sea el caso). También se pueden usar técnica de máxima verosimilitud.
3. *La validación estadística:* se debe constatar si los coeficientes estimados de los modelos son significativos, individual y globalmente, junto con estabilidad en aquellos asociados a los procesos autorregresivos. Esto es que los coeficientes asociados a este proceso (si los tienen) sigan $|\phi_1 + \phi_2 + \dots + \phi_m| < 1$ y los asociados al SARIMA (si los tienen) también sean también inferiores a la unidad. De la misma manera, se debe tener evidencia estadística que la perturbación estocástica del modelo sigue un proceso ruido blanco y que tiene una periodicidad estable. Esto se hace con una serie de pruebas estadísticas que se describirán más adelante.

Una vez obtenido las formas funcionales, sus estimaciones y haber realizado el proceso de validación estadística, se procede a obtener las predicciones y pronósticos. En este caso se emplean técnicas dinámicas para la obtención de

estos resultados a partir del último dato registrado, ya que se requieren pronósticos para la ventana 2024 – 2026.

Adicional a esto, en el ejercicio se estiman varios modelos para cada serie los cuales se comparan según la bondad de ajuste y la precisión de sus predicciones. Para determinar el modelo de mayor precisión y ajuste, se utilizan los criterios de información Akaike y Schwarz, seleccionando aquel que presente menor magnitud en estas medidas.

2.1. ESCENARIO CONTRAFACTUAL

Como se explicó en la sección anterior, la idea de establecer escenarios contrafactuales para las importaciones de China, Taiwán y Singapur y el agregado del resto del mundo es contar con un referente para el análisis comparativo con el cual se pueda observar el efecto de las medidas antidumping implementadas. Como actualmente no existen datos observados de estas importaciones que ofrezcan información sobre la dinámica y tendencia previa a la implementación de dichas medidas, se requiere de una simulación utilizando métodos estadísticos para mantener el rigor técnico del ejercicio.

Para establecer la ventana de análisis que necesita la construcción de estas simulaciones, se utilizan como valores observados aquellos que se asimilen o que teóricamente tengan una dinámica parecida a lo que se observaba previo a la implementación de las medidas antidumping. Una vez establecido un periodo con estas características, se estima el respectivo modelo y se hace el pronóstico a partir de ahí, para así simular la existencia de un universo en donde no se han implementado tales medidas.

Estos pronósticos también se estiman utilizando la metodología Box y Jenkins (1970), pero concordando que la ventana de pronóstico no es de 2024 a 2026 como con las series observadas, sino desde el periodo que discrecionalmente se haya acordado. En el Anexo No. 1 y en la subsección 3.1 del presente documento se exponen los periodos elegidos.

2.2. DATOS

Para realizar el ejercicio se utilizaron las series de volumen de importación en kilos correspondiente a las subpartidas arancelarias No. 6912.00.00.00 y No. 6911.10.00.00, provenientes de China, Taiwán y Singapur, y el agregado del resto del mundo.

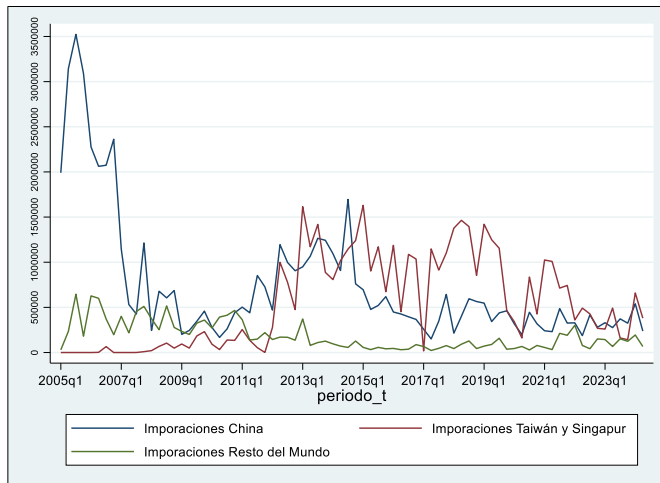
En el caso de las importaciones de vajillas de porcelana provenientes de China, Taiwán y Singapur, y el agregado del resto del mundo, se utilizaron datos trimestrales para poder capturar la dinámica natural de la serie, contar con un acervo de datos suficientes para estimar un modelo con estimadores robustos y además, controlar la estacionalidad, eliminar la censura de datos y mitigar la varianza que se presenta en la información de frecuencia mensual.

En la Gráfica No. 1 se observa las tres series de importaciones de porcelana, desde 2005 hasta el segundo trimestre de 2024, siendo esta la ventana temporal general para hacer las estimaciones. En la gráfica se puede apreciar cómo las importaciones provenientes de China se contraen sustancialmente desde 2005, pasando de más de 3 millones de kilos trimestrales, a alrededor de 300.000 18 años después. También se presenta una dinámica particular en las importaciones de Taiwán y Singapur entre 2014 y finalizando 2022, en donde conforme cae las

importaciones provenientes de China, las de estos dos países incrementan.

Gráfica No. 1

*Importaciones Trimestrales Vajillas Porcelana
(Volumen: kilos netos)*



Fuente: Datos DIAN.

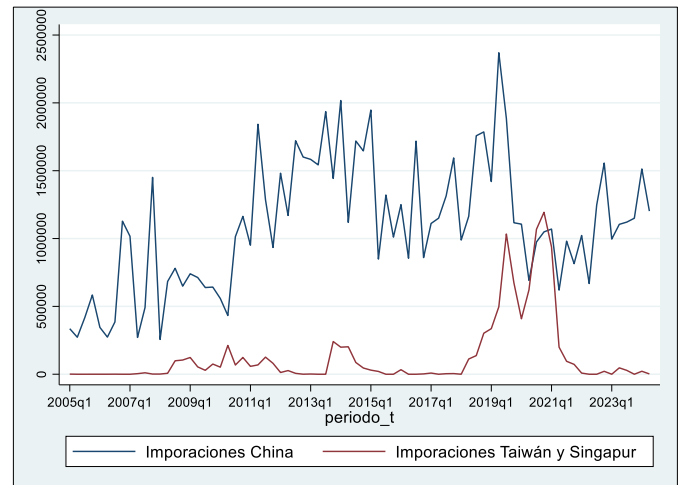
De otra parte, en la Gráfica No. 2a se expone la serie de importaciones de vajillas de loza proveniente de dos de los tres orígenes aquí estudiados: China y el agregado de Taiwán y Singapur. En primer lugar, es necesario comentar que la frecuencia usada para estas series fue trimestral, ya que en la serie mensual se presentaba censura en los datos, una extrema volatilidad y la presencia de valores atípicos asunto que dificultaría las estimaciones por mínimos cuadrados ordinarios.

A diferencia de lo que se observa para las importaciones de porcelana, se presentó un incremento en las importaciones de China iniciando la década pasada que perduró hasta 2019. De ahí en adelante, el nivel de importaciones y su dinámica se contrae. De otra parte, se observa que las importaciones provenientes de Taiwán y Singapur aumentan considerablemente a partir de la contracción de

las que provienen de China. No obstante, estas caen estrepitosamente a lo largo de 2021, situándose en niveles inferiores a 2019.

Gráfica No. 2a

*Importaciones Trimestrales Vajillas Loza
China y Taiwán y Singapur
(Volumen: kilos netos)*

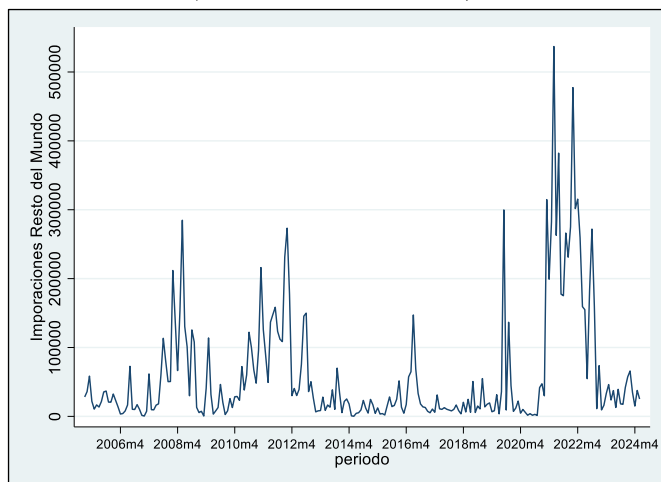


Fuente: Datos DIAN.

Con respecto a las importaciones de loza del agregado del resto del mundo, se decidió utilizar las series en frecuencia mensual, ya que no sólo no presentaba censura en los datos, sino que se buscó contar con la mayor cantidad de información posible para captar con precisión su dinámica. Así pues, la Gráfica No. 2b muestra las importaciones de este último origen. Se observa que, a mediados de la década pasada, las importaciones mensuales moderaron su tendencia y dinámica, disminuyendo considerablemente su magnitud. Sin embargo, finalizando 2020, el nivel de importaciones aumenta considerablemente, para volver a caer durante 2023.

Gráfica No. 2b

*Importaciones Mensuales Vajillas Loza
Resto del Mundo
(Volumen: kilos netos)*



Fuente: Datos DIAN.

3. RESULTADOS

Ahora bien, una vez reseñado la metodología y descrito los datos que se van a utilizar en el ejercicio, se procede a mostrar las estimaciones y pronósticos. Siguiendo la ruta aquí planteada resulta necesario mostrar, en primer lugar, tanto el proceso como los resultados de la identificación, lo cual establece cuáles son las formas funcionales y los componentes que tienen las series de importaciones una vez realizadas las estimaciones.

En segundo lugar, en esta sección se presenta los modelos estimados y su validación: la magnitud y dirección de los coeficientes, si hay estabilidad en los componentes autorregresivos, y si la perturbación estocástica es ruido blanco, se distribuye como una normal, etc. Por último, se presenta los pronósticos y el estado contrafactual para observar si se presenta una diferencia evidente entre un escenario simulado sin medida en comparación a lo observado.

3.1. IDENTIFICACIÓN

Para comenzar, se debe contar con series de tiempo estacionarias, es decir, que se distribuyan como una $I(0)$, con media y varianza constante, aspectos que requieren los modelos univariados para ser estimados (Montenegro, 2001; Hamilton, 1994; entre otros). Así pues, se utiliza la prueba de Dickey-Fuller, cuya hipótesis nula es que la serie se distribuye como una $I(1)$, integrada y no estacionaria.

En la Tabla No. 1, se presenta evidencia estadística para determinar que las series utilizadas en la estimación del ejercicio son estacionarias, ya que en todos los casos se rechaza la hipótesis nula de raíz unitaria $I(1)$ al 1% de significancia.

Tabla No. 1

Test Dickey-Fuller - Series Observadas

Ho: La serie es integrada de orden 1				
Series Porcelana	Transformación	Dickey-Fuller	Dickey-Fuller Aumentado	
			Con Tendencia	Rezagos (*)
China	Primeras Diferencias	Rechaza al 1%	Rechaza al 1%	4
Taiwán y Singapur	Primeras Diferencias	Rechaza al 1%	Rechaza al 1%	10
Resto del Mundo	Logaritmo Natural	Rechaza al 1%	Rechaza al 1%	1
<i>Series Loza</i>				
China	Logaritmo Natural	Rechaza al 1%	Rechaza al 1%	1
Taiwán y Singapur	Primeras Diferencias	Rechaza al 1%	Rechaza al 1%	6
Resto del Mundo (Mensual)	Logaritmo Natural	Rechaza al 1%	Rechaza al 1%	10

(*) Último Rezago incluido en donde se rechaza la hipótesis nula (así sea al 10%)

Fuente: Datos DIAN. Cálculos propios.

De otra parte, con respecto a los escenarios contrafactuales, en la Tabla No. 2 se exponen los resultados de la prueba de *Dickey – Fuller* para evaluar la hipótesis nula de raíz unitaria en las ventanas temporales que se utilizaron para simular los escenarios contrafactuales. Como se explicó en la sección de metodología, los escenarios contrafactuales se construyen a partir de segmentos de la serie cuya dinámica y tendencia se asemeja teóricamente a un mundo sin medidas antidumping. Por tanto, resulta

necesario utilizar series estacionarias y por ello, se debe evaluar si se rechaza la hipótesis nula de raíz unitaria. Como se observa en la tabla, en 5 de los 6 casos se rechaza dicha hipótesis nula, contando así con series estacionarias para los contrafactuales.

Tabla No. 2
Test Dickey-Fuller - Contrafactuales

Ho: La serie es integrada de orden 1				
Contrafactual Porcelana	Transformación	Dickey-Fuller	Dickey-Fuller Aumentado	
			Con Tendencia	Rezagos (*)
China	Primeras Diferencias	Rechaza al 1%	Rechaza al 1%	3
Taiwán y Singapur	Sin Transformar	Rechaza al 1%	Rechaza al 1%	8
Resto del Mundo	Sin Transformar	Rechaza al 1%	Rechaza al 1%	0
<i>Contrafactual Loza</i>				
China	Sin Transformar	Rechaza al 1%	Rechaza al 1%	0
Taiwán y Singapur	Sin Transformar	No Rechaza	No Rechaza	0
Resto del Mundo (Mensual)	Logaritmo Natural	Rechaza al 1%	Rechaza al 1%	9

(*) Último Rezago incluido en donde se rechaza la hipótesis nula (así sea al 10%)

Fuente: Datos DIAN. Cálculos propios.

Ahora bien, otro momento de la identificación es determinar si las series cuentan con procesos autorregresivos y/o de media móvil para estimar los modelos. Para esto, se estiman las funciones de autocorrelación y autocorrelación parcial, tanto para las series observadas como para los segmentos de serie utilizados para simular los escenarios contrafactuales (ver Anexo No. 1).

Por tanto, después de observar estos resultados y utilizando los criterios de información para identificar cuáles modelos tienen mejor ajuste, se obtuvieron las siguientes formas funcionales para los modelos estimados con series observadas:

Tabla No. 3
Formas Funcionales de las Series Observadas

IMPORTACIONES PORCELANA	
China	
$Y_t = \varphi_1 Y_{t-1} + \varphi_2 Y_{t-2} + \varphi_3 Y_{t-3} + \varepsilon_t + \theta_2 \varepsilon_{t-2}$	
Taiwán y Singapur	
$(1 - \varphi_1 L - \varphi_2 L^2)(1 - \Phi_1 L^4 - \Phi_2 L^{2(4)})Y_t = (1 + \theta_1 L)\varepsilon_t$	
Resto de Países	
$Y_t = \alpha_0 + \varphi_1 Y_{t-1} + \varphi_3 Y_{t-3} + \varepsilon_t$	
IMPORTACIONES LOZA	
China	
$Y_t = \alpha_0 + \varphi_1 Y_{t-1} + \varphi_3 Y_{t-3} + \varphi_3 Y_{t-4} + \varepsilon_t$	
Taiwán y Singapur	
$(1 - \varphi_2 L^2 - \varphi_3 L^3)(1 + \Theta_1 L^4)Y_t - A'C = \varepsilon_t$	
Resto de Países	
$(1 - \varphi_1 L)(1 - \Phi_1 L^4)Y_t - A'C - \delta D_t = (1 + \theta_1 L)\varepsilon_t$	

Fuente: Elaboración propia

Como se comentó, en casi todos los casos se utilizaron series trimestrales que abordan la ventana temporal completa: del primer trimestre de 2005 al segundo trimestre de 2024. En el único modelo que no se usó información trimestral, fue el de la serie de importaciones de vajillas de loza provenientes del resto del mundo. En ese caso, se usaron series mensuales.

Comenzando por las **vajillas de porcelana**, la serie de importaciones de **China** se transformó en primeras diferencias y se estimó un modelo **ARIMA (3,1,2)**, con tres componentes autorregresivos y uno de media móvil. Por su parte, en el caso de **Taiwán y Singapur**, por la presencia de eventos estacionales a lo largo de la serie, se decidió incluirle al modelo univariado un componente que controle tal estacionalidad y

también se le hizo una transformación utilizando primeras diferencias. A los dos componentes autorregresivos y al de media móvil se le agregó un efecto estacional en los componentes autorregresivos, de la forma **SARIMA (2,1,1) (2,0,0)₄**.

Por último, la forma funcional estimada para las que provienen del agregado del **resto del mundo** fue una relativamente parsimoniosa, en la que se contemplan **dos componentes autorregresivos, de orden 1 y de orden 3**. La transformación que se aplicó en la serie fue con logaritmo natural para controlar la variabilidad en la serie.

En cuanto a las importaciones de vajillas de loza, la serie de **China** se transformó con logaritmo natural y se utilizó una forma funcional relativamente parsimoniosa con tres componentes autorregresivos **AR (1,3,4)** y su respectiva constante. Frente a la serie de importaciones provenientes de **Taiwán y Singapur**, se transformó con primeras diferencias, se estimó un modelo autorregresivo con dos rezagos de orden 2 y 3, y se incluyó un efecto estacional en el componente autorregresivo de orden 1, de la forma **SARIMA (2/3,1,0)(1,0,0)₄**. Adicionalmente, se incluyeron **tres controles** para mitigar el efecto de datos atípicos presentes en la serie.

Para culminar, en el caso de las importaciones de vajillas mensuales de loza del agregado del **resto del mundo**, se transformó la serie utilizando logaritmo natural y se construyó un modelo con varios componentes: en primer lugar, se incluyeron procesos autorregresivos y de media móvil de orden 1, junto con efecto estacional en el proceso autorregresivo, de la forma **SARIMA (1,0,1) (1,0,0)₁₂**. En segundo

lugar, se le incluyó una **dicotómica de cambio estructural** en la cual se buscó controlar el efecto del periodo de pandemia, acontecido a partir de marzo de 2020. Como se observa en la Gráfica No. 1, la Gráfica No. 2a y la Gráfica No. 2b, solo en la serie de importaciones de loza proveniente del agregado del resto del mundo se observa ese cambio justo en el periodo de pandemia. También se incluyó un **vector de controles** con los cuales se mitigó el efecto de valores atípicos en la serie.

Utilizando los resultados de las funciones de autocorrelación parcial y autocorrelación del Anexo No. 1, se hizo el mismo ejercicio para identificar las formas funcionales para estimar los escenarios contrafactuales. Los resultados de este proceso de identificación se encuentran en la siguiente tabla:

Tabla No. 4
Formas Funcionales de las Simulaciones

CONTRAFACTUALES PORCELANA	
China	
$(1 - \varphi_3 L^3)Y_t = (1 + \theta_3 L^3)(1 + \Phi_1 L^4)\varepsilon_t$	
Taiwán y Singapur	
$Y_t = \varphi_4 Y_{t-4} + \varepsilon_t$	
Resto de Países	
$(1 - \varphi_1 L)(1 - \Phi_1 L^4)Y_t = (1 + \theta_1 L)\varepsilon_t$	
CONTRAFACTUALES LOZA	
China	
$(1 - \varphi_1 L)Y_t = (1 + \Theta_1 L^4)\varepsilon_t$	
Taiwán y Singapur	
$Y_t = \varphi_1 Y_{t-1} + \varphi_3 Y_{t-3} + \varepsilon_t + \theta_2 \varepsilon_{t-2}$	
Resto de Países	
$Y_t = \alpha_0 + \varphi_2 Y_{t-2} + \varphi_3 Y_{t-3} + \varepsilon_t + \theta_1 \varepsilon_{t-1}$	

Fuente: Elaboración propia

Es importante tener en cuenta que, para los escenarios contrafactuales, las formas funcionales se construyeron utilizando un segmento de la serie de importaciones el cual se observó un comportamiento semejante al que teóricamente debería corresponder al de un universo sin medidas antidumping.

Por ejemplo, para el escenario contrafactual de **porcelana para China**, se tomó el segmento temporal **2005T1 – 2019T2**, cuyo supuesto recaía en que las importaciones son sustancialmente superiores al mundo con medida. En este caso se contempló un proceso autorregresivo de orden 3 y una media móvil de también orden 3, controlando el efecto estacional en las medias móviles, de la forma **SARIMA (3,0,3)(0,0,1)₄**. La serie no tuvo ninguna transformación y se utilizó en niveles ya que, como se observa en la Tabla No. 2, se obtuvo evidencia estadística de su estacionariedad.

Con respecto al contrafactual de las importaciones de **porcelana provenientes de Taiwán y Singapur**, se utilizó el segmento temporal **2013T1 – 2022T4**, ya que presenta las mayores magnitudes de la serie pero en una tendencia constante, lo cual daría el espacio para que las importaciones de china crecieran sin medidas antidumping. El modelo utilizado fue relativamente parsimonioso compuesto por **un proceso autorregresivo de orden 4**. No se hace ninguna transformación a la serie y en el segmento utilizado, la Tabla No. 2 expone evidencia estadística de su estacionariedad.

Con respecto al contrafactual para las importaciones de **porcelana provenientes del resto de países**, se utilizó el segmento **2013T1 – 2019T4** con el cual se busca proyectar unas importaciones con una magnitud moderada,

constantes y sin mayor variabilidad. La forma funcional identificada para este segmento fue un proceso autorregresivo con media móvil de orden 1, controlando el efecto estacional en el proceso autorregresivo, de la forma **SARIMA (1,0,1)(1,0,0)₄**. No se le hizo transformación a la serie, ya que en este segmento hubo evidencia estadística de su estacionariedad.

Pasando a las formas funcionales que simularon los **contrafactuales de loza**, para el caso de **China** se utilizó el segmento **2013T1 – 2019T1** en el cual se observa las mayores magnitudes de la serie con una tendencia creciente. Esto arrojaría unos pronósticos en la misma línea simulando un escenario sin medida que no contendría a las importaciones chinas. La forma funcional identificada es un proceso autorregresivo de orden 1 controlando el efecto estacional en media móvil de orden 1, de la forma **SARIMA (1,0,0)(0,0,1)₄**. Tampoco se emplearon transformaciones y en la Tabla No. 2 se observa evidencia que la serie en niveles es estacionaria.

En cuanto a la simulación del escenario contractual de las importaciones provenientes de **Taiwán y Singapur**, se utilizó el segmento **2015T1 – 2019T1**, en donde se observa una magnitud sustancialmente inferior que el final de la serie, cuyo pronóstico fuera decreciente y que diera pie al incremento sustancial de las importaciones chinas en un universo sin medidas antidumping. La forma funcional identificada fueron dos procesos autorregresivos de orden 1 y orden 3, y un proceso de media móvil de orden 2 de la forma **ARMA (3,2)**. No se aplicó ninguna transformación a la serie y de su forma en niveles, no se obtuvo evidencia estadística de su estacionariedad. No obstante, al solo tratarse de un escenario simulado, se decidió relajar la

condición de estacionalidad en la serie para darle prelación a un pronóstico que recreara el universo sin medida bajo el supuesto planteado con el fin de observar el incremento de las importaciones chinas.

Para culminar, se encuentra la simulación del escenario contrafactual, pero para las importaciones de vajillas de loza provenientes del **resto del mundo**. En este caso se utilizaron series mensuales de **toda la ventana temporal** y se hizo una transformación a logaritmos naturales, asunto que ofreció evidencia estadística de su estacionariedad. El supuesto es mantener una senda natural de leve crecimiento que acompañe el incremento de las importaciones chinas. La forma funcional identificada fue relativamente parsimoniosa, con dos procesos autorregresivos de orden 2 y 3, y un proceso de media móvil de orden 1, de la forma **ARMA (3,1)**.

3.2. MODELOS Y VALIDACIÓN

Una vez identificadas las formas funcionales para los procesos generadores de datos, se procedió a hacer las estimaciones.

Adicionalmente, se observaron los resultados en materia de significancia individual y global, estabilidad y se aplicaron las pruebas necesarias para la validación de los modelos, tanto para las series observadas, como para los que simularon los escenarios contrafactuales.

3.2.1. MODELOS PARA LAS SERIES DE IMPORTACIONES OBSERVADAS

Los resultados de los modelos para las series de importaciones observadas de vajillas de porcelana, con los que se estiman los pronósticos 2024 – 2026, se encuentran en la siguiente tabla:

Tabla No. 5
Estimaciones Modelos Series Observadas
Vajillas de Porcelana

<i>Importaciones China</i>		<i>Importaciones Taiwán y Singapur</i>		<i>Importaciones Resto del Mundo</i>	
Procesos	Coefficientes	Procesos	Coefficientes	Procesos	Coefficientes
AR (1)	-0.3037 (***) (0.0863)	AR (1)	0.3431 (**) (0.1480)	Constante	11.7212 (***) (0.3027)
AR (2)	-0.8782 (***) (0.071)	AR (2)	0.3394 (**) (0.1605)	AR (1)	0.4 (***) (0.0901)
AR (3)	-0.3879 (***) (0.1064)	MA (1)	-0.9616 (***) (0.1145)	AR (3)	0.4211 (***) (0.1015)
MA (2)	0.7139 (**) (0.1325)	SAR (1)	-0.6909 (***) (0.1077)		
		SAR (2)	-0.4166 (***) (0.0915)		
T	77	T	73	T	78
σ	320397.6 (***)	σ	353239.4 (***)	σ	0.597 (***)
Test Wald	0.000	Test Wald	0.000	Test Wald	0.000
Test Portmanteau	0.7061	Test Portmanteau	0.6828	Test Portmanteau	0.9853
Test Barlett	0.6434	Test Barlett	0.9941	Test Barlett	0.9889
Test Jarque Bera	0.0239	Test Jarque Bera	0.0395	Test Jarque Bera	0.5333
Akaike CI	2181.9	Akaike CI	2088.6	Akaike CI	150.03
Schwarz CI	2193.7	Schwarz CI	2102.3	Schwarz CI	159.46

(***) Significativo al 1%; (**) Significativo al 5%; (*) Significativo al 10%
Nota: Para todos los Tests el número asociado es el p-valor

Fuente: Datos DIAN. Cálculos Propios

Comenzando para el modelo de la serie de importaciones proveniente de **China**, se puede observar que los coeficientes asociados a los cuatro procesos del modelo son significativos. Se observa que el modelo presenta inestabilidad, ya que $|\phi_1 + \phi_2 + \phi_3|$ supera la unidad. Esto hace que los pronósticos necesariamente tiendan a contraerse fuertemente dado la dirección que presentan los signos de los coeficientes. Frente a la significancia global, se observa que el modelo también significativo ya que su p-valor asociado es inferior a 0.05.

Con respecto a la perturbación estocástica, se observa que existe evidencia estadística para

determinar que es ruido blanco, ya que no se rechaza al 10% de significancia la hipótesis nula de ruido blanco en la prueba de Portmanteau (no autocorrelación de los errores, varianza y media constante). Lo mismo ocurre con la hipótesis nula de la prueba de Barlett la cual establece que la perturbación es ruido blanco, homocedasticidad, entre otras propiedades de un proceso de esta naturaleza. En el Anexo No. 2, se encuentra el periodograma en el que se ve que el proceso es estable conforme al aumento de frecuencias. Por último, se observa el contraste Jarque Bera, en donde la hipótesis nula de normalidad no se rechaza al 1% de significancia.

Por su lado, en el modelo de la serie de importaciones proveniente de **Taiwán y Singapur**, se puede observar que todos los procesos, incluyendo los que controlan los efectos estacionales, son significativos, tres de ellos al 1% y dos al 5%. En cuanto a la estabilidad del modelo, se observa que $|\phi_1 + \phi_2|$ es inferior a la unidad al igual que los coeficientes asociados a los procesos estacionales, por lo que se concluye que el modelo sigue el criterio de estabilidad. De otra parte, el modelo es significativo globalmente, toda vez que el p-valor asociado al Test de Wald es inferior a 0.05.

Continuando con la validación estadística del modelo, se observa que existe evidencia para determinar que la perturbación estocástica es ruido blanco, ya que no se rechaza esta hipótesis nula en la prueba de Portmanteau y la hipótesis nula de la prueba de Barlett. El periodograma del Anexo No. 2 para la serie observada, muestra que el proceso es estable ya que no se sale de las bandas de confianza y sigue una senda constante. Finalmente, se obtuvo evidencia estadística para no rechazar la hipótesis nula de normalidad al 1% de significancia.

Los procesos autorregresivos del modelo estimado para las importaciones del **resto de países** resultaron estables, ya que $|\phi_1 + \phi_3|$ es inferior a la unidad. Tanto la constante como los coeficientes asociados resultaron significativos estadísticamente, incluso al 1% de significancia. Con respecto a lo global, también se rechaza la hipótesis nula de no significancia al 1%.

Frente a la perturbación estocástica, se obtuvo evidencia estadística para no rechazar las hipótesis nulas de la prueba de Portmanteau y la prueba de Barlett, con lo que se puede concluir que la perturbación es ruido blanco: media y varianza constante, idénticamente distribuido, homocedástico y no autocorrelacionado. Lo mismo ocurre con la prueba de Jarque Bera, ya que tampoco se rechaza la hipótesis nula de normalidad. En los tres casos, las hipótesis nulas no se rechazan al 10% de significancia.

Para darle fin a esta primera tanda de modelos, al observar el periodograma para series observadas del Anexo No. 2, se puede constatar que el proceso es estable y se mantiene dentro de las bandas de confianza conforme aumentan las frecuencias. Algo importante de destacar es de los tres modelos presentados, este es el que menor magnitud presenta en los criterios de información, aduciendo con esto que es el que mejor ajuste y precisión tiene.

Pasando a las estimaciones de los modelos de importaciones de **vajillas de loza**, con los que se estiman los pronósticos 2024 – 2026, los resultados se encuentran en la siguiente tabla:

Tabla No. 6
Estimaciones Modelos Series Observadas
Vajillas de Loza

<i>Importaciones China</i>		<i>Importaciones Taiwán y Singapur</i>		<i>Importaciones Resto del Mundo</i>	
Procesos	Coefficientes	Procesos	Coefficientes	Procesos	Coefficientes
Constante	13,6634 (***) (0,2671)	AR (2)	-0,1483 (***) (0,0671)	Cambio Est.	2,4877 (***) (0,7384)
AR (1)	0,2774 (***) (0,0838)	AR (3)	-0,5184 (***) (0,0777)	AR (1)	0,5837 (***) (0,0527)
AR (3)	0,3588 (***) (0,0842)	SAR (1)	-0,3625 (***) (0,0876)	SAR (1)	-0,635 (***) (0,0623)
AR (4)	0,2458 (**) (0,1027)			SAR (2)	-0,338 (0,0606)
T	78	T	77	M	221
σ	0,367 (***)	σ	77964 (***)	σ	1,1344 (***)
Test Wald	0,000	Test Wald	0,000	Test Wald	0,000
Test Portmanteau	0,883	Test Portmanteau	0,5684	Test Portmanteau	0,331
Test Barlett	0,9972	Test Barlett	0,4562	Test Barlett	0,7152
Test Jarque Bera	0,348	Test Jarque Bera	0,013	Test Jarque Bera	0,0554
Akaike CI	76,55	Akaike CI	1968,6	Akaike CI	705,3
Schwarz CI	88,33	Schwarz CI	1985,1	Schwarz CI	732,5

(***) Significativo al 1%; (**) Significativo al 5%; (*) Significativo al 10%

Nota: Para todos los Tests el número asociado es el *p-valor*

Fuente: Datos DIAN. Cálculos Propios

En primer lugar, se puede apreciar que los coeficientes asociados a los tres procesos del modelo y la constante estimada para **China** son significativos y además estables, ya que $|\phi_1 + \phi_3 + \phi_4|$ es inferior a la unidad. En cuanto a la significancia global, se observa que el modelo es también significativo ya que su p-valor asociado es inferior a 0.05.

Con respecto a la perturbación estocástica, se observa que hay evidencia para concluir que es ruido blanco, ya que no se rechaza la hipótesis nula en la prueba de Portmanteau y la prueba de Barlett al 10% de significancia. Por su parte, examinando el Anexo No. 2, el periodograma para la serie observada ofrece evidencia que el proceso es estable conforme al aumento de frecuencias. Frente a la hipótesis nula de normalidad, el p-valor asociado al estadístico de prueba del contraste Jarque Bera es 0,34, lo cual es superior a 0.1, concluyendo que no hay evidencia estadística para rechazarla. Finalmente, es importante mirar la magnitud de los criterios de información, la cual es sustancialmente pequeña en comparación a los

otros modelos. Esto es evidencia que el modelo para China tiene buen ajuste y precisión.

Frente al modelo de las importaciones proveniente de **Taiwán y Singapur**, se puede observar que todos los procesos, incluyendo los que controlan los efectos estacionales, son significativos incluso al 1%. En cuanto a la estabilidad del modelo, se observa que $|\phi_2 + \phi_3|$ y el coeficiente asociado al efecto estacional es inferior a la unidad, argumentando con esto con el modelo es estable. Por su lado, el modelo es significativo globalmente, toda vez que el p-valor asociado al Test de Wald es inferior a 0.05.

De otra parte, existe evidencia para determinar que la perturbación estocástica es ruido blanco, ya que no se rechaza esta hipótesis nula en la prueba de Portmanteau y en la Prueba de Barlett. El periodograma del Anexo No. 2 para la serie observada, muestra que el proceso es estable ya que no se sale de las bandas de confianza. Para culminar, se obtuvo evidencia estadística para no rechazar la hipótesis nula de normalidad al 1% de significancia.

Para culminar con las estimaciones de los modelos con las series observadas, en el caso del modelo estimado para el agregado del **resto de países**, los coeficientes asociados a los componentes autorregresivos son inferiores a la unidad, aduciendo con esto que estos procesos son estables. De otra parte, la constante y los coeficientes asociados al componente autorregresivo y al control estacional de orden 1 resultaron significativos al 1%, al igual que la significancia global. No obstante, el control al efecto estacional de orden 2 resultó no significativo.

Frente a la validación estadística, se obtuvo evidencia que la perturbación es ruido blanco, ya que no se rechaza la hipótesis nula de la prueba de Portmanteau y de la prueba de Barlett al 10% de significancia. Examinando el periodograma para las series observadas del Anexo No. 2, se observa que con el aumento de frecuencias se conserva una tendencia estable que no sale de las bandas de confianza. Por último, la perturbación estocástica se distribuye como una normal ya que no se rechaza la hipótesis nula de normalidad al 5% de significancia.

3.2.2. ESCENARIOS CONTRAFACTUALES

Terminando con la revisión de las estimaciones de los modelos univariados realizados con las series observadas, resulta necesario inspeccionar los resultados de los modelos que simulan los escenarios contrafactuales, aquellos que arrojan pronósticos que recrean artificialmente un universo sin medidas antidumping. En la siguiente tabla se exponen los resultados para vajillas de porcelana:

Tabla No. 7
Estimaciones Escenarios Contrafactuales
Vajillas de Porcelana

Contrafactual China		Contrafactual Taiwán y Singapur		Contrafactual Resto del Mundo	
Procesos	Coefficientes	Procesos	Coefficientes	Procesos	Coefficientes
AR (3)	0,9201 (***) (0,2741)	AR(4)	0,8371 (***) (0,091)	AR (1)	0,882 (*) (0,4515)
MA (3)	-0,8475 (**) (0,3687)			MA (1)	-0,7038 (0,5391)
SMA (1)	-0,6962 (***) (0,1396)			SAR (1)	-0,5703 (***) (0,1223)
T	52	T	40	T	28
σ	392986,6 (***)	σ	542963,5 (***)	σ	68148,7 (***)
Test Wald	0,000	Test Wald	0,000	Test Wald	0,000
Test Portmanteau	0,2825	Test Portmanteau	0,2598	Test Portmanteau	0,6579
Test Barlett	0,2747	Test Barlett	0,0114	Test Barlett	0,5261
Test Jarque Bera	0,0553	Test Jarque Bera	0,5	Test Jarque Bera	0,0514
Akaike CI	1498	Akaike CI	1178,6	Akaike CI	712,25
Schwarz CI	1505,8	Schwarz CI	1182	Schwarz CI	717,58

(***) Significativo al 1%; (**) Significativo al 5%; (*) Significativo al 10%

Nota: Para todos los Tests el número asociado es el p-valor

Fuente: Datos DIAN. Cálculos Propios

Como se puede apreciar en la tabla anterior, los tres modelos son válidos estadísticamente, ya que en los tres casos no hay evidencia estadística para rechazar la hipótesis que la distribución es ruido blanco y para rechazar la hipótesis de normalidad. Frente a los periodogramas, en el Anexo No. 2 se observa que los realizados para los contrafactuales de **China** y el agregado del **resto de países** siguen una tendencia estable dentro de los intervalos de confianza.

No obstante, para el caso del modelo que simula el escenario contrafactual en las importaciones de vajillas de porcelana para **Taiwán y Singapur**, la hipótesis nula de la prueba de Barlett no se rechaza al 1%, lo cual es el poder estadístico más bajo en comparación a los otros modelos que no rechazan al 5%. De hecho, si se observa el periodograma para las series contrafactuales del Anexo No. 2, el correspondiente a las importaciones de estos orígenes es el único en el que se observa inestabilidad. No obstante, el modelo se utilizó porque lo que se busca es darle prelación a que su pronóstico simule una realidad con base en un supuesto teórico.

Observando especificidades por modelo, se puede apreciar que aquel que simula el escenario contrafactual para **China**, el coeficiente asociado al proceso autorregresivo AR (3) es inferior a la unidad, aduciendo con esto que este proceso presenta estabilidad. De otra parte, los coeficientes asociados a los tres procesos son significativos individualmente (dos al 1% y uno al 5%) y los coeficientes en su conjunto, son significativos globalmente al 1%.

Para el caso del modelo que simula el escenario contrafactual de las importaciones provenientes de **Taiwán y Singapur**, se puede

apreciar que el coeficiente asociado al proceso autorregresivo es inferior a la unidad, por lo que se concluye con esto sobre su estabilidad. También el modelo es significativo individual y globalmente al 1% de significancia.

Por último, el modelo estimado para las importaciones del **resto de países** se observa que los coeficientes asociados a dos de los tres procesos son estadísticamente significativos: el del proceso autorregresivo al 10% y el que controla el efecto estacional al 1%. Adicionalmente, estos dos coeficientes son inferiores a la unidad, por lo que se concluye que los procesos presentan estabilidad. Finalmente, los coeficientes en su conjunto son significativos globalmente al 1% de significancia.

Ahora bien, con respecto a los modelos que simulan escenarios contrafactuales para las importaciones de **vajillas de loza**, los resultados se presentan en la siguiente tabla:

Tabla No. 8
Estimaciones Escenarios Contrafactuales
Vajillas de Loza

<i>Contrafactual China</i>		<i>Contrafactual Taiwán y Singapur</i>		<i>Contrafactual Resto del Mundo</i>	
Procesos	Coefficientes	Procesos	Coefficientes	Procesos	Coefficientes
AR (1)	-0,5456 (***) (0,1854)	AR (1)	0,8269 (***) (0,1488)	Constante	10,1661 (***) (0,2650)
SMA (1)	-0,6288 (**) (0,2683)	AR (3)	-0,0715 (0,1932)	AR (2)	0,4096 (***) (0,0641)
		MA (2)	0,4013 (**) (0,1999)	AR (3)	0,1661 (***) (0,0585)
				MA (1)	0,547 (***) (0,0488)
T	25	T	57	M	233
σ	357559,4 (***)	σ	55273,3 (***)	σ	1,0215 (***)
Test Wald	0,0015	Test Wald	0,000	Test Wald	0,000
Test Portmanteau	0,571	Test Portmanteau	0,3555	Test Portmanteau	0,9362
Test Barlett	0,8611	Test Barlett	0,9186	Test Barlett	0,9816
Test Jarque Bera	0,1645	Test Jarque Bera	0	Test Jarque Bera	0,0141
Akaike CI	718,5	Akaike CI	1416,4	Akaike CI	681,8
Schwarz CI	722,2	Schwarz CI	1424,5	Schwarz CI	699,1

(***) Significativo al 1%; (**) Significativo al 5%; (*) Significativo al 10%

Nota: Para todos los Tests el número asociado es el *p-valor*

Fuente: Datos DIAN. Cálculos Propios

Detallando la información anterior, los modelos de simulación contrafactual para **China** y el agregado del **resto de países**, son válidos estadísticamente, ya que en los tres casos no hay evidencia estadística para rechazar la hipótesis que la perturbación estocástica es ruido blanco y para rechazar la hipótesis de normalidad. En el caso de China, la hipótesis de normalidad no se rechaza al 10% de significancia, mientras que para el caso del agregado del resto de países no se rechaza al 1%, siendo esto un poder estadístico relativamente bajo, pero que alcanza a configurarse como evidencia para concluir sobre la normalidad en la perturbación estocástica. Examinando los periodogramas del Anexo No. 2 para las series de los modelos contrafactuales, en estos dos casos se presenta un proceso estable y dentro de los intervalos de confianza

En cuanto al modelo de la simulación contractual para las importaciones de **Taiwán y Singapur**, se observa que hay evidencia estadística para no rechazar la hipótesis nula que las perturbaciones estocásticas son ruido blanco. Adicionalmente, su respectivo periodograma muestra que el proceso tiene una tendencia estable y dentro de los intervalos de confianza. Sin embargo, se observa que se rechaza la hipótesis nula de normalidad. Ahora, como se trata de una simulación, se le dio prelación a que el pronóstico arrojado coincida con lo dinámica y tendencia que teóricamente debería tener la serie en un universo sin medida antidumping, razón por la cual se empleó este modelo para el ejercicio.

Entrando en detalle, se puede apreciar que en el modelo estimado para **China**, el coeficiente asociado al proceso autorregresivo de orden 1 es inferior a la unidad, por lo que se evidencia que el proceso presenta estabilidad. De otra parte, los

coeficientes son significativos al 1% en al AR y a 5% en el MA. También, los modelos son significativos globalmente.

Por su lado, en el modelo estimado para **Taiwán y Singapur**, también se observa que $|ϕ_1 + ϕ_3| < 1$, sugiriendo con esto que se presenta estabilidad en los procesos autorregresivos. Adicionalmente, tanto el coeficiente asociado al AR como el coeficiente asociado al MA son significativos estadísticamente al 1% y al 5%, respectivamente. El modelo también es globalmente significativo.

Para finalizar con la revisión de los resultados obtenidos tras las estimaciones, se puede apreciar que los coeficientes asociados a los procesos autorregresivos del modelo estimado para el agregado del **resto de países** también presentan estabilidad ya que $|ϕ_2 + ϕ_3| < 1$. Los cuatro coeficientes estimados (incluyendo la constante) son significativos estadísticamente al 1%, de la misma manera que la significancia estadística global del modelo.

3.3. PRONÓSTICOS DE LAS SERIES OBSERVADAS Y LOS ESCENARIOS CONTRAFACTUALES

Después de exponer con claridad la metodología, haber ofrecido una descripción suficiente de las formas funcionales identificadas para la estimación y haber examinado los resultados de las estimaciones, se procede a exponer los pronósticos obtenidos de cada uno de los modelos detallados en la Secciones 3.1. y estimados en la Sección 3.2. En este caso, el orden de exposición es: primero los pronósticos de las series observadas, las cuales muestran en prospectiva el estado actual de las importaciones con medidas antidumping y, luego, las

simulaciones de los escenarios contrafactuales para hacer el respectivo contraste.

Así que, en la Tabla No. 9 se encuentra los pronósticos semestrales del segundo semestre de 2024 hasta 2026 de las series de importaciones observadas de **vajillas de porcelana**. Se puede apreciar que los pronósticos de China y Taiwán y Singapur tienden a contraerse conforme al paso del tiempo. En el caso de China, pasa de 703 mil kilos netos el segundo semestre de 2024 a 665 el segundo semestre de 2026. En el caso de Taiwán y Singapur, pasa de 770 mil kilos netos a 338 mil.

Tabla No. 9 <i>Pronósticos Series Observadas 2024 - 2026</i> <i>Importación Vajillas Porcelana</i>			
PRONÓSTICOS 2024 - 2026			
(Kilos Netos)			
Periodo	China	Taiwán - Singapur	Demás Países
2024S2	703.007	770.120	293.808,0
2025S1	696.079	812.316	292.123,0
2025S2	673.935	470.236	286.281,0
2026S1	703.260	764.850	275.563,0
2026S2	665.275	338.715	271.884,0

Fuente: Cálculos Propios.

Por su parte, el resto de presentan una tendencia decreciente pero moderada en comparación a los otros dos orígenes: de 293 mil kilos pasa a 271 mil kilos.

Contrastando con las simulaciones de los escenarios contrafactuales de las importaciones que se presentan en la Tabla No. 10, en un universo sin medidas antidumping las importaciones chinas superarían el millón de kilos, incrementando paulatinamente y contemplando una estacionalidad en donde los segundos semestres presentan un volumen mayor que los primeros. Por su lado, las importaciones de Taiwán y Singapur tendrían a contraerse más que en el escenario observado con medida, ya

que no habría el incentivo de eludir por cambio de origen y, por tanto, las vajillas de porcelana se importaría mayoritariamente de China.

Tabla No. 10
Escenarios Contrafactuales 2024 - 2026
Importación Vajillas Porcelana

PRONÓSTICOS 2024 - 2026			
(Kilos Netos)			
Periodo	China	Taiwán - Singapur	Demás Países
2024S2	1.353.196	487.691	210.857
2025S1	1.013.921	499.844	184.116
2025S2	1.431.327	408.270	211.824
2026S1	1.058.005	418.444	184.516
2026S2	1.515.117	341.783	212.079

Fuente: Cálculos Propios.

El agregado del resto de países se mantendría relativamente constante con un efecto estacionales, en donde los segundos semestres tendrían a presentarse un mayor volumen de importación que los primeros.

En cuanto a los pronósticos de las importaciones de vajillas de loza, en la Tabla No. 11 se observa el ejercicio para las series observadas:

Tabla No. 11
Pronósticos Series Observadas 2024 - 2026
Importación Vajillas Loza

PRONÓSTICOS 2024 - 2026			
(Kilos Netos)			
Periodo	China	Taiwán - Singapur	Demás Países
2024S2	2.334.363	38.629	106.566
2025S1	2.358.764	29.918	154.733
2025S2	2.265.800	28.983	97.280
2026S1	2.210.133	33.111	154.013
2026S2	2.168.234	30.339	116.378

Fuente: Cálculos Propios.

A diferencia de lo que se presenta en vajillas de porcelana, las importaciones de loza provenientes de China son sustancialmente

mayores a los otros orígenes, ya que el pronóstico arroja más de 2 millones de kilos, frente a la importación de alrededor de 30.000 de Taiwán y Singapur, y a la importación en el rango de 100 mil a 160 mil proveniente del resto de países.

No obstante, se aprecia una tendencia decreciente en las importaciones de China y de Taiwán y Singapur. En el caso del resto de países, las importaciones tienen cierta variabilidad, pero se mantienen entre 106 mil y 154 mil, según la estacionalidad del caso.

En aras de hacer el contraste con los escenarios contrafactuales, la siguiente tabla expone los pronósticos contemplando un universo sin medidas antidumping. Como se puede observar, en esta simulación sin medida China no sólo acapararía la totalidad de las importaciones, sino que, en total, se doblarían las importaciones de vajillas de loza en comparación a los pronósticos de las series observadas con medidas antidumping. La importación de Taiwán y Singapur sería ínfima, dado que no habría en lo absoluto eludir dicha medida con el cambio de origen.

Tabla No. 10
Escenarios Contrafactuales 2024 - 2026
Importación Vajillas Loza

PRONÓSTICOS 2024 - 2026			
(Kilos Netos)			
Periodo	China	Taiwán - Singapur	Demás Países
2024S2	4.754.964	174	165.663
2025S1	4.216.233	77	158.490
2025S2	4.977.055	34	156.680
2026S1	4.438.324	15	156.252
2026S2	5.199.146	7	156.151

Fuente: Cálculos Propios.

Con respecto al resto de países, el volumen de importaciones sería constante y sin la estacionalidad presentada en el escenario

observado. De hecho, el volumen anual sería superior en un escenario sin medida que en lo que se ha observado con la implementación de las medidas antidumping contra China.

4. CONCLUSIONES

En el presente reporte se hizo el ejercicio de estimación de modelos univariados de series de tiempo, tanto para obtener pronósticos de series observadas como para hacer una simulación de escenarios contrafactuales en los cuales se recree un universo sin medidas antidumping. Esto con el fin de tener un referente objetivo y cuantitativo con el que se puede hacer un análisis comparado de los efectos que han tenido tales medidas.

Para las series de importaciones independientemente del origen, fue posible construir y estimar formas funcionales con procesos autorregresivos y de medial móvil, sea el caso, que además tuviesen en cuenta en algunas ocasiones el posible efecto que tiene la estacionalidad en las estimaciones. De hecho, al observar los resultados, no sólo se obtuvieron coeficientes significativos y pronósticos acordes con la realidad observada y las concepciones teóricas en la materia, sino que además fueran modelos válidos estadísticamente. Fueron aislados los casos en donde se le dio prelación al pronóstico y que este coincidiera con la dinámica y tendencia que teóricamente se esperaría, sobre algunos aspectos de validación.

Contrastando los pronósticos tanto del escenario observado con medidas antidumping como de los escenarios contrafactuales, se pudo determinar que efectivamente hay evidencia del fuerte efecto que tuvo dichas medidas sobre las importaciones de vajillas de porcelana y vajillas de loza. Fue evidente que el volumen de las

importaciones provenientes de China sería sustancialmente superior en universo acorde a los escenarios contrafactuales y, además, que afectaría el nivel de importaciones de otros orígenes.

Así pues, este ejercicio resulta ser un referente cuantitativo y técnico válido estadísticamente para argumentarle a la respectiva autoridad, la necesidad de ampliar las mencionadas medidas para mantener las importaciones de estos perfiles en los niveles hasta ahora observados y pronosticados hasta 2026.

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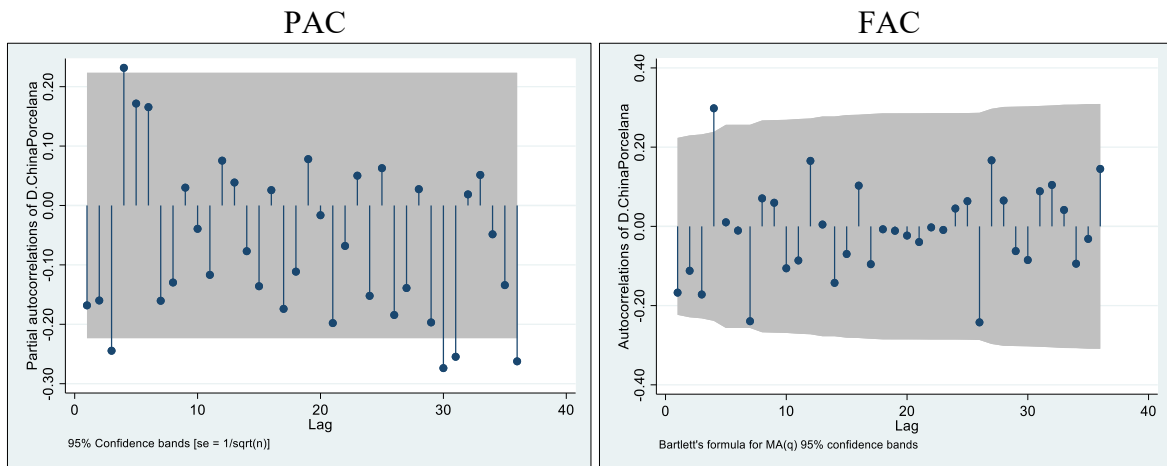
Rosales, et. al (2008). *Ej 22. Metodología Box-Jenkins*. Programa de Econometría II, Facultad de Economía Universidad de los Andes. Recuperado de: https://economia.uniandes.edu.co/files/profesores/ramon_rosales_alvarez/docs/econometria2/Salidas%20y%20Ejercicios/EJC202220Metodologia20Box20-20Jenkins.pdf

ANEXO No. 1

FUNCIONES DE AUTOCORRELACIÓN (FAC) Y AUTOCORRELACIÓN PARCIAL (PAC)

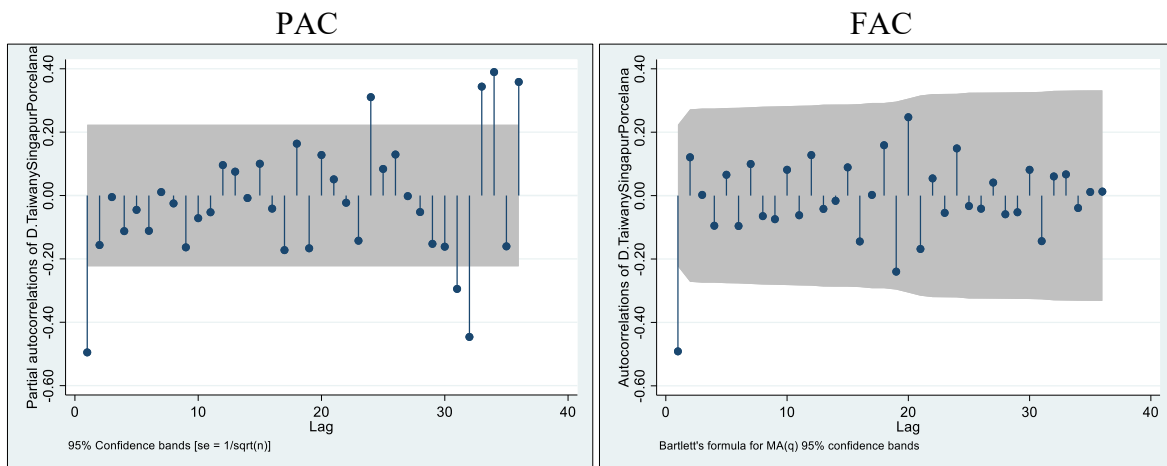
SERIES OBSERVADAS

- **IMPORTACIONES PORCELANA CHINA:** serie observada trimestral en primeras diferencias de 2005T1 a 2024T2.



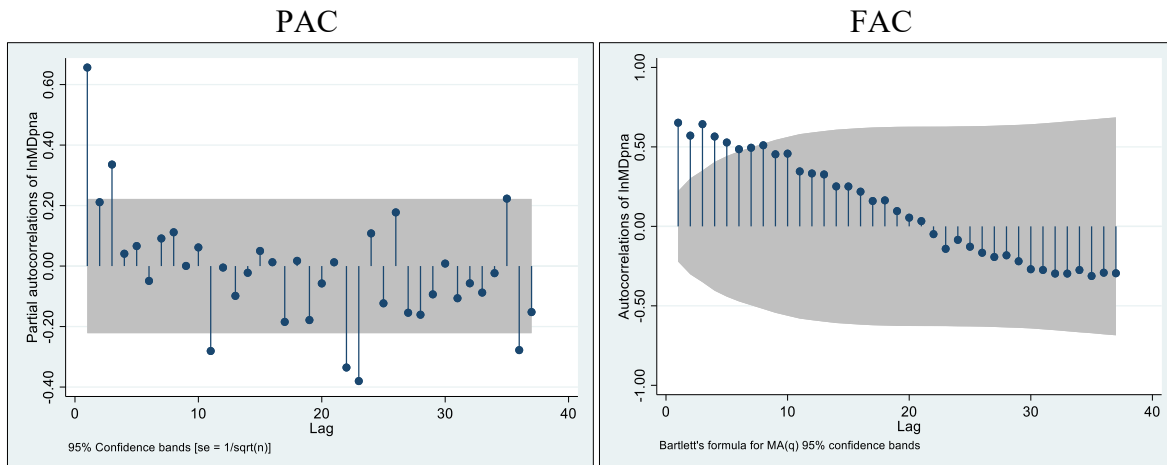
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES PORCELANA TAIWÁN Y SINGAPUR:** serie observada trimestral en primeras diferencias de 2005T1 a 2024T2.



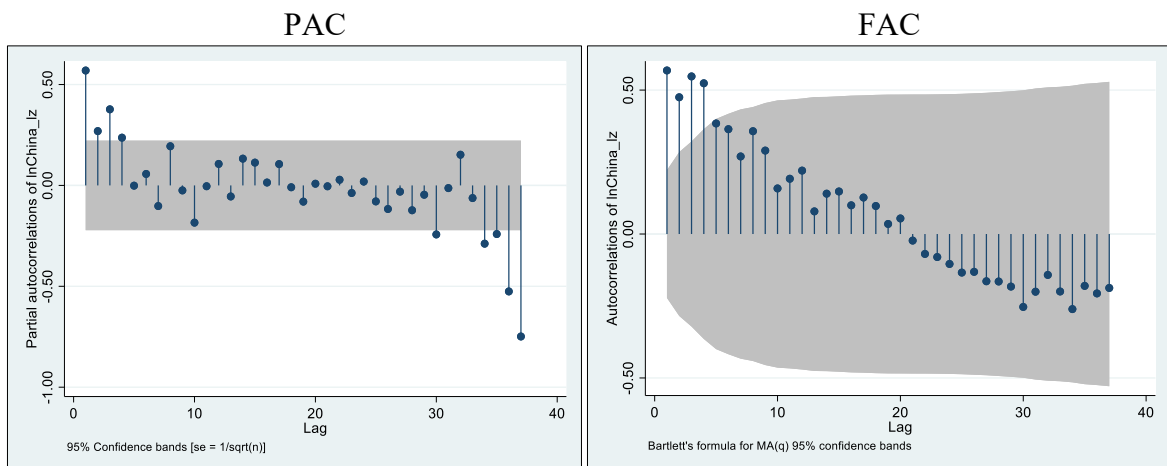
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES PORCELANA RESTO DE PAÍSES:** serie observada trimestral en logaritmo natural de 2005T1 a 2024T2.



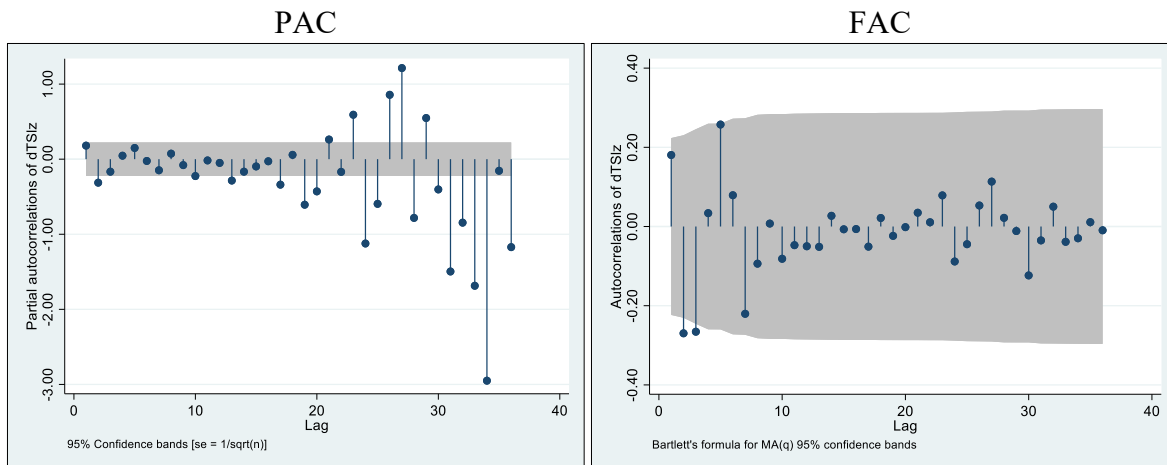
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES LOZA CHINA:** serie observada trimestral en logaritmo natural de 2005T1 a 2024T2.



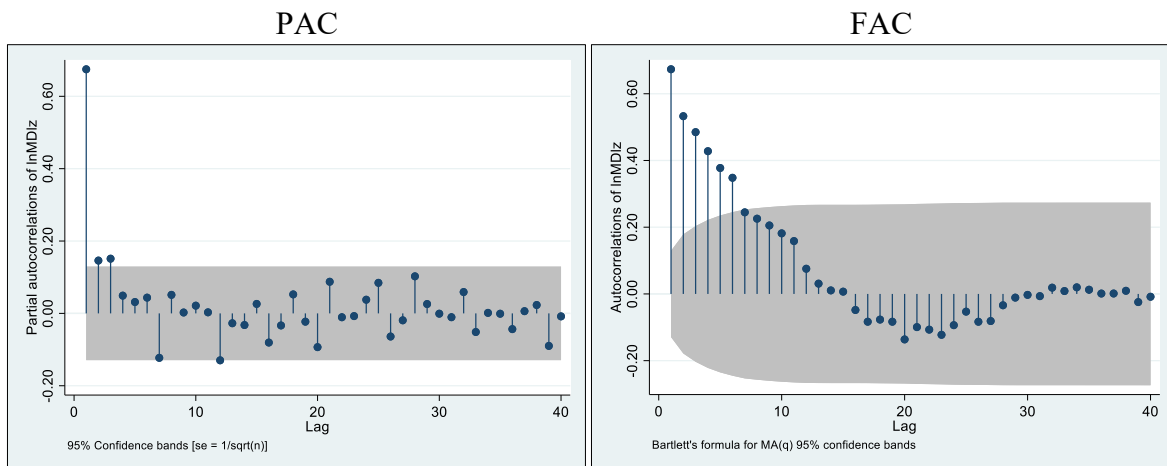
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES LOZA TAIWÁN Y SINGAPUR:** serie observada en primeras diferencias de 2005T1 a 2024T2.



Fuente: Datos DIAN. Cálculos Propios

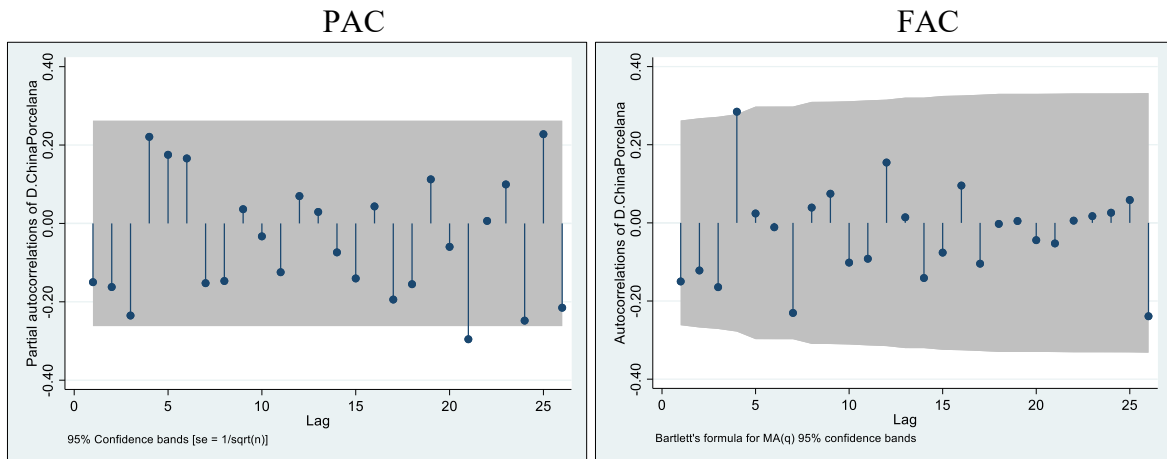
- **IMPORTACIONES LOZA RESTO DE PAÍSES:** serie observada mensual en logaritmo natural de 2005M1 a 2024M5.



Fuente: Datos DIAN. Cálculos Propios

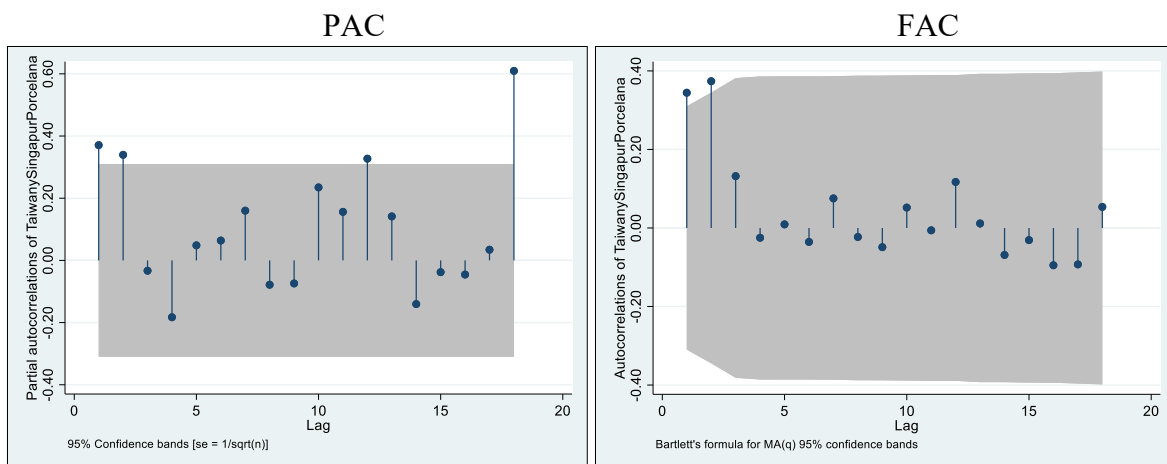
SERIES PARA LA SIMULACIÓN DE CONTRAFACTUALES

- **SEGMENTO CHINA PORCELANA:** segmento de serie trimestral en primeras diferencias de 2005T1 a 2019T1.



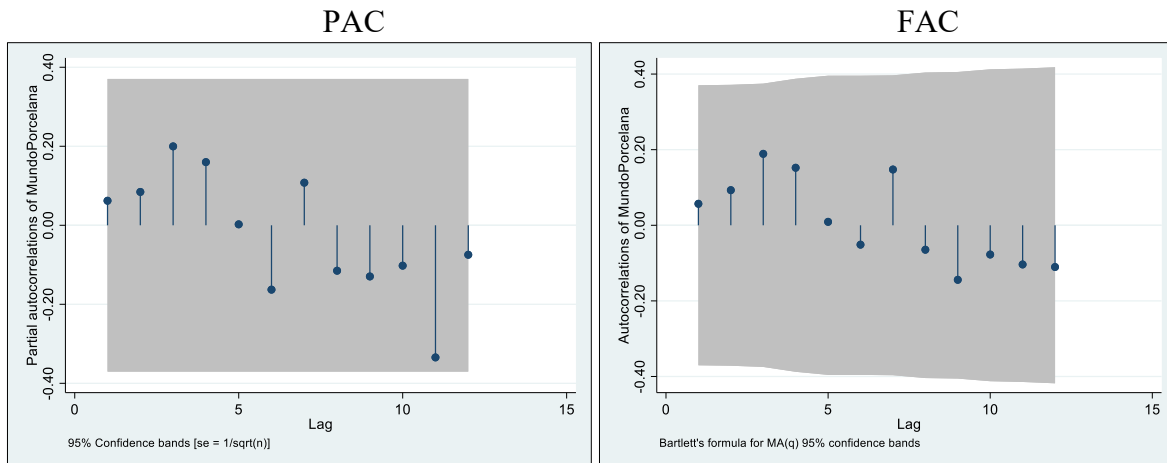
Fuente: Datos DIAN. Cálculos Propios

- **SEGMENTO TAIWÁN Y SINGAPUR PORCELANA:** segmento de serie trimestral en niveles, sin transformación, de 2013T1 a 2022T4.



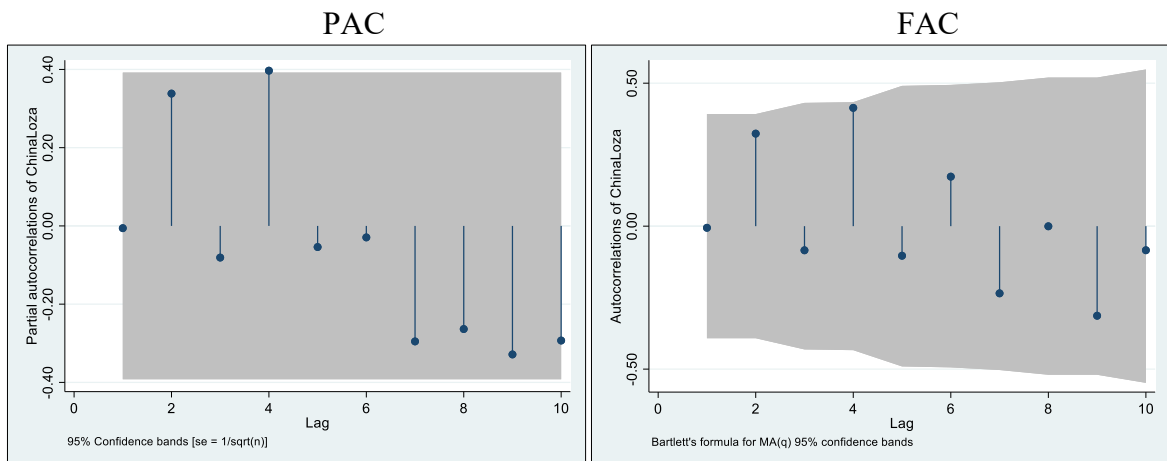
Fuente: Datos DIAN. Cálculos Propios

- **SEGMENTO RESTO DEL MUNDO PORCELANA:** segmento de serie trimestral en niveles, sin transformación, de 2013T1 a 2019T4.



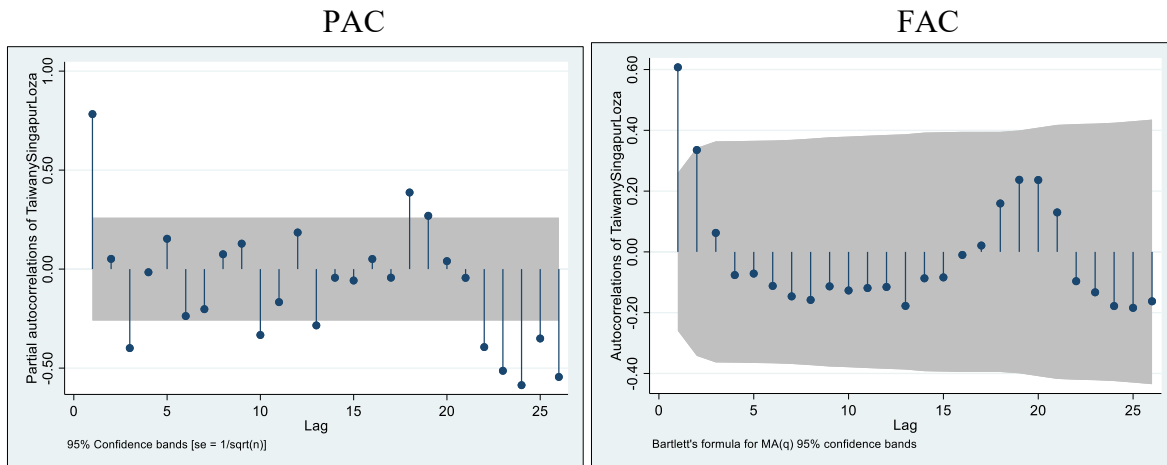
Fuente: Datos DIAN. Cálculos Propios

- **SEGMENTO CHINA LOZA:** segmento de serie trimestral en niveles, sin transformación, de 2013T1 a 2019T1.



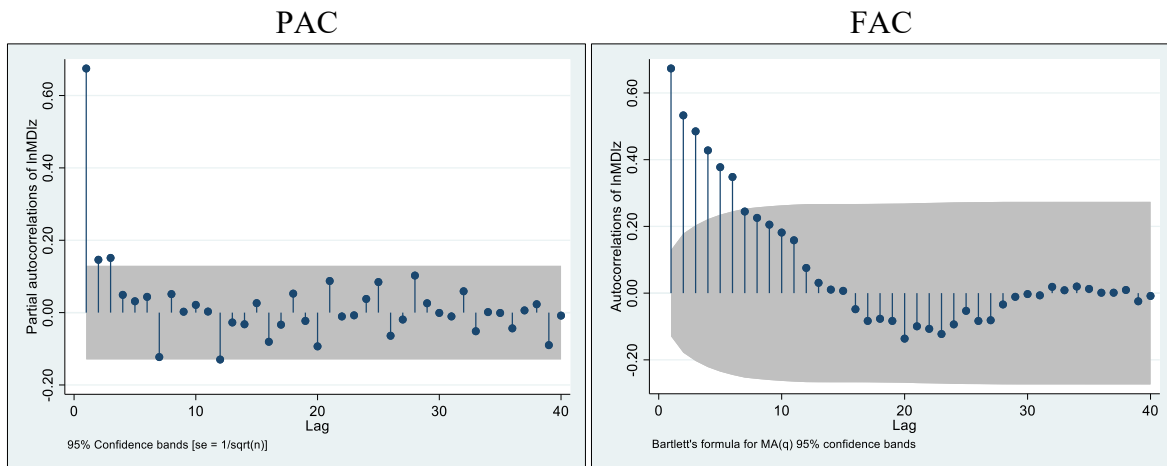
Fuente: Datos DIAN. Cálculos Propios

- **SEGMENTO TAIWÁN Y SINGAPUR LOZA:** segmento de serie trimestral de 2005T1 a 2019T1.



Fuente: Datos DIAN. Cálculos Propios

- **SEGMENTO RESTO DEL MUNDO LOZA:** segmento de serie mensual en logaritmo natural de 2005M1 a 2024M5.



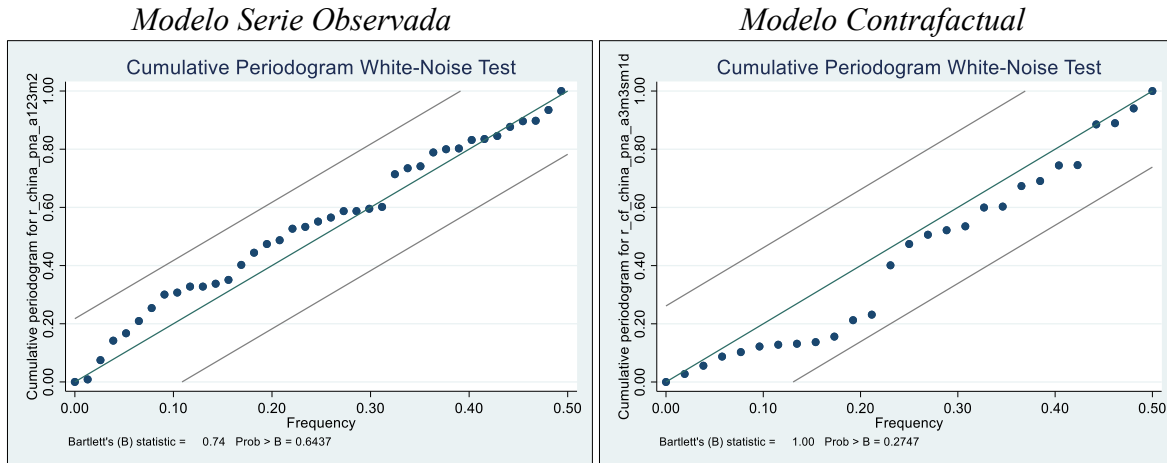
Fuente: Datos DIAN. Cálculos Propios

ANEXO No. 2

PERIODOGRAMAS

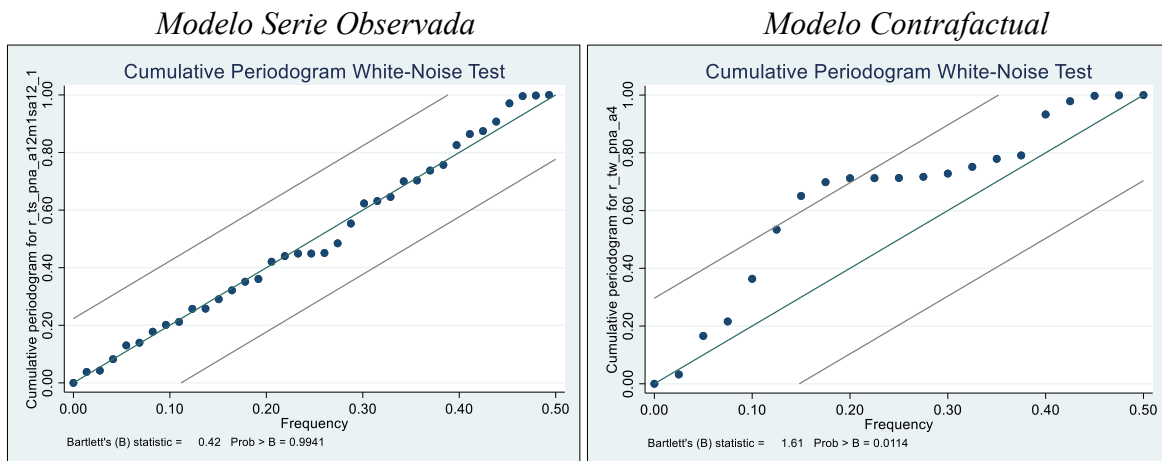
MODELOS CON SERIES OBSERVADAS Y CONTRAFACTUALES

- IMPORTACIONES PORCELANA DE CHINA**



Fuente: Datos DIAN. Cálculos Propios

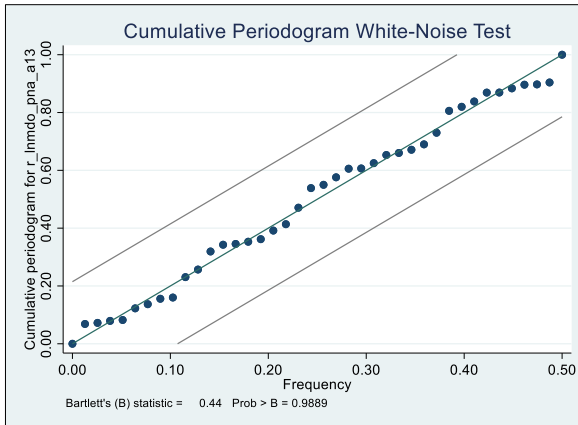
- IMPORTACIONES PORCELANA DE TAIWÁN Y SINGAPUR**



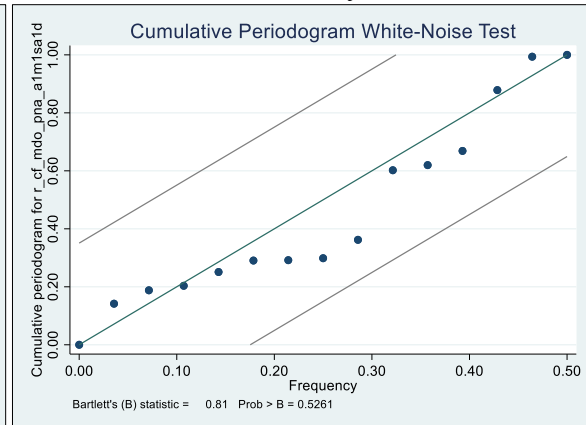
Fuente: Datos DIAN. Cálculos Propios

- IMPORTACIONES PORCELANA RESTO DEL MUNDO**

Modelo Serie Observada



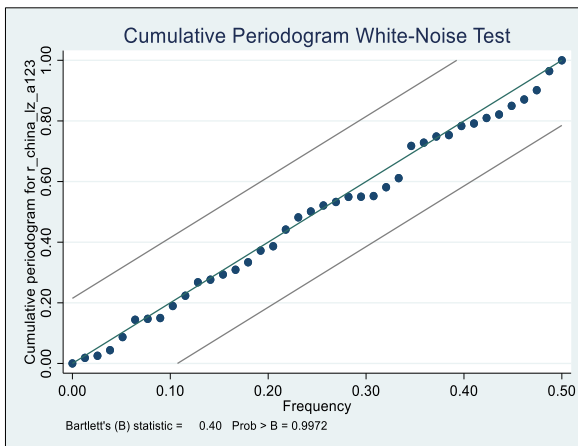
Modelo Contrafactual



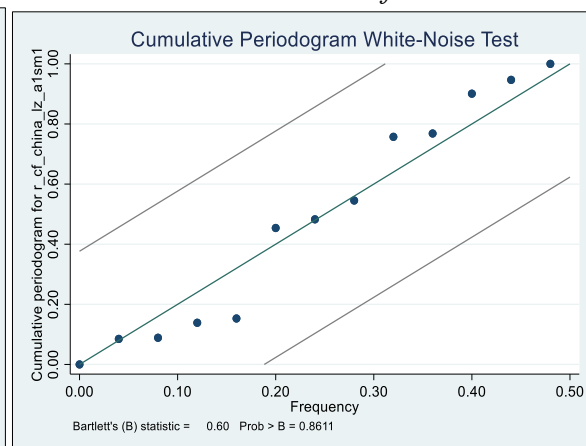
Fuente: Datos DIAN. Cálculos Propios

- IMPORTACIONES LOZA DE CHINA**

Modelo Serie Observada



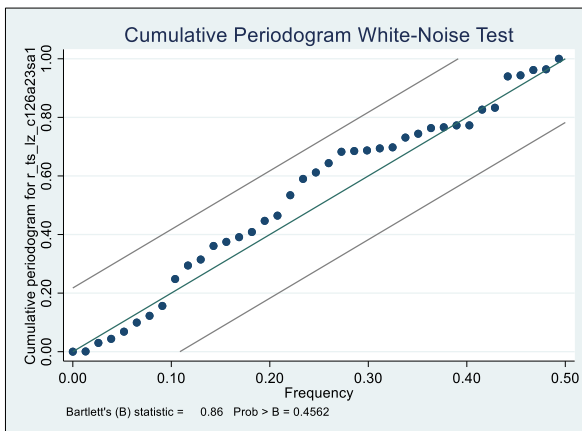
Modelo Contrafactual



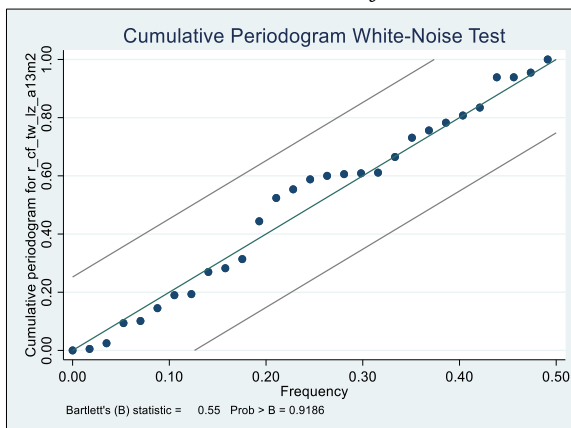
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES LOZA DE TAIWÁN Y SINGAPUR**

Modelo Serie Observada



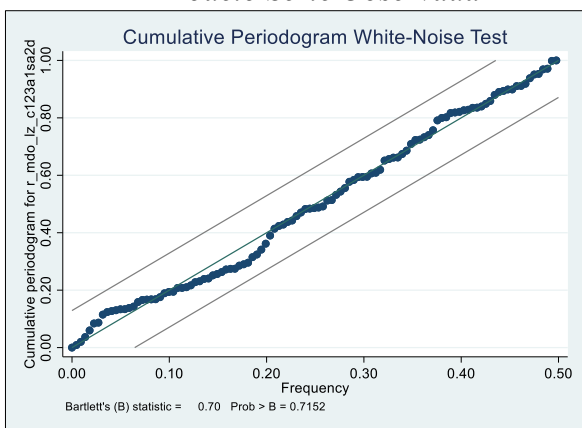
Modelo Contrafactual



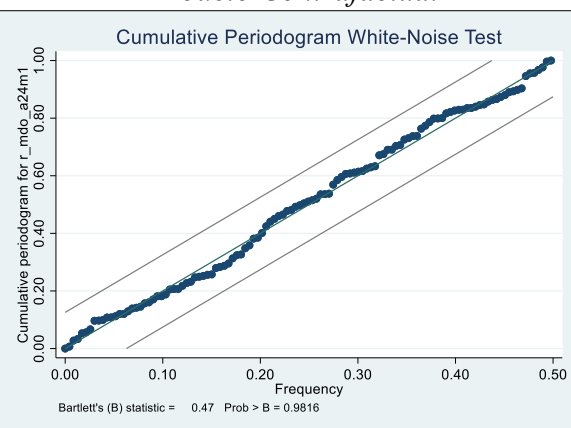
Fuente: Datos DIAN. Cálculos Propios

- **IMPORTACIONES LOZA RESTO DEL MUNDO (MENSUAL)**

Modelo Serie Observada



Modelo Contrafactual



Fuente: Datos DIAN. Cálculos Propios

PREMISAS PROYECCIÓN MERCADO Y PRECIOS ESCENARIO CON MEDIDAS

MERCADO VAJILLAS DE LOZA

Ventas Nacionales

- **II SEM 2024:**

Se tomó como base la proyección del Plan de Ventas y Operaciones (PVO) de septiembre de 2024, el cual, incluye información real de ventas de 2022 hasta agosto del 2024 y proyectados de septiembre a diciembre de 2024.

En el primer semestre del 2024 se evidenció una contracción del mercado del 18% con respecto al mismo periodo del 2023, pasando de un volumen de ventas de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Para el segundo semestre del 2024 se tienen en cuenta el volumen de ventas reales de julio y agosto. Para las proyecciones de septiembre a diciembre se realiza un ejercicio interno de acuerdo con la información que recolecta el área comercial de acuerdo con las ventas e inventarios de sus clientes. Además, esta proyección incluyó elementos como los calendarios comerciales, es decir, Ofertas de navidad, Blackfriday, Regalos corporativos de fin de año, entre otros.

Teniendo en cuenta lo anterior, se estima una recuperación para el segundo semestre del 10.5% respecto al segundo semestre del 2023 debido a una mejor dinámica del canal B2B, Moderno y Digital. Pasando entonces de un volumen de ventas en el segundo semestre del 2023 de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg para el segundo semestre del 2024.

- **I SEM – II SEM 2025:**

Para las proyecciones del volumen se realizó un análisis a nivel de Canal de Distribución. Por cual, a continuación, se presenta una caracterización de cada uno:

- *Canal Detallista:* En este canal se encuentran los intermediarios minoristas, estos a su vez se encargan de comercializar el producto a consumidor final. Son empresas pequeñas que compran a fabricantes.
- *Canal Digital:* Es el medio de distribución en el que se le vende al consumidor final por medio de una plataforma en línea, ya sea e-commerce propios o market places.

- *Canal Directo:* Es el canal en el cual se vende directamente del fabricante al consumidor final, sin intermediarios. El consumidor final puede ser una persona natural o jurídica.
- *Canal Institucional:* Es el canal encargado de transacciones entre compañías con el fin de potencializar un producto o premiar ciertas acciones de sus clientes. Se caracteriza por tener un comportamiento estacional ya que busca impulsar la venta.
- *Canal Mayorista:* Se caracteriza por su papel de intermediario en la cadena de suministro, actuando como puente entre fabricantes y minoristas o, en algunos casos, directamente con otros negocios. Su naturaleza es la compra de producto en grandes volúmenes.
- *Canal Moderno:* Es un canal enfocado a formatos de venta y distribución asociados con el comercio detallista organizado como grandes superficies y Retail en general. Es el canal en el que la marca cuenta con una mayor visibilidad debido a la gran afluencia del público y su nicho de mercado más valorizado.

Para cada canal se distribuyó la cifra del 2024, dando como resultado el siguiente volumen:

Canal	2024
Detallista	
Digital	
Directos	
Institucional	
Mayorista	
Moderno	
Total general	

Tabla 1. Volumen 2024 por Canal - Loza

Para los canales Detallista, Directos, Mayorista y Moderno se aplicó el porcentaje de crecimiento estimado del PIB de la Industria (1,6%) proyectado por Fedesarrollo en su Informe de Prospectiva Económica (Ver Anexo 15) sobre las ventas registradas en el año 2024. Lo anterior, teniendo en cuenta que las vajillas de Loza se pueden considerar como una manufactura que es fabricada para el consumo de los hogares.

Para el canal Institucional se realizó un análisis de su tendencia de venta histórica, las cuales muestran un comportamiento estacional en el que cada dos años de caída se observa un repunte el tercer año, así como se muestra en la gráfica en piezas:

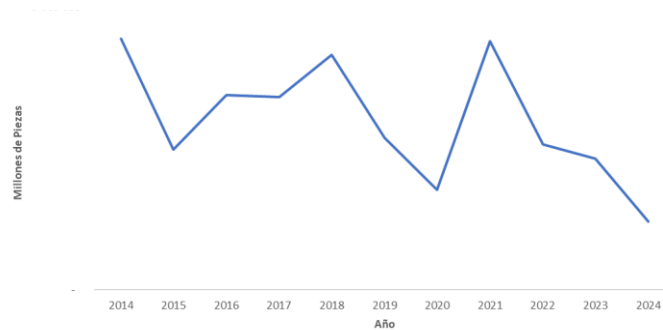


Ilustración 1. Ventas en Millones de Piezas Canal Institucional.

Por lo tanto, se estima que en esta canal para el 2025 se presente un repunte de los niveles del 2018, es decir, un 22% vs el año anterior, por lo que la venta pasaría de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

En el caso del Canal Digital, el Informe de Cierre del 2023 publicado por la Cámara Colombiana de Comercio Electrónico (CCCE) indica que el crecimiento proyectado del comercio electrónico total del 2024 vs el 2023 es del 18%¹. Para el 2025 se espera que, aunque se tengan proyecciones como las de Statista en la que se estima que el crecimiento del e-commerce en Colombia será del 26%², hay otras proyecciones como las de AmericaRetail & Malls en las que prevé que el comercio electrónico en Colombia continúe creciendo, pero en un ritmo más moderado³, por lo que se toma la decisión de proyectar el 2025 con un crecimiento igual al del 2024, es decir del 18%. Por lo tanto, las ventas de este canal pasarían de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Teniendo en cuenta las consideraciones anteriores, se proyecta el 2025 así:

Canal	2024 KG	2025 KG	% Crec
Detallista			1,6%
Digital			18,0%
Directos			1,6%
Institucional	CONFIDENCIAL		22,0%
Mayorista			1,6%
Moderno			1,6%
Total general			5,1%

Tabla 2. Volumen 2024 y 2025 proyectado - Loza

Teniendo el total de las ventas proyectadas para 2025 y para obtener el volumen por semestre, se aplicó un porcentaje estimado de acuerdo con el comportamiento

¹ Cámara Colombiana de Comercio Electrónico (2023). Informe de cierre del Comportamiento del Comercio Electrónico en Colombia 2023, P 34. Tomado de: <https://ccce.org.co/wp-content/uploads/2017/06/INFORME-DE-CIERRE-2023-VERSION-PUBLICA.pdf>

² Arreaza, J. M. (2021, December 21). El ECommerce en Colombia crecerá 26% hacia 2025 (Statista). Marketing4eCommerce Colombia. <https://marketing4ecommerce.co/el-ecommerce-en-colombia-crecera-26-hacia-2025-statista/>

³ Palacios, K. (2024, July 5). Análisis del avance y proyección del comercio electrónico hasta 2026. AmericaRetail & Malls. <https://america-retail.com/secciones/omnicanalidad/analisis-del-avance-y-proyeccion-del-comercio-electronico-hasta-2026/>

registrado en las ventas del 2023, dónde la distribución de las ventas total fue de 52,5% en el ISEM y de 47,5% en el IISEM.

• **ISEM – IISEM 2026:**

Para este periodo se realiza un ejercicio a nivel de canal de distribución partiendo de la base del 2025:

Canal	2025
Detallista	-
Digital	-
Directos	-
Institucional	-
Mayorista	-
Moderno	-
Total general	-----

Tabla 3. Volumen 2025 por Canal – Loza

Para los canales Detallista, Directos, Mayorista y Moderno se aplicó el porcentaje de crecimiento estimado del PIB de la Industria (2%) proyectado por Fedesarrollo en su Informe de Prospectiva Económica (Ver Anexo 15), sobre las ventas registradas en el año 2025.

Para el canal Institucional, a pesar de que el análisis de ventas históricas indicaría que este año no se tendría un crecimiento importante con respecto al año anterior, se plantean estrategias comerciales y de mercadeo que permitan tener un crecimiento sostenido en el canal. Por lo que se estima nuevamente un crecimiento del 22%. Por lo tanto, las ventas de este canal pasarían de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

En el Canal Digital se proyecta continuar con un crecimiento del 18%. Lo anterior debido a que, a pesar de que estimaciones de Payments & Commerce Market Intelligence (PCMI) estima que el comercio electrónico en Colombia crecerá para el 2026 un 27%⁴, hay otras proyecciones como las de AmericaRetail & Malls en las que prevé que el comercio electrónico en Colombia continúe creciendo, pero en un ritmo más moderado⁵, por lo que se toma la decisión de proyectar el 2026 con la misma estimación del 2025. Por lo tanto, las ventas de este canal pasarían de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Teniendo en cuenta las consideraciones anteriores, se proyecta el 2026 así:

⁴ Datos del mercado del comercio electrónico en Colombia. (2024). Payments and Commerce Market Intelligence - Global Payments Market Research and Insights. <https://paymentscmi.com/insights/datos-mercado-comercio-electronico-colombia/>

⁵ Palacios, K. (2024, July 5). Análisis del avance y proyección del comercio electrónico hasta 2026. AmericaRetail & Malls. <https://america-retail.com/secciones/omnicanalidad/analisis-del-avance-y-proyeccion-del-comercio-electronico-hasta-2026/>

Canal	2025 KG	2026 KG	% Crec
Detallista			2,0%
Digital			18,0%
Directos			2,0%
Institucional	CONFIDENCIAL		22,0%
Mayorista			2,0%
Moderno			2,0%
Total general			6,0%

Tabla 4. Volumen 2025 y 2026 proyectado - Loza

Teniendo el total de las ventas proyectadas para 2026 y para obtener el volumen por semestre, se aplicó un porcentaje estimado de acuerdo con el comportamiento registrado en las ventas del 2023, dónde la distribución de las ventas total fue de 52,5% en el ISEM y de 47,5% en el IISEM.

Importaciones de China

- II SEM 2024:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- ISEM – IISEM 2025 y 2026:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones de Taiwán y Singapur

- II SEM 2024:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
 .
- ISEM – IISEM 2025 y 2026:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones Demás Orígenes

- **II SEM 2024:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

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- **ISEM – IISEM 2025 y 2026:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Consumo Nacional Aparente

- Para todos los periodos estimados, el CNA es la sumatoria de las proyecciones de las ventas del productor nacional, más las proyecciones de las importaciones totales (China, Taiwán & Singapur y los demás orígenes).

PRECIO VAJILLAS DE LOZA

Productor Nacional

- **II SEM 2024:**

Ya que los incrementos de precios en Locería Colombiana se hacen típicamente una vez al año (al inicio del año), para este semestre se estimó que los precios serían iguales a los precios del ISEM24, teniendo en cuenta que ya eran datos reales y sobre los que no se proyectaba ningún cambio.

- **ISEM y IISEM 2025:**

Considerando que en este escenario seguirían vigentes las Medidas AD, se tomó como premisa que los precios del 2025 simplemente reflejarían un incremento de acuerdo

con la inflación proyectada por el Banco de la República para ese mismo año. Se aplicó entonces un IPC del 5,8%⁶ sobre los precios proyectados del 2024.

- **ISEM y IISEM 2026:**

Considerando que en este escenario seguirían vigentes las Medidas AD, se tomó como premisa que los precios del 2026 simplemente reflejarían un incremento de acuerdo con la inflación proyectada por el Banco de la República para ese mismo año. Se aplicó entonces un IPC del 4% sobre los precios proyectados del 2025.

Importaciones

Para todos los orígenes de importación (China, Taiwán & Singapur y demás orígenes) se estimó el precio así:

- **IISEM 2024:**

Para este semestre se estimó el mismo precio registrado para el ISEM24, ya que no se proyectaron incrementos.

- **ISEM y IISEM 2025:**

Para los dos semestres del 2025 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 4%⁷, sobre los precios del año 2024.

- **ISEM y IISEM 2026:**

Para los dos semestres del 2026 se aplicó IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6%, sobre los precios del año 2025.

MERCADO VAJILLAS DE PORCELANA

Para el caso de la porcelana, los productos van dirigidos principalmente al sector del entretenimiento, puntualmente al segmento HORECA. Compuesto por Hoteles, Restaurantes y Casinos.

Ventas Nacionales

- **IISEM 2024:**

⁶ Fuente: Supuestos Macroeconómicos Corporativo Corona.

⁷ World Economic Outlook Database, April 2024. (2024, April 16). IMF. <https://www.imf.org/en/Publications/WEO/weo-database/2024/April>

Se tomó como base la proyección del Plan de Ventas y Operaciones (PVO) de septiembre de 2024, el cual, incluye información real de ventas de 2022 hasta agosto del 2024 y proyectados de septiembre a diciembre de 2024.

En el primer semestre del 2024 se evidenció una contracción del mercado del 21,2% con respecto al mismo periodo del 2023, pasando de un volumen de ventas de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Para el segundo semestre del 2024 se tienen en cuenta el volumen de ventas reales de julio y agosto. Para las proyecciones de septiembre a diciembre se realiza un ejercicio interno de acuerdo con la información que recolecta el área comercial de acuerdo con las ventas e inventarios de sus clientes. Además, esta proyección incluyó elementos como los calendarios comerciales.

Teniendo en cuenta lo anterior, se estima un menor decrecimiento para el segundo semestre del 2024, siendo este de 0,4% respecto al mismo periodo del 2023, debido a una mejor dinámica del canal Detallista. Pasando entonces de un volumen de ventas en el segundo semestre del 2023 de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg para el segundo semestre del 2024.

- **ISEM – IISEM 2025:**

Para las proyecciones del volumen se realizó un análisis a nivel de Canal de Distribución. Por cual, a continuación, se presenta una caracterización de cada uno:

- *Canal Detallista:* En este canal se encuentran los intermediarios minoristas, estos a su vez se encargan de comercializar el producto a consumidor final. Son empresas pequeñas que compran a fabricantes.
- *Canal Digital:* Es el medio de distribución en el que se le vende al consumidor final por medio de una plataforma en línea, ya sea e-commerce propios o market places.
- *Canal Directo:* Es el canal en el cual se vende directamente del fabricante al consumidor final, sin intermediarios. El consumidor final puede ser una persona natural o jurídica.
- *Canal Institucional:* Es el canal encargado de transacciones entre compañías con el fin de potencializar un producto o premiar ciertas acciones de sus clientes. Se caracteriza por tener un comportamiento estacional ya que busca impulsar la venta.
- *Canal Mayorista:* Se caracteriza por su papel de intermediario en la cadena de suministro, actuando como puente entre fabricantes y minoristas o, en algunos casos, directamente con otros negocios. Su naturaleza es la compra de producto en grandes volúmenes.
- *Canal Moderno:* Es un canal enfocado a formatos de venta y distribución asociados con el comercio detallista organizado como grandes superficies y Retail en general. Es el canal en el que la marca cuenta con una mayor

visibilidad debido a la gran afluencia del público y su nicho de mercado más valorizado.

Para la estimación de las ventas de este periodo se realiza un análisis de las ventas históricas en piezas:

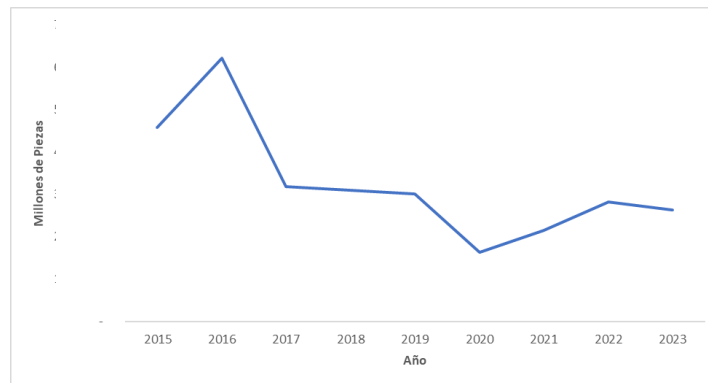


Ilustración 2. Ventas en Millones de Piezas Porcelana

Se presenta una caída en el 2020 por efectos de la pandemia, y a partir de este año, se observa una recuperación hasta el 2022, sin embargo, a pesar de que en el 2023 y 2024 se evidencia una caída del mercado, se plantean estrategias comerciales y de mercadeo que permitan tener un crecimiento que permitan volver a los niveles de 2022 y 2023. Además, teniendo en cuenta que la porcelana va dirigida al segmento HORECA (Hoteles, Restaurantes y Casinos) se consideran las perspectivas positivas con respecto al crecimiento del sector del entretenimiento para el 2025 de acuerdo con informes de AmericaRetail & Malls ⁸y la Revista P&M⁹. Dando como resultado un crecimiento del 14% para el 2025 frente al año inmediatamente anterior para los canales Detallista, Directos, Mayorista y Moderno. Por lo tanto, el total de ventas para estos canales pasarían de **CONFIDENCIAL** kg en 2024 a **CONFIDENCIAL** kg en 2025.

Para el canal Institucional, no se realizan apuestas ya que este canal se caracteriza por la comercialización en su mayoría de producto de Loza.

En el caso del Canal Digital, el Informe de Cierre del 2023 publicado por la Cámara Colombiana de Comercio Electrónico (CCCE) indica que el crecimiento proyectado del comercio electrónico total del 2024 vs el 2023 es del 18%¹⁰. Para el 2025 se espera que, aunque se tengan proyecciones como las de Statista en la que se estima que el

⁸ Palacios, K. (2024, September 6). El auge del sector del entretenimiento en Colombia. AmericaRetail & Malls. <https://america-retail.com/secciones/innovacion/el-auge-del-sector-del-entretenimiento-en-colombia/>

⁹ Redacción P&M. (2024, August 26). El crecimiento del sector del entretenimiento en Colombia y su Impacto en el PIB. Revista PYM; Revista P&M. <https://www.revistapym.com.co/articulos/comunicacion/78488/el-crecimiento-del-sector-del-entretenimiento-en-colombia-y-su-impacto-en-el-pib>

¹⁰ Cámara Colombiana de Comercio Electrónico (2023). Informe de cierre del Comportamiento del Comercio Electrónico en Colombia 2023, P 34. Tomado de: <https://ccce.org.co/wp-content/uploads/2017/06/INFORME-DE-CIERRE-2023-VERSION-PUBLICA.pdf>

crecimiento del e-commerce en Colombia será del 26%¹¹, hay otras proyecciones como las de AmericaRetail & Malls en las que prevé que el comercio electrónico en Colombia continúe creciendo, pero en un ritmo más moderado¹², por lo que se toma la decisión de proyectar el 2025 con un crecimiento igual al del 2024, es decir del 18%. Por lo tanto, las ventas de este canal pasarían de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Teniendo en cuenta las consideraciones anteriores, se proyecta el 2025 así:

Canal	2024 KG	2025 KG	% Crec
Detallista			14,0%
Digital			18,0%
Directos			14,0%
Institucional	CONFIDENCIAL		0,0%
Mayorista			14,0%
Moderno			14,0%
Total general			14,0%

Tabla 5. Volumen 2025 y 2026 proyectado - Porcelana

Teniendo el total de las ventas proyectadas para 2025 y para obtener el volumen por semestre, se aplicó un porcentaje estimado de acuerdo con el comportamiento registrado en las ventas del 2023, dónde la distribución de las ventas total fue de 48,8% en el ISEM y de 51,2% en el IISEM.

• **ISEM – IISEM 2026:**

Para este periodo se realiza un ejercicio a nivel de canal de distribución partiendo de la base del 2025:

Canal	2025
Detallista	
Digital	
Directos	
Institucional	
Mayorista	
Moderno	
Total general	

Tabla 6. Volumen 2025 por Canal – Porcelana

Para los canales Detallista, Directos, Mayorista y Moderno se aplicó el porcentaje de crecimiento estimado del PIB de la Industria (2%) proyectado por Fedesarrollo en su

¹¹ Arreaza, J. M. (2021, December 21). El ECommerce en Colombia crecerá 26% hacia 2025 (Statista). Marketing4eCommerce Colombia. <https://marketing4ecommerce.co/el-ecommerce-en-colombia-crecera-26-hacia-2025-statista/>

¹² Palacios, K. (2024, July 5). Análisis del avance y proyección del comercio electrónico hasta 2026. AmericaRetail & Malls. <https://america-retail.com/secciones/omnicanalidad/analisis-del-avance-y-proyeccion-del-comercio-electronico-hasta-2026/>

Informe de Prospectiva Económica (Ver Anexo 15), sobre las ventas registradas en el año 2025.

Para el canal Institucional, no se realizan apuestas ya que este canal se caracteriza por la comercialización en su mayoría de producto de Loza.

En el Canal Digital se proyecta continuar con un crecimiento del 18%. Lo anterior debido a que, a pesar de que estimaciones de Payments & Commerce Market Intelligence (PCMI) estima que el comercio electrónico en Colombia crecerá para el 2026 un 27%¹³, hay otras proyecciones como las de AmericaRetail & Malls en las que prevé que el comercio electrónico en Colombia continúe creciendo, pero en un ritmo más moderado¹⁴, por lo que se toma la decisión de proyectar el 2026 con la misma estimación del 2025. Por lo tanto, las ventas de este canal pasarían de **CONFIDENCIAL** kg a **CONFIDENCIAL** kg.

Teniendo en cuenta las consideraciones anteriores, se proyecta el 2026 así:

Canal	2025 KG	2026 KG	% Crec
Detallista			2,0%
Digital			18,0%
Directos			2,0%
Institucional	CONFIDENCIAL		0,0%
Mayorista			2,0%
Moderno			2,0%
Total general			2,2%

Tabla 7. Volumen 2025 y 2026 proyectado - Porcelana

Teniendo el total de las ventas proyectadas para 2026 y para obtener el volumen por semestre, se aplicó un porcentaje estimado de acuerdo con el comportamiento registrado en las ventas del 2023, dónde la distribución de las ventas total fue de 48,8% en el ISEM y de 51,2% en el IISEM.

Importaciones de China

- **II SEM 2024:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins. Ver Reporte de Pronósticos Vajillas de Porcelana y Loza (Ver Anexo 15).

¹³Datos del mercado del comercio electrónico en Colombia. (2024). Payments and Commerce Market Intelligence - Global Payments Market Research and Insights. <https://paymentscmi.com/insights/datos-mercado-comercio-electronico-colombia/>

¹⁴ Palacios, K. (2024, July 5). Análisis del avance y proyección del comercio electrónico hasta 2026. AmericaRetail & Malls. <https://america-retail.com/secciones/omnicanalidad/analisis-del-avance-y-proyeccion-del-comercio-electronico-hasta-2026/>

- **ISEM – IISEM 2025 y 2026:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones de Taiwán y Singapur

- **II SEM 2024:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

- **ISEM – IISEM 2025 y 2026:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones Demás Orígenes

- **II SEM 2024:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

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- **ISEM – IISEM 2025 y 2026:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

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Consumo Nacional Aparente

- Para todos los periodos estimados, el CNA es la sumatoria de las proyecciones de las ventas del productor nacional, más las proyecciones de las importaciones totales (China, Taiwán & Singapur y los demás orígenes).

PRECIO VAJILLAS DE PORCELANA

Productor Nacional

- **II SEM 2024:**
Ya que los incrementos de precios en Locería Colombiana se hacen típicamente una vez al año (al inicio del año), para este semestre se estimó que los precios serían iguales a los precios del ISEM24, teniendo en cuenta que ya eran datos reales y sobre los que no se proyectaba ningún cambio.
- **ISEM y IISEM 2025:**
Considerando que en este escenario seguirían vigentes las Medidas AD, se tomó como premisa que los precios del 2025 simplemente reflejarían un incremento de acuerdo con la inflación proyectada por el Banco de la República para ese mismo año. Se aplicó entonces un IPC del 5,8¹⁵% sobre los precios proyectados del 2024.
- **ISEM y IISEM 2026:**
Considerando que en este escenario seguirían vigentes las Medidas AD, se tomó como premisa que los precios del 2026 simplemente reflejarían un incremento de acuerdo con la inflación proyectada por el Banco de la República para ese mismo año. Se aplicó entonces un IPC del 4% sobre los precios proyectados del 2025.

Importaciones

Para todos los orígenes de importación (China, Taiwán & Singapur y demás orígenes) se estimó el precio así:

- **IISEM 2024:**
Para este semestre se estimó el mismo precio registrado para el ISEM24, ya que no se proyectaron incrementos.
- **ISEM y IISEM 2025:**
Para los dos semestres del 2025 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 4%¹⁶, sobre los precios del año 2024.
- **ISEM y IISEM 2026:**
Para los dos semestres del 2026 se aplicó IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6%, sobre los precios del año 2025.

¹⁵ Fuente: Supuestos Macroeconómicos Corporativo Corona.

¹⁶ World Economic Outlook Database, April 2024. (2024, April 16). IMF. <https://www.imf.org/en/Publications/WEO/weo-database/2024/April>

PREMISAS PROYECCIÓN MERCADO Y PRECIOS ESCENARIO SIN MEDIDAS

Partimos del supuesto de que el CNA será el mismo en el escenario con y sin medida, y lo que cambiará será la participación de sus componentes (productor nacional, importaciones de China, importaciones de Taiwán & Singapur y las importaciones de los demás orígenes).

MERCADO VAJILLAS DE LOZA

Ventas Nacionales

- II SEM 2024:**
Para el segundo semestre del 2024 las medidas siguen vigentes, por lo cual, las ventas del productor nacional serán iguales a las calculadas en el escenario con medidas. Es decir que, para el IISEM24 se proyecta de acuerdo con el plan de ventas de Locería Colombiana de septiembre de 2024.
- ISEM – IISEM 2025 y 2026:**
Las ventas del productor nacional se estimaron a partir de la diferencia entre el CNA proyectado y las importaciones totales proyectadas.

Año	Semestre	Volumen
2025	ISEM	—
2025	IISEM	—
2026	ISEM	—
2026	IISEM	—

Tabla 1. Volumen por semestre - Loza

Adicionalmente, estas estimaciones están justificadas a partir de un ejercicio interno realizado por el peticionario en el que tuvo en cuenta la combinación de dos criterios: el precio proyectado de las importaciones investigadas y el comportamiento del segmento comercial al que van dirigidos este tipo de productos, tal y como se verá más adelante.

Para el caso de la loza, los productos van dirigidos principalmente al segmento Hogar, que está compuesto por tres sub-segmentos: Funcional, Informado y Decorativo.

Importaciones de China

- **II SEM 2024:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- **ISEM – IISEM 2025 y 2026:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones de Taiwán y Singapur

- **II SEM 2024:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- **ISEM – IISEM 2025 y 2026:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones Demás Orígenes

- **II SEM 2024:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- **ISEM – IISEM 2025 y 2026:**
Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Consumo Nacional Aparente

- Se tiene como premisa que el CNA es el mismo al calculado en el escenario con medidas para todos los semestres proyectados (Del IISEM24 al IISEM26) ya que el tamaño del mercado no cambia. Lo que variará será el porcentaje de participación de cada uno de sus componentes (Productor Nacional, Importaciones China, Importaciones Taiwán & Singapur y los demás orígenes).

PRECIO VAJILLAS DE LOZA

Productor Nacional

- **II SEM 2024:**
Ya que los incrementos de precios en Locería Colombiana se hacen típicamente una vez al año (al inicio del año), para este semestre se estimó que los precios serían iguales a los precios del ISEM24, teniendo en cuenta que ya eran datos reales y sobre los que no se proyectaba ningún cambio.

Para el caso de la loza, los productos van dirigidos principalmente al segmento Hogar, que está compuesto por tres sub-segmentos: Funcional, Informado y Decorativo.

- *Funcional:* Es un consumidor que se caracteriza por priorizar el precio en su decisión de compra.
- *Informado:* Es un consumidor que se caracteriza por buscar un equilibrio entre precio y diseño. Están atentos a las ofertas y se informan previamente a cerca del producto que quieren adquirir.
- *Decorativo:* Es un consumidor que se caracteriza por estar influenciado por el diseño y las formas, buscan moda y tendencias y les gusta decorar su hogar.

El cálculo del precio se entiende como un precio promedio ponderado entre dos variables: el volumen de ventas y el precio de cada uno de los sub-segmentos. Por lo tanto, la combinación entre el mix de ventas y el precio de cada sub-segmento, determina al final el precio promedio ponderado del peticionario en cada semestre proyectado.

- **ISEM 2025:**

Efectos Variable Precio

En un escenario en el que no se prorroguen las medidas AD y en el que las importaciones de China ingresen nuevamente a precios de dumping, el Productor Nacional se verá obligado a replantear sus precios en cada sub-segmento:

- Sub-segmento Funcional. Es el más sensible al precio, el Productor Nacional estima que deberá reducir su precio sólo hasta un nivel en que obtenga un margen mínimo de acuerdo con su estructura de costos y gastos. Por lo tanto, sólo podrá bajar sus precios un 10%. Esta disminución se aplica sobre la base de los precios del 2024 (\$**CONFIDENCIAL**/kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%¹) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** kg.
- Sub-segmento Informado. El Productor Nacional estima que deberá reducir su precio sólo hasta un nivel en que obtenga un margen mínimo de acuerdo con su estructura de costos y gastos. Por lo tanto, sólo podrá bajar sus precios un 16%. Esta disminución se aplica sobre la base de los precios del 2024 (\$**CONFIDENCIAL**/kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%²) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Decorativo. El Productor Nacional estima que para este primer semestre los exportadores/importadores de China habrán iniciado una lectura de las tendencias del mercado colombiano, por lo que se estima que el Productor Nacional deberá disminuir en un 5,5% su precio con el objetivo de no tener una mayor pérdida. Esta disminución se aplica sobre la base de los precios del 2024 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg.

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el primer semestre del 2025, el sub-segmento Decorativo se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (1,6%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del primer semestre del 2024 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 45% con respecto al mismo periodo del año anterior, así:

¹ Fuente: Supuestos Macroeconómicos Corporativo Corona.

² Fuente: Supuestos Macroeconómicos Corporativo Corona.

Sub-segmento	ISEM24	Porcentaje Afectado	Volumen por Porcentaje	Comentario	ISEM25
DECORATIVO	CONFIDENCIAL				
Total general			808.784		746.460

Tabla 2. Proyección Sub-segmento Decorativo ISEM25.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el primer semestre de 2023:

Sub-Segmento	Venta KG ISEM 2023	% KG ISEM 2023	Venta KG ISEM 2025	% KG ISEM 2025
FUNCIONAL	CONFIDENCIAL			
INFORMADO				
Total general				

Tabla 3. Proyección Sub-segmentos Funcional e Informado ISEM25.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG ISEM 2025	Precio ISEM 2025	Venta ISEM 2025 \$
FUNCIONAL	CONFIDENCIAL		
INFORMADO			
DECORATIVO			
Total general			

Tabla 4. Resumen KG, Precio y Valor ISEM25 Loza

$$\begin{aligned} \text{Precio Ponderado} &= \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} \\ &= \$\text{CONFIDENCIAL/kg} \end{aligned}$$

- Por lo tanto, el precio para el ISEM25 es de **\$CONFIDENCIAL** /kg.

• IISEM 2025:

Efectos Variable Precio

- Sub-segmento Funcional. Se mantiene la premisa del ISEM25: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Informado. Se mantiene la premisa del ISEM25: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Decorativo. Se estima que para este momento los exportadores/importadores de China ya habrán hecho una lectura más completa de las tendencias del mercado colombiano. Por lo tanto, se proyecta

que para que el Productor Nacional deberá disminuir su precio. Para este semestre se estimó una reducción del 10%. Esta disminución se aplica sobre la base de los precios del ISEM25 (\$**CONFIDENCIAL** /kg) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el Sub-segmento Decorativo se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (1,6%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del segundo semestre del 2024 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 59% con respecto al mismo periodo del año anterior, así:

Sub-segmento	IISEM24	Porcentaje Afectado	Volumen por Porcentaje	Comentario	IISEM25
DECORATIVO	CONFIDENCIAL				
Total general					

Tabla 5. Proyección Sub-segmento Decorativo IISEM25.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el segundo semestre de 2023:

Sub-Segmento	Venta KG		% KG	
	IISEM 2023	IISEM 2023	IISEM 2025	IISEM 2025
FUNCIONAL	CONFIDENCIAL			
INFORMADO				
Total general				

Tabla 6. Proyección Sub-segmentos Funcional e Informado IISEM25.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG IISEM 2025	Precio IISEM 2025	Venta IISEM 2025 \$
FUNCIONAL	CONFIDENCIAL	CONFIDENCIAL	CONFIDENCIAL
INFORMADO			
DECORATIVO			
Total general			

Tabla 7. Resumen KG, Precio y Valor IISEM25 Loza

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$\text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el IISEM25 es de \$ **CONFIDENCIAL** /kg.

• ISEM 2026:

Efectos Variable Precio

- Sub-segmento Funcional. Se proyecta el precio tomando como base el precio registrado en el año 2025 (\$**CONFIDENCIAL** /kg) y aplicando la variación del IPC proyectado para el 2026 (4,0%)³, por lo tanto, el precio para este Sub-segmento es de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Informado. Se proyecta el precio tomando como base el precio registrado en el año 2025 (\$**CONFIDENCIAL** /kg) y aplicando la variación del IPC proyectado para el 2026 (4,0%), por lo tanto, el precio para este Sub-segmento es de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Decorativo. Se estima que para este momento los exportadores/importadores de China ya habrán hecho una lectura completa de las tendencias del mercado colombiano. Por lo tanto, se proyecta que para que el Productor Nacional vea una afectación menor a la del 2025 en el volumen del Sub-segmento deberá continuar disminuyendo su precio. Para este semestre se estimó una reducción del 5%. Esta disminución se aplica sobre la base de los precios del IISEM25 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2026 (4,0%) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo:
CONFIDENCIAL kg

³ Fuente: Supuestos Macroeconómicos Corporativo Corona.

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el Sub-segmento Decorativo se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (2%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del primer semestre del 2025 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 4% con respecto al mismo periodo del año anterior, así:

Sub-segmento	ISEM25	Porcentaje Afectado	Volumen por Porcentaje	Comentario	ISEM26
DECORATIVO	CONFIDENCIAL				
Total general					

Tabla 8. Proyección Sub-segmento Decorativo ISEM26.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el primer semestre de 2023:

Sub-Segmento	Venta KG ISEM 2023	% KG ISEM 2023	Venta KG ISEM 2026	% KG ISEM 2026
FUNCIONAL	CONFIDENCIAL			
INFORMADO				
Total general				

Tabla 9. Proyección Sub-segmentos Funcional e Informado ISEM26.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG ISEM 2026	Precio ISEM 2026	Venta ISEM 2026 \$
FUNCIONAL	CONFIDENCIAL		
INFORMADO			
DECORATIVO			
Total general			

Tabla 10. Resumen KG, Precio y Valor IISEM25 Loza

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$\text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el ISEM26 es de \$ **CONFIDENCIAL** /kg.

• **IISEM 2026:**

Efectos Variable Precio

- Sub-segmento Funcional. Se mantiene la premisa del ISEM26: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Informado. Se mantiene la premisa del ISEM26: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Decorativo. Se estima que para este momento los exportadores/importadores de China seguirán capturando porcentaje del mercado colombiano. Por lo tanto, se proyecta que para que el Productor Nacional pueda competir deberá disminuir su precio. Para este semestre se estimó una reducción del 5%. Esta disminución se aplica sobre la base de los precios del ISEM26 (\$**CONFIDENCIAL** /kg) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el Sub-segmento Decorativo se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (2%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del segundo semestre del 2025 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 4% con respecto al mismo periodo del año anterior, así:

Sub-segmento	IISEM25	Porcentaje Afectado	Volumen por Porcentaje	Comentario	IISEM26
DECORATIVO					CONFIDENCIAL
Total general					

Tabla 11. Proyección Sub-segmento Decorativo IISEM26.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el segundo semestre de 2023:

Sub-Segmento	Venta KG IISEM 2023	% KG IISEM 2023	Venta KG IISEM 2026	% KG IISEM 2026
FUNCIONAL	CONFIDENCIAL			
INFORMADO				
Total general				

Tabla 12. Proyección Sub-segmentos Funcional e Informado IISEM26.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG IISEM2026	Precio IISEM 2026	Venta IISEM 2026 \$
FUNCIONAL	CONFIDENCIAL		
INFORMADO			
DECORATIVO			
Total general			

Tabla 13. Resumen KG, Precio y Valor IISEM26 Loza

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$ \text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el IISEM26 es de \$ **CONFIDENCIAL** /kg.
- Tabla Resumen Efectos Variables Volumen y Precio del Productor Nacional - Loza**

Unidad	Variable	Sub-Segmento	IISEM24	ISEM25	IISEM25	ISEM26	IISEM26
LOZA	Precio	FUNCIONAL	Igual a Escenario con Medidas	Si = 10	No	No	No
		INFORMADO		Si = 16	No	No	No
		DECORATIVO		Si = 5,5	Si = 10	Si = 5	Si = 5
	Volumen	FUNCIONAL		Si	Si	Si	Si
		INFORMADO		Si	Si	Si	Si
		DECORATIVO		Si	Si	Si	Si

Tabla 14. Resumen Efectos Volumen y Precio - Loza

Importaciones de China

- IISEM 2024:**
Como en este semestre aún estarán vigentes las medidas de AD se estimó el mismo precio que en el escenario con medidas, es decir, el precio registrado para el IISEM24.
- ISEM y IISEM 2025:**
En ausencia de derechos AD se estima un precio equivalente al precio promedio registrado para este origen entre los años 2001-2004, momento en el cual aún no se

tenían medidas vigentes que corrigieran la práctica del dumping de China. El precio promedio obtenido para el periodo 2001-2004 fue de USD 0,68/Kg.

- **ISEM y IISEM 2026:**

Para los dos semestres del 2026 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6%⁴ sobre los precios proyectados para el año 2025.

Importaciones de Taiwán, Singapur y Demás Orígenes

Como estos orígenes de importación no se ven afectados por la medida de AD, se estimó el precio así:

- **IISEM 2024:**

Para este semestre se estimó el mismo precio registrado para el ISEM24, ya que no se proyecta un segundo incremento por año.

- **ISEM y IISEM 2025:**

Para los dos semestres del 2025 se aplicó IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 4% sobre los precios del año 2024.

- **ISEM y IISEM 2026:**

Para los dos semestres del 2026 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6% sobre los precios proyectados para el año 2025.

MERCADO VAJILLAS DE PORCELANA

Ventas Nacionales

- **IISEM 2024:**

Para el segundo semestre del 2024 las medidas siguen vigentes, por lo cual, las ventas del productor nacional serán iguales a las calculadas en el escenario con medidas. Es decir que, para el IISEM24 se proyecta de acuerdo con el plan de ventas de Locería Colombiana de septiembre de 2024.

- **ISEM y IISEM 2025 y 2026:**

Las ventas del productor nacional se estimaron a partir de la diferencia entre el CNA proyectado y las importaciones totales proyectadas.

⁴ World Economic Outlook Database, April 2024. (2024, April 16). IMF. <https://www.imf.org/en/Publications/WEO/weo-database/2024/April>

Año	Semestre	Volumen
2025	I SEM	
2025	II SEM	
2026	I SEM	
2026	II SEM	

Tabla 15. Volumen por semestre - Porcelana

Adicionalmente, estas estimaciones están justificadas a partir de un ejercicio interno realizado por el peticionario en el que tuvo en cuenta la combinación de dos criterios: el precio proyectado de las importaciones investigadas y el comportamiento del segmento comercial al que van dirigidos este tipo de productos, tal y como se verá más adelante.

Para el caso de la Porcelana, los productos van dirigidos principalmente al segmento HORECA (Hoteles, Restaurantes y Casinos), que está compuesto por tres sub-segmentos: Precio, Servicio y Tendencia.

Importaciones de China

- II SEM 2024:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- ISEM – II SEM 2025 y 2026:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones de Taiwán y Singapur

- II SEM 2024:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).
- ISEM – II SEM 2025 y 2026:**
 Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las

Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Importaciones Demás Orígenes

- **II SEM 2024:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

- **ISEM – IISEM 2025 y 2026:**

Para este periodo se realizó una proyección a partir de modelos univariados de series de tiempo utilizando la metodología Box y Jenkins (Ver Anexo 13 Pronósticos de Las Importaciones Provenientes de China, Taiwán y Singapur, y el Consolidado del Resto del Mundo).

Consumo Nacional Aparente

- Se tiene como premisa que el CNA es el mismo al calculado en el escenario con medidas para todos los semestres proyectados (Del IISEM24 al IISEM26) ya que el tamaño del mercado no cambia. Lo que variará será el porcentaje de participación de cada uno de sus componentes (Productor Nacional, Importaciones China, Importaciones Taiwán & Singapur y los demás orígenes).

PRECIO VAJILLAS DE PORCELANA

Productor Nacional

- **II SEM 2024:**

Ya que los incrementos de precios en Locería Colombiana se hacen típicamente una vez al año (al inicio del año), para este semestre se estimó que los precios serían iguales a los precios del ISEM24, teniendo en cuenta que ya eran datos reales y sobre los que no se proyectaba ningún cambio.

Para el caso de la porcelana, los productos van dirigidos principalmente al segmento HORECA (Hoteles, Restaurantes y Casinos), que está compuesto por tres sub-segmentos: Precio, Servicio, Tendencia.

- *Precio:* Es un consumidor que se caracteriza por priorizar el precio en su decisión de compra.

- *Servicio*: Es un consumidor que se caracteriza por buscar un equilibrio entre costo y beneficio. Valorán la capacidad de reposición del menaje y la continuidad del portafolio ofrecido en el tiempo.
- *Tendencia*: Es un consumidor muy especializado, valora la exclusividad y la innovación de las vajillas y/o piezas que utilizará en su menaje.

El cálculo del precio se entiende como un precio promedio ponderado entre dos variables: el volumen de ventas y el precio de cada uno de los sub-segmentos. Por lo tanto, la combinación entre el mix de ventas y el precio de cada sub-segmento, determina al final el precio promedio ponderado del peticionario en cada semestre proyectado.

- **ISEM 2025:**

Efectos Variable Precio

En un escenario en el que no se prorroguen las medidas AD y en el que las importaciones de China ingresen nuevamente a precios de dumping, el Productor Nacional se verá obligado a replantear sus precios en cada sub-segmento:

- Sub-segmento Precio. Es el más sensible al precio, el Productor Nacional estima que deberá reducir su precio sólo hasta un nivel en que obtenga un margen mínimo de acuerdo con su estructura de costos y gastos. Por lo tanto, sólo podrá bajar sus precios un 20,5%. Esta disminución se aplica sobre la base de los precios del 2024 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%⁵) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Servicio. El Productor Nacional estima que deberá reducir su precio sólo hasta un nivel en que obtenga un margen mínimo de acuerdo con su estructura de costos y gastos. Por lo tanto, sólo podrá bajar sus precios un 16%. Esta disminución se aplica sobre la base de los precios del 2024 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Tendencia. El Productor Nacional estima que para este primer semestre los exportadores/importadores de China habrán iniciado una lectura de las tendencias del mercado colombiano, sin embargo, prefiere ser conservador en cuanto al desempeño del segmento con el fin de que la reducción de precios dañe el mercado existente, por lo que proyecta que no tendrá que afectar su precio en este periodo, pero partiendo del precio base del

⁵ Fuente: Supuestos Macroeconómicos Corporativo Corona.

2024 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2025 (5,8%) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg.

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el primer semestre del 2025, el sub-segmento Tendencia se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (1,6%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del primer semestre del 2024 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 36% con respecto al mismo periodo del año anterior, así:

Sub-segmento	ISEM24	Porcentaje Afectado	Volumen por Porcentaje	Comentario	ISEM25
TENDENCIA	CONFIDENCIAL				
Total general					

Tabla 16. Proyección Sub-segmento Tendencia ISEM25.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos precio y servicio de acuerdo con la proporción que tenían en el primer semestre de 2023:

Sub-Segmento	Venta KG ISEM 2023	% KG ISEM 2023	Venta KG ISEM 2025	% KG ISEM 2025
PRECIO	CONFIDENCIAL			
SERVICIO				
Total general				

Tabla 17. Proyección Sub-segmentos Precio y Servicio ISEM25.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG ISEM 2025	Precio ISEM 2025	Venta ISEM 2025 \$
PRECIO	CONFIDENCIAL		
SERVICIO			
TENDENCIA			
Total general			

Tabla 18. Resumen KG, Precio y Valor ISEM25 Porcelana

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$\text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el ISEM25 es de \$ **CONFIDENCIAL** /kg.

- **IISEM 2025:**

Efectos Variable Precio

- Sub-segmento Precio. Se mantiene la premisa del ISEM25: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Servicio. Se mantiene la premisa del ISEM25: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Tendencia. Se estima que para este momento los exportadores/importadores de China ya habrán hecho una lectura de las tendencias del mercado colombiano. Por lo tanto, se proyecta que para que el Productor Nacional no vea una afectación mucho mayor que la del semestre anterior en el volumen del Sub-segmento deberá disminuir su precio. Para este semestre se estimó una reducción del 5%. Esta disminución se aplica sobre la base de los precios del ISEM25 (\$**CONFIDENCIAL** kg) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- El Sub-segmento Tendencia se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (1,6%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del segundo semestre del 2024 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 50% con respecto al mismo periodo del año anterior, así:

Sub-segmento	IISEM24	Porcentaje Afectado	Volumen por Porcentaje	Comentario	IISEM25
TENDENCIA	CONFIDENCIAL				
Total general					

Tabla 19. Proyección Sub-segmento Tendencia IISEM25.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos precio y servicio de acuerdo con la proporción que tenían en el segundo semestre de 2023:

Sub-Segmento	Venta KG IISEM 2023	% KG IISEM 2023	Venta KG IISEM 2025	% KG IISEM 2025
PRECIO	CONFIDENCIAL			
SERVICIO				
Total general				

Tabla 20. Proyección Sub-segmentos Precio y Servicio IISEM25.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG IISEM 2025	Precio IISEM 2025	Venta IISEM 2025 \$
PRECIO	CONFIDENCIAL		
SERVICIO			
TENDENCIA			
Total general			

Tabla 21. Resumen KG, Precio y Valor IISEM25 Porcelana

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$\text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el IISEM25 es de \$ **CONFIDENCIAL** /kg.

• ISEM 2026:

Efectos Variable Precio

- Sub-segmento Precio. Se proyecta el precio tomando como base el precio registrado en el año 2025 (\$**CONFIDENCIAL** /kg) y aplicando la variación del IPC proyectado para el 2026 (4,0%)⁶, por lo tanto, el precio para este Sub-segmento es de \$ **CONFIDENCIAL** /kg.

⁶ Fuente: Supuestos Macroeconómicos Corporativo Corona.

- Sub-segmento Servicio. Se proyecta el precio tomando como base el precio registrado en el año 2025 (\$**CONFIDENCIAL** /kg) y aplicando la variación del IPC proyectado para el 2026 (4,0%), por lo tanto, el precio para este Sub-segmento es de \$ **CONFIDENCIAL** /kg.
- Sub-segmento Tendencia. Se estima que para este momento los exportadores/importadores de China ya habrán hecho una lectura completa de las tendencias del mercado colombiano. Por lo tanto, se proyecta que para que el Productor Nacional vea una afectación menor a la del año anterior en el volumen del Sub-segmento deberá disminuir su precio. Para este semestre se estimó una reducción del 7%. Esta disminución se aplica sobre la base de los precios del IISEM25 (\$**CONFIDENCIAL** /kg). Posteriormente, se aplica la variación del IPC proyectado para el 2026 (4,0%) arrojando una proyección del precio para este segmento de \$ **CONFIDENCIAL** /kg

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- El Sub-segmento Tendencia se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (2%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del primer semestre del 2025 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 33% con respecto al mismo periodo del año anterior, así:

Sub-segmento	ISEM25	Porcentaje Afectado	Volumen por Porcentaje	Comentario	ISEM26
TENDENCIA	CONFIDENCIAL				
Total general					

Tabla 22. Proyección Sub-segmento Tendencia ISEM26.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el primer semestre de 2023:

Sub-Segmento	Venta KG ISEM 2023	% KG ISEM 2023	Venta KG ISEM 2026	% KG ISEM 2026
PRECIO				
SERVICIO				
Total general				

Tabla 23. Proyección Sub-segmentos Servicio y Tendencia ISEM26.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG ISEM 2026	Precio ISEM 2026	Venta ISEM 2026 \$
PRECIO			
SERVICIO			
TENDENCIA			
Total general			

Tabla 24. Resumen KG, Precio y Valor IISEM25 Porcelana

$$\text{Precio Ponderado} = \frac{\text{Venta \$}}{\text{Venta KG}} = \frac{\text{CONFIDENCIAL}}{\text{CONFIDENCIAL}} = \$\text{CONFIDENCIAL/kg}$$

- Por lo tanto, el precio para el ISEM26 es de \$38.083/kg.

• IISEM 2026:

Efectos Variable Precio

- Sub-segmento Precio. Se mantiene la premisa del ISEM26: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Servicio. Se mantiene la premisa del ISEM26: \$ **CONFIDENCIAL** /kg.
- Sub-segmento Tendencia. Se mantiene la premisa del ISEM26: \$ **CONFIDENCIAL** /kg.

Efectos Variable Volumen

Se parte de la base del Volumen de Ventas Nacionales proyectadas para este periodo: **CONFIDENCIAL** kg

Teniendo en cuenta que el precio del Productor Nacional depende de la composición de su mix de ventas y del precio de cada uno de los sub-segmentos explicados

previamente, se procedió a distribuir ese volumen por sub-segmento de acuerdo con los siguientes criterios:

- En el Sub-segmento Tendencia se verá afectado en diferentes proporciones. El 80% de las ventas del Sub-segmento crecerá con respecto al PIB Industrial (2%) proyectado por Fedesarrollo (Ver Anexo 15) tomando como base las ventas del segundo semestre del 2025 (**CONFIDENCIAL** kg). Mientras que el 20% restante de las ventas del Sub-Segmento disminuirá un 33% con respecto al mismo periodo del año anterior, así:

Sub-segmento	IISEM25	Porcentaje Afectado	Volumen por Porcentaje	Comentario	IISEM26
TENDENCIA					CONFIDENCIAL
Total general					

Tabla 25. Proyección Sub-segmento Tendencia IISEM26.

- Para el volumen restante **CONFIDENCIAL** kg (**CONFIDENCIAL** kg – **CONFIDENCIAL** kg = **CONFIDENCIAL** kg), se hace una distribución entre los sub-segmentos funcional e informado de acuerdo con la proporción que tenían en el segundo semestre de 2023:

Sub-Segmento	Venta KG IISEM 2023	% KG IISEM 2023	Venta KG IISEM 2026	% KG IISEM 2026
PRECIO				
SERVICIO				CONFIDENCIAL
Total general				

Tabla 26. Proyección Sub-segmentos Funcional e Informado IISEM26.

- Considerando los efectos sobre el precio y el volumen para cada uno de los Sub-segmentos, se calculó entonces el precio promedio ponderado:

Sub-Segmento	Venta KG IISEM2026	Precio IISEM 2026	Venta IISEM 2026 \$
PRECIO			
SERVICIO			
TENDENCIA			
Total general			

Tabla 27. Resumen KG, Precio y Valor IISEM26 Loza

$$Precio\ Ponderado = \frac{Venta\ \$}{Venta\ KG} = \frac{CONFIDENCIAL}{CONFIDENCIAL} = \$ CONFIDENCIAL/kg$$

- Por lo tanto, el precio para el IISEM26 es de \$ **CONFIDENCIAL** /kg.

- **Tabla Resumen Efectos Variables Volumen y Precio del Productor Nacional - Porcelana**

Unidad	Variable	Sub-Segmento	IISEM24	ISEM25	IISEM25	ISEM26	IISEM26
PORCELANA	Precio	PRECIO	Igual a Escenario con Medidas	Si = 20,5	No	No	No
		SERVICIO		Si = 16	No	No	No
		TENDENCIA		No	Si=5	Si=7	No
	Volumen	PRECIO		Si	Si	Si	Si
		SERVICIO		Si	Si	Si	Si
		TENDENCIA		Si	Si	Si	Si

Tabla 28. Resumen Efectos Volumen y Precio - Porcelana

Importaciones de China

- **IISEM 2024:**
Como en este semestre aún estarán vigentes las medidas de AD se estimó el mismo precio que en el escenario con medidas, es decir, el precio registrado para el IISEM24.
- **IISEM y IISEM 2025:**
En ausencia de derechos AD se estima un precio equivalente al precio promedio registrado para este origen entre los años 2001-2004, momento en el cual aún no se tenían medidas vigentes que corrigieran la práctica del dumping de China. El precio promedio obtenido para el periodo 2001-2004 fue de USD 0,68/Kg.
- **IISEM y IISEM 2026:**
Para los dos semestres del 2026 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6%⁷ sobre los precios proyectados para el año 2025.

Importaciones de Taiwán, Singapur y Demás Orígenes

Como estos orígenes de importación no se ven afectados por la medida de AD, se estimó el precio así:

- **IISEM 2024:**
Para este semestre se estimó el mismo precio registrado para el IISEM24, ya que no se proyecta un segundo incremento por año.

⁷ World Economic Outlook Database, April 2024. (2024, April 16). IMF. <https://www.imf.org/en/Publications/WEO/weo-database/2024/April>

- **ISEM y IISEM 2025:**

Para los dos semestres del 2025 se aplicó IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 4% sobre los precios del año 2024.

- **ISEM y IISEM 2026:**

Para los dos semestres del 2026 se aplicó el IPC mundial proyectado por el Fondo Monetario Internacional – FMI del 3,6%⁸ sobre los precios proyectados para el año 2025.

⁸ World Economic Outlook Database, April 2024. (2024, April 16). IMF. <https://www.imf.org/en/Publications/WEO/weo-database/2024/April>