Executive Summary

President Trump is right to want to get the U.S. economy growing again and help those left behind. And he is right that in the past decade China has taken advantage of its access to the U.S. market and invested in some of the United States’ most sensitive industries, while building barriers to effectively fence many foreign companies out of China’s own economy.

President Trump’s team can achieve these goals while maintaining a reasonably positive relationship with China, which in the long term will benefit both countries. The most difficult foreign policy issues in Asia will be easier to resolve if the United States and China find a way to cooperate economically.

As the president begins his first visit to China, much of the administration’s trade policy toward the United States’ most important, and difficult, trade partner is still being developed. China hawks are negotiating internally with more pro-trade advisors about how tough a stance to take. Far from imposing the 45 percent tariffs on Chinese imports the president threatened on the campaign trail, his administration’s actions so far have been relatively mild. The new Economic Dialogue has achieved little so far – which is to be expected with such thorny issues. In May, China agreed to open its markets to U.S. beef, biotechnology products, credit rating services, and electronic payment services. In April, the U.S. Trade Representative (USTR) initiated a Section 232 investigation on the effects of Chinese steel imports (and later aluminum) on U.S. national security. In August, the USTR launched a Section 301 investigation into China’s Intellectual property rights and forced technology transfer policies to determine their impact on U.S. economic interests. It is not yet clear whether the World Trade Organization (WTO) will adjudicate this dispute, or if the United States will handle it unilaterally. [1]

This paper outlines the specific Chinese practices U.S. companies believe unfairly affect them and American workers. It also explains current efforts and additional measures the Trump administration could use to open further
the Chinese market or address important imbalances. [2]

For example, the United States could consider:

Working with like-minded countries to bring real clout to the recently established G20 forum to address the world oversupply of heavy manufactured products like steel and aluminum.

Sector-by-sector trade negotiations to open markets where the United States is most competitive, as the administration is already doing with beef and some financial services. This could expand to agribusiness, energy, entertainment, technology, healthcare, and the internet. This is similar to what the United States did with Japan in the 1980s.

Expanding the scope of review of the Committee on Foreign Investment in the United States (CFIUS) process somewhat, so Chinese firms don’t buy the United States’ most critical technologies, and that those engaging in intellectual property (IP) theft, cyber-espionage, and other problematic practices cannot conduct mergers and acquisitions activity in the U.S. until they resolve these issues.

Some existing remedies have been effective, so they should not be thrown out in the interest of trying something new. But it is time for a good hard look at what works, what should be scrapped, and what other measures might be effective and smart, without unnecessarily stoking Chinese nationalism and compromising cooperation in other areas.

**China-U.S. Trade Helps the U.S. Economy and U.S. Workers**

Most of the recent decline in U.S. manufacturing jobs can be attributed to automation. [3] Nevertheless, research suggests that “over the 12 years after the country’s WTO entry in 2001, Chinese imports took an estimated two million jobs out of U.S. communities.” [4] This is a tragedy, and President Trump should concentrate on revitalizing these communities.

Despite these issues, trade with China also supports many good jobs in the United States and helps the economy. According to Oxford Economics, U.S. exports to China directly supported 1.5 million jobs and $128 billion in GDP in 2015. [5] China is the fastest growing export market for U.S. companies. [6] U.S. exports to China have over the last 10 years grown faster than China’s exports to the United States. [7] American companies have many leading market share positions in China, especially in high-tech and sophisticated capital goods such as U.S.-made microprocessors and gas turbines. For example, China is the largest foreign market for U.S. agricultural products [8] and airplanes, [9] the largest Iphone market for Apple, [10] and the third largest for U.S. auto-parts manufacturers [11] and Coca Cola. [12] More than half of annual sales for several Fortune 500 companies are in China. [13]

In addition, Chinese investment in the United States has created over 100,000 jobs in America and the number is growing. [14] In the Midwest alone, affiliates of Chinese companies provide more than 36,000 jobs, and Chinese companies are building several large manufacturing “greenfield” investments that will employ additional Americans. [15]

Trade with China alone also makes U.S. products on average 1–1.5 percent cheaper. This helps lower income Americans in particular. According to a report prepared for the U.S.-China Business Council by Oxford Economics,
“The typical U.S. household earned about $56,500 in 2015; trade with China therefore saved each of these families up to $850 that year.” [16]

Most Americans continue to view trade positively. In a Gallup poll in February 2017, an impressive 72 percent of Americans see foreign trade as an opportunity for growth rather than as a threat – the highest percentage since this poll has been conducted. [17]

While this commentary outlines several new ideas to open China’s market, the bilateral trade deficit alone should not be the focus of American policy. First, much of the bilateral trade deficit is structural: it is affected by the U.S. dollar, which is a safe haven and thus highly valued, and the low U.S. savings rate. Second, the trade deficit is not the primary cause of lost American jobs. If imports are cut, some would argue, American production will rise to replace them. But as Derek Scissors of the American Enterprise Institute has explained, facts and logic say otherwise. In 2006, the highest U.S. annual trade deficit in history coincided with the lowest U.S. unemployment in the previous 15 years. In 2009, the U.S. trade deficit fell by more than $300 billion, yet unemployment worsened dramatically. [18] Third, many U.S. products (such as computers and phones) contain inputs from various countries but are counted somewhat inaccurately as “imports” from China, and thus artificially inflate the deficit. A growing economy – not balanced trade or protectionism – will produce good jobs for American workers.

**Chinese Practices Unfairly Impact U.S. Business And Workers**

American companies and workers have rightly complained about a number of Chinese policies that unfairly impact non-Chinese companies, which can be organized roughly into the following eight categories:

1. non-tariff barriers to trade through regulations, quotas, etc.
2. access to government-directed credit and massive subsidies for state-owned enterprises and national champions in favored industries
3. government procurement that favors or exclusively permits Chinese bidders
4. technology and internet sovereignty policies
5. weak enforcement of intellectual property rights, including trade secrets
6. continued cyber-espionage of U.S. industrial secrets
7. discriminatory application of law to the detriment of foreign companies and investors
8. currency manipulation (This is not currently an issue, as China has actively intervened to increase – not decrease – the value of the renminbi, but is included here because it has received significant political attention.)

**U.S. Leverage to Push Back, While Keeping the Bilateral Economic Relationship Strong**
The United States has leverage to roll back many of China’s unfair trade practices short of imposing across the board tariffs – especially if the United States is willing to do the hard work to create a unified front with other large economies, especially European or Japanese. In many, but not all areas, the WTO should help resolve these disputes. Imposing unilateral trade sanctions outside the WTO process can be a powerful tool, but should be used sparingly, since it will likely result in damaging retaliation.

These suggestions focus on specific Chinese practices. General ideas to improve U.S. companies’ competitiveness in China are discussed later.

**Non-Tariff Barriers to Trade through Regulations, Quotas, etc.**

Many U.S. companies complain that non-transparent – and sometimes unevenly applied – Chinese regulations and licenses unfairly restrict their ability to compete in China.

**Affects:** all U.S. industries, in particular agribusiness (beef/pork), energy, entertainment, technology/IT, healthcare, and financial services.

**Tried to Date:** The Obama administration filed 16 of the 21 WTO cases against Beijing[^19] since China’s accession to the WTO, many of them fighting back against non-tariff barriers.[^20] The United States has won all the cases that have been decided so far, and while China has made changes in response to the cases it often only partially complies with the rulings.[^21]

**Additional Measures to Try:** While the Trump administration has so far been hesitant to pursue cases at the WTO - and recently launched a Section 232 investigation into Chinese steel and aluminum imports outside the WTO - the WTO has been partially able to push back against Chinese non-tariff barriers. China is more likely to compromise, and usually reacts with less hostility, to trade disputes taken to the WTO than to unilateral trade measures like anti-dumping cases.[^22]

In addition to continuing aggressive enforcement actions at the WTO, the Trump administration could launch sector-specific trade negotiations to open markets in sectors where the United States is most competitive (agribusiness, energy, entertainment, technology, healthcare, financial services, and the internet) and use benchmarks to gauge progress. This is similar to what was done with Japan in the 1990s. China’s concession to let in U.S. beef imports and ease restrictions on some financial services in May 2017 was a good example of this.

An even tougher approach would have these sector-by-sector trade negotiations insist on reciprocal access on a product-by-product basis. The United States could threaten that Chinese industries will lose their access to the U.S. market unless China does more to end its non-tariff barriers and give foreign companies real access to their market. For example, if U.S. producers of wind turbines do not have the same market access in China as Chinese producers have in the United States, the United States could demand the same access or reduce its openness to match China’s level.[^23] While this approach sounds appealing, it would be very difficult in practice. If the United States were to extend this practice to other partners, it would require monitoring different levels of access for a variety of sectors and in many different countries – a nearly impossible task.

**Access to Government-Directed Credit and Massive Subsidies Given to State-Owned Enterprises and National Champions in Favored industries**
An urgent near-term issue is the impact of Chinese and world overcapacity in heavy industrial goods such as steel, aluminum, and cement. This has led to China and others dumping these products on world markets below cost, thus lowering prices drastically around the world and leading to many job losses.

**Affects:** primarily steel, aluminum, cement, transport infrastructure (trains, telecoms etc.), and energy (oil and gas)

**Tried to Date:** The Obama administration mounted a steady stream of anti-dumping cases against Chinese steel and other products, most recently in January 2017 in response to Chinese overproduction of aluminum due to government subsidies. It also launched WTO enforcement actions to end tax exemptions that unfairly benefited Chinese-produced aircraft and its excessive support for farmers. [24]

In September 2016, G20 leaders agreed to establish a forum addressing overcapacity in the steel and other industries. In July 2017, the G20 discussed the issue, but reached no conclusions. [25] Also in July 2017, at the first China-U.S. Comprehensive Economic Dialogue (CED), China and the United States discussed overcapacity amidst tensions over Trump’s plan to restrict steel and aluminum imports for national security reasons, and agreed it is a global issue that requires a collective response. [26]

China understands that it has an overcapacity in heavy industrial goods and has taken small unilateral steps to begin to address this, including calling for the elimination of 100 to 150 million megatons of steel capacity (not yet implemented), agreeing to lay off 5 million coal and steel workers in the next several years, and shutting down factories that fall short of environment, energy consumption, and quality or safety standards. [27]

**Additional Measures:** China has agreed to support the establishment of, and to actively participate in, the G20 forum on excess steel capacity. Its goal is to manage the gradual reduction of heavy industrial goods production over time, while giving workers the time and means to adjust to this reduction. [28] Although this forum has not gone far enough, the United States should support this initiative and support China’s initial unilateral steps to tackle its own overproduction.

To make the G20 forum a success, the United States needs to energize Europe, Japan, Australia, South Korea, and other major economies to pressure China on this issue. Germany could be a particularly good partner, given their high level of trade with China and influence within the European Union (EU). [29]

Simultaneously, the administration could implement a tougher option: As a Brookings report suggests, it could leverage China’s desire to become a “market economy” to negotiate specific reductions in excess steel and other overproducing sectors. [30] Such an approach would be more effective if the United States can get other large economies to cooperate.

Finally, the administration could threaten to impose unilateral tariffs on Chinese imports in sectors with a large overcapacity – as it is beginning to do. Before using such a severe measure, however, the Trump trade team should take into account that this will likely cause China to retaliate against other industries and drastically increase the prices of important inputs, for example of steel for U.S. building projects. This will have a negative impact on the U.S. construction and other sectors.
**Government Procurement that Favors or Exclusively Permits Chinese Bidders** [31]

China has government procurement policies both at the national, regional, and local levels that sometimes explicitly, and sometimes implicitly, allow only Chinese companies to sell to the government. At times, this also extends to state-owned enterprises, and thus potentially closes off a large segment of the Chinese economy.

**Affects:** all industries, but especially building materials (steel, aluminum, cement) and technology.

**Tried to Date:** The Obama administration repeatedly admonished China about its unfair procurement processes, both through then-ambassador to China Gary Locke and through the Strategic Economic Dialogue. [32] The EU Chamber of Commerce has also complained about favoritism and corruption unfairly favoring Chinese companies in government contracts. In 2012, the EU threatened reciprocity if countries are thought to have unfair procurement processes that benefit domestic players. This was targeted at China but would also affect others. [33]

There has been some progress. In 2016, China's State Council required all sub-central regions and agencies to examine their policies and remove preferences for local companies in government procurement. [34]

**Additional Measures:** The administration should press hard in its revitalized Comprehensive Economic Dialogue for China to join the WTO Government Procurement Agreement. The potential economic benefits to the United States are significant given the Chinese government’s outsized role in its economy. [35] The president has the authority to suspend the procurement provisions of U.S. trade deals until China agrees to open its own government procurement. [36]

**Technology and Internet Sovereignty Policies**

The Chinese government at times forces foreign companies seeking access to China to transfer key technologies to Chinese joint ventures, disclose their source code, or adhere to other discriminatory policies.

**Affects:** primarily information technology, high tech manufacturing, clean tech, energy, biotech, and media companies.

**Tried to Date:** The Obama administration discussed this issue at every previous strategic and economic dialogue. This has not been effective – U.S. internet companies are in practice shut out of the Chinese market.

**Additional Measures:** The author agrees with a recent bipartisan Asia Society study that argues the United States should start a new, separate negotiation with China for technology “rules of the road” to address China’s rising digital protectionism, [37] which should cover all the discriminatory policies discussed in this commentary.

As leverage, a very tough position would have the United States condition market access for Chinese internet and technology companies to the United States on reaching a successful agreement. Alibaba, TenCent, Huawai, and others are actively seeking to gain a toehold in the United States. It would be difficult to keep them from selling to the U.S. market altogether. However, Chinese companies are actively trying to buy U.S. firms in the high-tech space, and it seems reasonable to expand the focus of CFIUS review slightly to take into account whether U.S. companies are experiencing a level playing field in China. [38]
There may also be gains to be had from forcing U.S. tech companies to work with each other as a united front. Right now each are trying to find their own way in, which is often ineffective and requires them to curry favor with the Chinese government.

**Weak Enforcement of Intellectual Property Rights, including Trade Secrets**

For years, non-Chinese companies have complained that Chinese business partners push them to transfer sensitive technologies to China, only to find their intellectual property stolen and in some cases blatantly used to compete against them elsewhere.

**Affects:** many industries, especially IT, high-tech manufacturing, fashion, and entertainment.

**Tried to date:** Every recent U.S. administration has discussed these issues at length with their Chinese counterparts in almost every bilateral forum, and in the WTO (through TRIPS). China makes the right pronouncements in response, but enforcement of intellectual property is still lacking. There is some evidence that China is stepping up IP enforcement in areas as its own companies become more innovative. The Trump USTR recently bypassed the WTO and launched a (scarcely used) Section 301 case against China to combat this practice. Most U.S. industries impacted by China’s unfair IP practices are concerned about Chinese retaliation and would prefer to handle the issue through the WTO.

**Additional Measures:** In addition to addressing this problem through the WTO and encouraging Japan and Europe to also take a tougher line, the administration could encourage U.S. companies to bring more Section 337 cases, which allow companies to obtain relief in the ITC by showing that imported articles have infringed on their U.S. patents, trademarks, or copyrights. If the U.S. company wins the case, any product incorporating the stolen IP may not enter the United States. A more draconian step would be to prevent Chinese companies with a record of benefiting from intellectual property theft from trading with, or even investing in the United States. This would be a real departure from the current CFIUS review process, which focuses narrowly on national security. Yet there is a reasonable argument that massive theft of American intellectual property negatively impacts U.S. national security.

Ideally, the United States would coordinate this policy with Europe, Canada, and major Asian economies to make it more effective and prevent Chinese IP thieves from trading with these other countries.

**Continued Cyber-Espionage on U.S. Industrial Secrets**

Some U.S. reports estimate that China has stolen as much as $300 billion a year in U.S. industrial secrets, much of it through a concentrated effort to hack into U.S. company and government databases.

**Affects:** primarily high tech, advanced manufacturing, and defense sectors

**Tried to Date:** The Obama administration indicted several Chinese hackers (who of course would never be extradited to the United States) and threatened to downgrade a major summit with China in 2015 to get China to agree to a serious dialogue on cyber-espionage. That dialogue has been partially successful. The Trump administration’s Section 301 case seeks to address this issue as well.
**Additional Measures:** The direct government-to-government dialogue on cyber-espionage, as well as the various “track-2” efforts underway though Massachusetts Institute of Technology and other institutions are showing some progress. These should be continued. It is too soon to determine whether the administration’s Section 301 action will be helpful leverage in these talks, or just cause China to retaliate.

To gain additional leverage, the administration could threaten to automatically bar any Chinese company that engages in or benefits from[^48] cyber-espionage from exporting to or investing in the United States.[^49] Ideally, there should be a multilateral agreement on this, so any Chinese company that violates this rule would also be barred from business in Europe, Japan, Australia, Canada and other like-minded countries.

**Discriminatory Application of Law to the Detriment of Foreign Companies and Investors**

China uses antitrust, patent laws, environmental laws, or security reviews in a discriminatory manner, or holds up licenses or institutes red tape to slow down non-Chinese competitors.

**Affects:** all U.S. industries, but especially pharmaceuticals, medical devices, chipmakers/tech, automotive, consumer goods (e.g. baby formula), and technology.

**Tried to Date:** The Obama administration repeatedly raised this issue in the Strategic and Economic Dialogue,[^50] and the Trump administration has done the same. In the anti-trust area, the U.S. Federal Trade Commission (FTC) and Department of Justice (DOJ) held workshops for Chinese anti-trust enforcement agencies and the two anti-trust agencies speak frequently, which has resulted in the streamlining of some Chinese processes.[^51] The U.S. Chamber of Commerce and U.S.-China Business Council have spoken out against other discriminatory practices.[^52] So far, none of this has had much effect.

**Additional Measures:** This is one of the most difficult issues to address. While there is much anecdotal evidence that this is happening, it is virtually impossible to prove that Chinese laws are enforced more stringently against foreign corporations.

In anti-trust enforcement, China and other countries often argue that their policies are merely retaliation for U.S. actions. For example, China and other foreign nations point to recent FTC and DOJ actions that presume that “special rules for IP are desirable … and that business arrangements involving IP rights may be safely presumed to be anticompetitive without proof of competitive harm.” U.S. FTC Commissioner Maureen Ohlhausen has agreed that U.S. decisions have “created potentially confusing precedent for foreign enforcers,” U.S. unfettered notions of “unreasonable” conduct let Chinese officials force down prices of foreign goods to promote their own nationalist economic policies. In this area, the United States may want to slightly modify its regulations.

This still would not help with the discriminatory application of other Chinese laws, for example unevenly-applied environmental standards. This issue is best addressed at the cabinet level as part of the bilateral economic dialogue along with the other problems raised in this commentary. If operating licenses are being held up, as a last resort the United States (and Europe) could threaten to retaliate by not giving Chinese companies in the same sector permission to list on U.S. exchanges or invest in the United States until the issues are cleared.

**Currency Manipulation**
Some U.S. observers and politicians have argued that China keeps the renminbi artificially low and thus makes its exports more competitive internationally. While this was the case for many years, it is no longer a concern.

**Tried to Date:** No policy response is necessary at the moment, because, after years of keeping their currency artificially low, China has in the past few years been selling U.S. Treasuries in order to prop up the value of the yuan, which is declining relative to other currencies as China's economy slows. The underlying reason is China's high savings rate. Many economists believe that even with this intervention, China will not be able to prevent the market from depreciating its currency.

**Additional Measures:** It would be a mistake to pressure China on the value of its currency now. As the Brookings report argues, “we should in fact be happy that China is intervening to keep its currency high, since . . . Chinese depreciation would likely destabilize global financial markets. Just the hint of significant devaluation in August 2015 and again in December sent financial markets tumbling.”

The United States should work with allies to start intensive discussions with China about how it plans to move toward a more market-determined currency and liberalized capital account. The talks should also explore limitations being placed on capital outflows to ensure that they will not be used as a trade or investment barrier.

Should China attempt to manipulate its currency in the future, the United States could try an approach similar to the Reagan administration's Plaza Accords, a 1985 agreement between the United States, France, Germany, Japan, and the United Kingdom to jointly intervene in their currency markets in order to devalue the dollar relative to the Japanese yen and German deutsche mark.

**General Recommendations**

In addition to the specific recommendations above, the administration should consider these more general tactics.

1. While there is some skepticism in the administration about the WTO, the WTO dispute resolution mechanism has been a very valuable tool that the U.S. should continue to use and even ramp up its efforts in the organization. WTO cases take time – two to three years until all appeals are exhausted – but just the threat of bringing a case usually forces the Chinese government to act. It has also traditionally been more successful against China than unilateral tariffs, which generally cause the Chinese to retaliate. This tit-for-tat costs the American economy billions of dollars to save relatively few jobs.

2. The Trump team should adequately fund one U.S. government agency – ideally the USTR – to investigate claims by U.S. companies that another country is cheating and to initiate formal enforcement proceedings. The USTR does this in some cases and the Department of Commerce in others. The USTR staff is small and chronically underfunded. A small boost in funding (between $10–20 million a year) would make an enormous difference in the number of trade disputes the United States can pursue, especially at the WTO, which has traditionally pushed China to compromise.

3. The administration could also offer Chinese investment in the U.S. as a “carrot” to get Chinese agreement on other economic issues. This is consistent with President Trump’s stated aim to spur job creation. While this
commentary recommends that the United States strengthen the CFIUS process somewhat, in general, America should welcome Chinese investment, especially in areas that will create many jobs, for example tourism and infrastructure. On infrastructure, the administration could consider waiving discriminatory practices such as the requirement to buy American when federal or local governments are undertaking construction, but only for Chinese companies that have not broken American laws. [62]

4. The United States has so far resisted granting China “market economy” status within the WTO, something China claims should have been awarded automatically with its 15th anniversary of joining. [63] Together with like-minded nations, the United States should continue withholding this status until some of the urgent dialogues proposed above show real progress. As a Brookings report argued, “China would have a good case in the WTO against such U.S. action, but a WTO case would take years and China is likely to prefer a negotiated settlement.” [64]

5. The United States can expand the scope of review of the CFIUS process – and several proposals to do this are already in the works. The administration has great leeway to change the scope of review even without any statutory changes. This should be a nuanced approach: A proposed bill by Senator John Cornyn (R-TX) and Rep. Pittenger (R-TX) draws a thoughtful line and deals with several gaps in the current process, including by expanding the definition of national security, specifically covering greenfield investments in addition to mergers and acquisitions, mandating increased scrutiny of state-owned entity purchases, and possibly covering venture capital transactions, joint ventures, minority position investments and even some sensitive real estate transactions. [65] This would restrict the ability of Chinese enterprises to purchase some of the United States’ most sensitive technologies until some of the problems discussed here are addressed. Other proposed bills, such as one by Sens. Grassley (R-Iowa) and Brown (D-Ohio), in this author’s view, go too far. [66] Overall, Chinese investment in the U.S. creates jobs, helps our economy, and should be encouraged – so it’s important to strike a careful balance here.

**Conclusion**

The U.S. open trade relationship with China has helped the U.S. economy as a whole, although it has contributed to dislocation in some communities.

Some existing trade remedies – such as bringing cases in the WTO – have been effective, so these should not be thrown out in the interest of trying something new. This commentary lays out additional measures that might create incentives for China to open up to the standards of other large markets. Some “hardball tactics” in the trade arena will whip up nationalistic support for retaliation in China. Thus, these suggestions are intended to try to maintain some balance and to be handled quietly, behind the scenes, to give the Chinese ability to save face.

**Endnotes**


[2] Many of these additional measures have been suggested by trade experts previously, but the author believes it is helpful to put all of the United States’ best thinking on this problem into one comprehensive document.
A recent academic study reports that trade accounted for just 13 percent of the lost U.S. factory jobs, but 88 percent were taken by robots and other factors at home. Michael Hicks, “The Myth and the Reality of Manufacturing in America,” Ball State University Center for Business and Economic Research, June 2015, http://conexus.cberdata.org/files/MfgReality.pdf.

Thomas Hout, “Where Trump Does (and Doesn’t) Have Leverage with China,” The Harvard Business Review, December 16, 2016, https://hbr.org/2016/12/where-trump-does-and-doesnt-have-leverage-with-china. In addition, the trade-weighted value of the U.S. dollar has risen over 25 percent since 2012, which is pushing even more jobs in furniture, appliances, and similar sectors out of the U.S. The manufacturing sector has added roughly a half million jobs since the recovery – but all for highly skilled, technical, and managerial people. The U.S.-China trade imbalance is structural, based on China’s export scale, the overvalued safe-haven U.S. dollar, and the low U.S. savings rate.


Berr, “China Trade War?”


Semiconductor maker Ambarella (AMBA) gets 90 percent of its revenue from China, and other tech firms, such as Marvell (MRVL) and Qualcomm (QCOM), get more than 50 percent of their sales from the world’s most populous country. See “Berr, China Trade War?”


[18] Derek Scissors, “How Trump Can Make Trade with China Work for America: A Strategy for the New Administration,” National Review, February 8, 2017, www.nationalreview.com/article/444612/donald-trumps-china-trade-deals-should-foster-reciprocity. Scissors also argues convincingly that focusing on the bilateral trade deficit with China is misleading. For example, China merely assembles cell phones, but “its exports to the U.S. are credited with the phones’ full value even though components made in Japan, Korea, the United States and elsewhere account for most of that value. Our true deficit with China is smaller than reported; our deficits with some countries are larger.”


U.S. Trade Representative, China’s WTO Compliance.

U.S. Trade Representative, China’s WTO Compliance.


For example, foreign companies often don’t find out about tenders on time; confusing standards on bids that vary by municipality. Bids tendered below central government levels, a murky regulatory space where relations with local-level officials help.


U.S. Trade Representative, China’s WTO Compliance.


[38] Dollar, “U.S.-China economic ties.”

[39] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO). TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures.


[41] New, “China Still Weak”; and U.S. Trade Representative, China’s WTO Compliance.


[43] Steptoe & Johnson, LLP, “Section 337 / ITC Litigation,” www.steptoe.com/practices-101.html. One downside of this remedy is that supply chains are so complex and international that often components that include stolen IP are incorporated into American products (iphones, computers, etc.) and sanctioning these parts harms the American company using the component.


[47] It’s sometimes easier to determine who benefited from the espionage (because they put out similar products to the ones that were stolen) than who engaged in the espionage. Indicting individual hackers in China who will never be extradited is not a very helpful tool.
Again, this would be a departure from the current, narrow focus of CFIUS, but we believe is warranted because cyber-espionage negatively affects U.S. national security.


Gough, “Western Companies.”


Dollar, “U.S.-China economic ties.”

Dollar, “U.S.-China economic ties.”

Prior to the Plaza Accords, the most successful exchange-rate negotiation was the Smithsonian Agreement when, in 1971, President Nixon forced American trade partners to allow dollar depreciation, instituting a 10 percent import surcharge to force them to the negotiating table. See, Chris Matthews, “Here’s How Donald Trump Can Win a Trade War With China,” Fortune, December 13, 2016, http://fortune.com/2016/12/13/trump-china-trade.

Recently, some companies have been hesitant to come forward, worried that the Chinese government will retaliate against them.

For example, in 2009, President Obama issued a 35% tariff on Chinese tires, complaining China was flooding America with tires at low prices. The Peterson institute says it saved 1,200 tire jobs in the U.S. However, it caused Americans to pay 26 percent more per tire. U.S. tire makers, facing less competition from China, also raised prices on American-made tires. The Peterson Inst. Estimates that the tire tariff cost Americans an extra $1.1 billion. Plus, China responded with penalties on U.S. shipments of chicken parts, which cost chicken manufacturers US $1 billion in sales. Gary Clyde Hufbauer and Sean Lowry, “US Tire Tariffs: Saving Few Jobs at High Cost,” policy brief number PB12-9,
Currently, U.S. exporters bring their concerns to USTR informally or through formal processes like the Special 301 Report. Consulting with agencies, USTR then decides whether or not to raise the allegation with the other country. If the government decides to press the issue, the countries sometimes reach a voluntary resolution, but often, the other government denies the claims. USTR may decide that the only way to resolve the matter is through formal enforcement proceedings. Through such proceedings, neutral arbitrators identify specific violations of trade agreements, issue legally binding orders to the violators to come into compliance and impose sanctions for continued noncompliance. John Veroneau and Shara Aranoff, “How to stop our partners’ unfair trade practices,” Politico, April 4, 2016, www.politico.com/agenda/story/2016/04/how-to-stop-our-partners-unfair-trade-practices-000084.

Another idea, which most trade professionals I spoke to did not favor, involved granting the ITC the right to issue “Trade Enforcement Advisory Opinions” under Section 332 regarding specific allegations of trade violations. The proponents of this approach argue that the ITC is independent, not political like USTR, but having these enforcement actions aligned with the White House seems to us the best course of action. Veroneau and Aranoff, “Unfair Trade Practices.”

Scissors, “Trade with China.”


Dollar, “U.S.-China economic ties.”


On October 18, US Senators Sherrod Brown (D-Ohio) and Chuck Grassley (R-Iowa) introduced an even more draconian bill, that goes well beyond a national security review and would set up a separate process by the Department of Commerce in addition to CFIUS, and would consider the history of distortive trade practices by a country, and impact on domestic industry. So far, most U.S. companies are not in favor of going this far. Morgan Lewis, “Senate Bill Proposes New Review of Certain Foreign Investments’ Effects on US Economy,” JDSUPRA, October 29, 2017, https://www.jdsupra.com/legalnews/senate-bill-proposes-new-review-of-44834.

About the Author
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