Ken Monahan
Vice President, International Economic Affairs

Sept. 28, 2022

Mr. William Shpiece
Chair, Trade Policy Staff Committee
Assistant U.S. Trade Representative for Trade Policy and Economics
Office of the U.S. Trade Representative
600 17th St. NW
Washington, DC 20510

Re: Request for Written Comments Concerning China's Compliance with WTO Commitments (USTR-2022-0012)

Dear Mr. Shpiece:

The National Association of Manufacturers appreciates the opportunity to provide to the Office of the U.S. Trade Representative comments regarding China's compliance with its World Trade Organization commitments, in accordance with an Aug. 29 Federal Register notice (87 FR 52835) inviting public comments.

The NAM is the largest manufacturing association in the U.S., representing 14,000 manufacturers in every industrial sector and in all 50 states. The NAM represents businesses of all sizes, with small and medium-sized manufacturers comprising 90% of our members. Manufacturing employs more than 12.8 million women and men across the country, accounting for 58% of private sector research and development and contributing $2.77 trillion annually to the U.S. economy as of the first quarter of 2022.[1] Many of those manufacturing companies do business internationally, exporting millions of dollars' worth of products to China and other markets overseas in ways that support American workers, investment and economic activity here in the U.S.

Overview

As the U.S. grapples with the continued uncertainty prompted by the global COVID-19 pandemic, Russia's invasion of Ukraine, supply chain disruptions and inflation, the U.S. must assert strong global leadership, working with allies and partners to tackle our shared global challenges. The U.S., however, is not the only country seeking to shape this new world: China's increasing global ambition and reach, and the size and impact of its economy, will have important implications for manufacturers, for the country and our common future.

Our approach to China must recognize the complex ties between the U.S., China and the rest of the world. China will remain a necessary partner on targeted global issues, a fierce economic competitor that often does not play by the rules and a major rival challenging American global influence. From an economic perspective, the U.S.-China economic and trading relationship remains one of the most impactful, and most complex, for manufacturers in the U.S.

- China remains a critical market for manufacturers in the U.S. and their ability to compete, to invest and to hire here at home. Manufacturers' ability to export and sell to

[1] National Association of Manufacturers, "Facts about Manufacturing," last visited Sept. 21, 2022.

one of the world's fastest growing markets is fundamental to their global economic competitiveness, and one that they cannot afford to cede to Chinese or other foreign competitors. More than half of American manufacturing workers depend on exports for their paychecks—and manufacturers in the U.S. export more goods to China (more than $104 billion) than any other market outside of North America, supporting hundreds of thousands of well-paying American jobs.

- Yet China's unfair and market-distorting policies and practices directly harm manufacturers and workers in the U.S. From unfair import and export subsidies and industrial policies to intellectual property theft, manufacturers and workers in the U.S. face an unfair playing field that harms manufacturing in the U.S. and holds back the industry. As discussed below, some of these issues have arisen as China has failed to implement fully and consistently its World Trade Organization obligations. In many other cases, however, WTO and other trade rules have failed to keep up with Chinese government market distortions.

To remain globally competitive, manufacturers need to be able to sell and compete around the world, including in China—but to succeed, they need a level playing field and to work with government to tackle persistent, systemic trade and investment barriers.

Resetting the Relationship: The Need to Accelerate of a Comprehensive China Strategy

NAM President and CEO Jay Timmons has urged the administration and members of Congress in both parties to fix the U.S.–China relationship, calling on President Joe Biden, U.S. Trade Representative Katherine Tai and other senior officials to implement a clear China trade and economic strategy that can strengthen our ability to compete economically with and in China and hold China accountable for its behaviors. Such a strategy could help to provide desperately needed business certainty that can support manufacturing investment in the U.S. and industry efforts to relocate and build more resilient supply chains. And a clear strategy is needed now: China is not sitting still, signing new trade and investment agreements with key allies in Europe, Asia and the Americas in recent months.

At a high level, that strategy must operate on multiple fronts, including targeted U.S.-China bilateral engagement at senior levels to press on key economic priorities, close engagement with allies and partners and assertive U.S. leadership in global institutions like the WTO. The U.S. must develop, and strategically use, a full playbook of legislative and enforcement tools to pressure China to stop its discriminatory economic policies and level the playing field for manufacturers and workers in the U.S. The U.S. must also work with allies to shape China's external environment, adopting common approaches that incentivize China to change its behavior. The U.S. must also push for proactive, market-opening policies that strengthen our trading relationships—not just policies that disincentivize U.S. manufacturers from operating in China or impose collateral damage on the U.S. economy.

More specifically, that broad strategy must include action in key areas, including:

- Strengthening domestic investment in manufacturing through bold investments in research, development and production capabilities for critical and emerging manufacturing technologies and products, and efforts to boost supply chain security and resiliency, infrastructure, energy development, workforce and smart regulation;
- Deepening engagement with allies around the world, and a committed presence in the Indo-Pacific, through ambitious efforts that cement market access, best-in-class trade rules and binding trade and economic commitments that deliver for manufacturers;

- Asserting strong U.S. global leadership to ensure that the U.S.—not China—is writing the rules for the international system, including on trade;
- Leveraging clear, consistent pressure, through direct engagement with China and in concert with allies for China to fully meet trade and economic commitments it has made to the U.S., including those through the WTO and bilateral commitments such as those under the Phase One U.S.-China deal;
- Strategically using domestic and multilateral trade enforcement tools to target identified areas of problematic Chinese trade behavior, and refining existing tools to focus on priority concerns without imposing blanket harm on the U.S. economy;
- Expanding efforts to tackle Chinese intellectual property theft, including the growing tide of counterfeits;
- Advancing targeted and effective upgrades to national security regulatory frameworks, such as investment security reviews and export controls; and
- Strengthening collaboration between manufacturers, Congress and the executive branch to advance American values abroad.

<u>China's Implementation of its WTO Commitments</u>

In the years immediately following China's accession to the WTO, it addressed many of the issues laid out in its accession protocol and joined new agreements such as the Trade Facilitation Agreement and expanded Information Technology Agreement. Despite those areas of progress, China has failed to fully implement the letter and the spirit of its WTO commitments in key areas, has imposed additional barriers to market access and engages in distortive activities not fully covered by WTO rules. As outlined in the appendix to this submission, these actions have resulted in a wide variety of market-distorting and damaging industrial policies and other measures designed to tilt the playing field in favor of Chinese manufacturers and hinder the ability of manufacturers in the U.S. to compete fairly.

In many of the cases in which China has violated its WTO commitments, the U.S. has been able to use WTO enforcement to effectively force policies to be withdrawn or revised: the U.S. has a strong track record in WTO dispute settlement, filing 24 WTO challenges against Chinese trade policies without a clear loss.[2] Yet these efforts have not been enough: China has continued to push the boundaries of its WTO commitments, and WTO rules have not kept pace with Chinese trade-distorting practices in areas such as digital trade, state-led competition and distortive subsidies.

<u>Ways Forward: U.S. Strategies and Approaches to Address Chinese Areas of WTO Noncompliance and Other Trade Distorting Behavior</u>

The U.S. must find the right approach to the U.S.-China economic relationship that will enable manufacturers to compete fairly for critical opportunities in the Chinese market while leveling the playing field for manufacturers of all sizes to overcome a range of persistent, systemic barriers and market-distorting behaviors. Manufacturers strongly believe that the U.S. government must undertake a comprehensive, strategic approach to China trade policy that can drive concrete, lasting and enforceable policy changes while strengthening the U.S. economy.

<u>Multilateral: Leveraging WTO Modernization and U.S. Leadership in Other Global Institutions to Address Problematic Chinese Behaviors</u>

[2] Since 2004, the U.S. has brought 24 cases against China, with 15 wins via ruling or settlement, three mixed rulings, three cases still in process and one case lapsed. In turn, China has brought 16 cases against the U.S., in which the U.S. has one clear win, four mixed rulings, three losses, seven cases still in progress and one case withdrawn.

The U.S. helped to create a rules-based international system to promote peace, stability and growth in line with U.S. foreign policy and economic interests, leading in critical institutions such as the WTO, the United Nations, the G7, the G20 and others. These institutions represent critical avenues for strong U.S. trade and economic leadership to set trade and economic approaches that align with U.S. interests and values, and to address problematic Chinese trade practices.

The WTO is a critically important arena to demonstrate a clear U.S. approach to trade and economic issues with China. Manufacturers in the U.S. have long supported the WTO as an engine driving the expansion of global trade, improving the competitiveness of manufacturers in the U.S. and promoting economic development around the world. The WTO has implemented numerous meaningful policies since it was established in 1995, from substantial reductions in global tariffs and trade barriers to the adoption and enforcement of stronger and fairer standards to meaningful dispute resolution mechanisms. Manufacturers in the U.S. depend on this rules-based global trading system to support exports, investment and growth—and as a backstop to push back on areas in which China (or other trading partners) are harming manufacturers in violation of their trade commitments.

Yet the WTO is increasingly in need of modernization to address industry evolution, technological developments or pernicious trade-distorting practices from China and others.

Key elements of such a WTO revitalization and modernization agenda must:

- **Deliver broad trade liberalization**, including through plurilateral and sectoral agreements, as the organization has been largely unable to deliver broad-based trade liberalization in more than 25 years;
- **Modernize the WTO rulebook to address Chinese and other market-distorting behaviors**, updating existing rules and adopting new disciplines in areas such as digital trade, state-led competition and distortive subsidies that are critical for a fair and fully functioning global trading system;
- **Strengthen enforcement of the WTO rulebook**, preventing countries like China from ignoring core WTO disciplines and flouting core WTO requirements such as trade barrier notifications with seeming impunity; and
- **Improve WTO enforcement tools, particularly the Appellate Body system,** to address longstanding concerns with the WTO's dispute settlement system.

Manufacturers in the U.S. are committed to being allies in that modernization process, which can directly tackle concerns related to China's WTO compliance addressed in this submission. Manufacturers' continued growth and success in the U.S. depend upon fair international trade rules, requiring strong and quick action by U.S. policymakers and other global leaders to embrace concrete solutions that will reform, revitalize and modernize the critical WTO system.

Beyond the WTO, the U.S. must also strengthen its engagement with like-minded trading partners to ensure a common front on China concerns, leveraging workstreams at existing global and regional organizations such as APEC, the Organization for Economic Cooperation and Development and the G7; in sector-specific dialogues such as the Global Forum on Steel Overcapacity; and in informal multi-partner dialogues such as trilateral discussions with the European Union and Japan.

Bilateral: Direct Engagement to Hold China Accountable and Press for Action on Priority Trade Concerns

The administration must also directly confront problematic Chinese behaviors that are harming manufacturing businesses, workers and communities, engaging China to address its concerns comprehensively through direct negotiations.

In January 2018, NAM President and CEO Jay Timmons called for the U.S. to negotiate a comprehensive, enforceable, rules-based trade agreement with China that "wholly restructures our economic relationship" to benefit manufacturers, and in August 2018 released a three-point framework of negotiating priorities, addressing Chinese trade practices that harm manufacturers and, in some cases, violate China's WTO commitments. Although significant attention has been paid to product purchases, the U.S. also negotiated critical language in frameworks such as the 2020 interim "Phase One" U.S.-China deal to address core manufacturing concerns such as intellectual property theft and market access.

Manufacturers continue to believe that the U.S. must engage with China—directly, regularly and at senior levels—on trade priorities. Such efforts are critical in holding China fully accountable for the trade commitments it has made to the U.S. and its allies at the WTO and under the "Phase One" deal. Direct negotiation is also critical to address key concerns beyond existing commitments and disciplines such as industrial overcapacity, non-market actions by Chinese state-owned enterprises and technology transfer.

Domestic: Strategic Use of U.S. Enforcement Tools to Address Unfair Chinese Policies

Manufacturers welcome domestic efforts to strengthen U.S. manufacturing competitiveness and support investments that benefit manufacturers and American workers. These policies should strengthen domestic supply chains, expand and upskill the U.S. manufacturing workforce, improve domestic infrastructure, promote innovation and ensure smart regulation.

In the trade arena, the U.S. has numerous existing tools in U.S. law that could be used strategically to address Chinese market-distorting activities. Some of these tools have been used very effectively on specific products to address problematic Chinese behaviors that are injuring manufacturing industries in the U.S. Notably, the U.S. has more than 200 active trade remedy orders imposing tariffs on unfairly traded Chinese imports,[3] and has numerous active orders to block IP-infringing Chinese imports.[4] Last year alone, the U.S. seized hundreds of millions of dollars in IP-infringing Chinese products at the U.S. border.[5]

Manufacturers respectfully encourage the U.S. government to consider a series of key steps, including action to:

- Expedite USTR's ongoing four-year review of actions taken as a result of its 2018 Section 301 investigation on China's acts, policies and practices related to technology transfer, intellectual property and innovation to provide clarity to manufacturers on next steps, and immediately launch a comprehensive, transparent and robust Section 301 tariff exclusion process with meaningful retroactivity.
- Conduct strategic, transparent and evidence-based investigations invoking existing U.S. trade statutes to address market-distorting Chinese trade behaviors impacting

[3] As of August 2021, that number was 231 active orders. See U.S. International Trade Commission, "Antidumping and Countervailing Duty Orders in Place as of August 23, 2021."
[4] U.S. International Trade Commission, "Outstanding Section 337 Exclusion Orders," last accessed on September 10, 2021.
[5] U.S. Customs and Border Protection, "Intellectual Property Rights Fiscal Year 2020 Seizure Statistics."

manufacturers in the U.S. Such tools could include trade remedy cases (such as anti-dumping and countervailing duty investigations under Title VII of the amended Trade Act of 1930), country and sector-specific investigations (such as investigations under Sections 201 and 301 of the Trade Act of 1974), evidence-based national security investigations (such as investigations under Section 232 of the amended Trade Expansion Act of 1962), and other trade enforcement rules (such as investigations under the Trade Facilitation and Trade Enforcement Act of 2015 and Section 337 of the amended Tariff Act of 1930).

- Make active use of reports that identify and detail specific Chinese trade barriers, including multi-country reports such as USTR's Special 301 report on intellectual property protection and the National Trade Estimate, as well as China-specific reports such as USTR's annual report on China's WTO compliance (for which this submission is provided).
- Explore, based on dialogue between U.S. government agencies, Congressional allies and other domestic stakeholders and in coordination with key global allies, the creation of new enforcement tools and targeted remedies that could best address problematic trade behaviors from China and other trading partners.

When conducting domestic trade enforcement activities, including trade investigations, manufacturers encourage USTR and its fellow agencies to do so in a transparent and evidence-based manner, in consultation with manufacturers in the U.S. Manufacturers believe that such tools must be used strategically to address specific unfair and market-distorting practices. Similarly, applied remedies should be designed to prompt changes to Chinese policies and practices while considering the trade and economic impact on domestic manufacturers and consumers to avoid unintended consequences.

These domestic tools must be used alongside bilateral, regional and multilateral strategies to address unfair Chinese practices, as they cannot directly solve the underlying Chinese practices that have given rise to market distortions and, if used broadly or in isolation, could instead merely harm the U.S. manufacturing sector or prompt Chinese retaliation without forcing any immediate or long-term change in China's policies and practices.

Conclusion

The U.S.–China commercial relationship is vitally important to get right, given the enormous opportunities and challenges manufacturers face from our largest trading partner. The NAM appreciates the persistent efforts of the members of the Trade Policy Staff Committee and their respective government agencies to assess China's track record of implementing its WTO commitments and to use all available bilateral and multilateral channels to address them.

Please do not hesitate to contact me at any point if the NAM can be of further assistance on these issues.

Sincerely,

Ken Monahan

Attachment:

- Appendix: Specific Areas of Chinese Compliance with its WTO Commitments

Appendix: Specific Areas of Chinese Compliance with its WTO Commitments

Import Regulation

From tariffs and customs barriers to differential import procedures, manufacturers in the U.S. face border barriers in China that impede U.S. exports and limit market access:

- While China reduced tariffs as part of its WTO implementation on a broad range of manufacturing products, the process did not eliminate all of China's burdensome tariffs, including some high tariff rates in key manufacturing sectors. Additionally, Chinese retaliation against U.S. exports of a wide variety of manufactured goods in response to tariffs imposed by the United States under its Section 301 investigation has continued to cause concerns and operational harm for manufacturers.
- Inconsistencies in customs-related regulations and enforcement create unnecessary challenges for U.S. exporters. Most notably, manufacturers continue to see different customs clearance proceedings and regulations implemented in various locations and between various agencies, with procedures even differing among individual customs agents. Specific areas of inconsistency include customs classification, customs valuation procedures and clearance requirements. China should implement a more balanced, strategic, risk-based management approach to consistent border clearance between ports, consistent with World Customs Organization guidelines.
- Manufacturers continue to face hurdles for low-value shipments, such as the need for the Chinese government to implement commercially meaningful *de minimis* and informal entry treatments for low-value shipments, including shipments of manufactured goods sent through e-commerce channels. Furthermore, although manufacturers can seek expedited shipment treatment through one of three channels (including an e-commerce category), burdensome requirements for the e-commerce channel prevent many products from using this option.
- Manufacturers in the U.S. have seen growing politicization of Chinese trade remedy measures, raising concerns about China's commitment to WTO principles and core values such as procedural fairness. China has deliberately targeted key imports of countries when disputes arise to pressure and damage foreign industry as well as to support China's domestic industrial development policies, often through unsubstantiated allegations of subsidies or non-market conditions. The process is non-transparent, unnecessarily burdensome and designed to ensure negative outcomes, to establish maximum political and commercial leverage, abusing the rationale and nature of the anti-dumping and countervailing duty processes. China maintains these discriminatory provisions despite the impact to its own domestic industry and should accelerate a sunset review to remove these remedies.
- Import bans, restrictions and regulatory hurdles have also undermined U.S. access to China's market, including bans on remanufactured products; new requirements under Decree 248 for food exporters to report trade secrets and confidential business information in order to certify facilities; and significant restrictions on imports of recyclable materials.

Export Regulation

Chinese government agencies continue to utilize a variety of export policies, particularly export restraints and subsidies, to promote or restrict the growth and export of priority products and sectors to provide an advantage to Chinese producers reliant on various metals and raw materials.

While the U.S. has brought and won WTO cases on some of these policies and have used U.S. countervailing duty law to apply other remedies, manufacturers continue to report new subsidy programs designed to support Chinese entities selling both at home and abroad, often implemented as part of broader industrial plans and policies. These actions both undermine U.S. market access in China and distort competition in U.S. and third-country markets, all to the disadvantage of manufacturers and their workers in the U.S.

Internal Policies Affecting Trade

Industrial Policy, Industrial Subsidies and Discriminatory Policies
Manufacturers in the U.S. have seen in recent years a resurgence of policies that directly or practically discriminate against manufacturers in the U.S. While these policies do not always contain explicit discriminatory language, they are often designed to boost—and provide significant, non-transparent material support to—domestic industries and businesses at the expense of foreign players in clear violation of China's WTO commitments. Moreover, even when these policies are broad, they are often interpreted by provincial and local governments as mandates to boost Chinese companies over their foreign counterparts. These policies are often as problematic for foreign companies as explicit discrimination and violate the spirit of WTO rules, and they should be eliminated.

China's "Made in China 2025" initiative remains a leading example of this approach. The plan, initially released in 2015, set specific targets for domestic manufacturing (40% domestic content of core components and materials by 2020 and 70% by 2025), focusing on ten priority sectors, such as information technology, new energy vehicles, agricultural equipment and robotics. The plan's localization targets and focus on building globally competitive Chinese companies through specific government policies and financial support raised concerns for manufacturers that the plan's effect will be to benefit Chinese manufacturers over foreign ones, with many viewing the policy as inconsistent with China's WTO commitments.

In the face of growing international criticism of the approach, the Chinese government downplayed it in public communications, though it did not eliminate the plan itself. Additionally, the Chinese government has released other plans that take a similar approach, such as the September 2020 announcement by the National Development and Reform Commission and Ministry of Science and Technology to ramp up investment and build national champions in eight "strategic emerging industries" ranging from next-generation information technology to new-energy vehicles. This and other policies continue to reflect core aspects of China's industrial policy approach, including government policy and financial support for Chinese champions in advanced manufacturing sectors in ways that discriminate against U.S. companies.

Beyond these high-level policies, manufacturers in the U.S. confront on a daily basis domestic subsidies and other policy support for Chinese companies that promote market distortions, including direct subsidies to Chinese companies, tax breaks and preferential access to credit, land and other industrial inputs. These subsidies have fueled massive overcapacity in key sectors that, due to the size of China's economy, create global economic distortions. Steel and aluminum are front and center, but overcapacity is also a problem in industries such as chemicals, fertilizer, concrete, agricultural processing and semiconductors.

Government support for Chinese state-owned and state-invested companies remains particularly vexing. During China's WTO accession, China made commitments related to the activities of SOEs and state-invested enterprises, including agreeing that those firms would make purchases and sales based solely on commercial considerations and not be influenced by the government. In recent years, China has made various commitments to reduce support for, and overcapacity of steel, with announcements made in recent months to increase oversight of iron and steel projects in relation to China's environmental goals. Despite such announcements, however, the Chinese government has not fully followed through, as overcapacity remains a significant challenge. In recent years, USTR and its counterparts in the administration have announced plans to work more closely with global allies to address global overcapacity in steel and aluminum products, a crucial step but one that must be backed up by effective, substantive solutions to address this issue comprehensively.

More broadly, President Xi Jinping has continued to signal strong support for the state economy, resulting in strengthened efforts to boost SOEs through policies that, though termed as "reform plans," have failed to tackle underlying SOE issues. These plans have instead made changes such as promoting mixed-ownership structures, addressing corruption and reforming executive board operations designed to strengthen SOEs' role and influence in the economy. Yet these changes do little to address the underlying challenges posed by state-owned commercial entities in the marketplace.

Finally, the Chinese government has enacted policies and actions that discriminate against foreign company operations in China or appear designed to force, or encourage, companies to localize their technology and operations in China. Examples of policies with localization elements include:

- Cybersecurity policies that pressure companies to localize technology or mandate local testing and certification requirements for products in the information and communications technology sector, with August 2021 State Council rules on critical information infrastructure providing the latest clarification of the scope and impact of China's approach;
- Cross-border data flow restrictions that require companies to store China-generated data on local servers and prohibit their transfer overseas, thus effectively forcing companies to consider local data centers and data controls;
- Expedited product approvals for products that meet certain local technology development or production goals, such as medical device products based on domestic innovation; and
- Regulatory restrictions or hurdles for foreign companies operating in China that impact their ability to obtain product approval for, and to sell, manufactured goods in the country on a level playing field with their domestic counterparts.

Standards, Technical Regulations and Conformity Assessment Procedures

Manufacturers in the U.S. continue to experience a variety of longstanding challenges related to standards and technical regulations in China. These challenges range from inadequate channels for participation in standard-setting processes, treatment of IP in standards setting, persistent Chinese efforts to promote standards (both at home and abroad) that do not harmonize with international standards, and a growing push to drive international standard setting activity in ways to promote Chinese economic leadership.

Broadly, manufacturers in the U.S. face opportunities and challenges from China's increasingly ambitious approaches to standards on the international stage. A series of high-level strategies and legal changes, including China's Standards 2035 initiative, its 2021 National Standardization Development Framework and its 2018 Standardization Law, have demonstrated the country's clear ambition and concrete plans to set global standards for next-generation technologies. The 2018 Standardization Law and related regulations streamlined some aspects the standards system to create more space for private-sector standards development, but also raised new challenges related to association and enterprise standards that could put company IP at risk. More broadly, global standards and regulatory approaches increasingly feature in range of high-level economic initiatives, from China's Belt and Road Initiative to its Global Data Security initiative that aims to drive a set of international rules on data security to align with Beijing's approaches in this area.

More concretely, testing and certification bottlenecks are also a concern for many manufacturers in the U.S., particularly SMMs, as they can slow market entry. Allowing greater participation by foreign entities as designated certification bodies in key certification regimes such as the China Compulsory Certification system would alleviate this situation, facilitating greater market access in line with the spirit of China's WTO commitments.

These regulations and requirements can add significantly to the cost of manufacturing products for export to China and limit the ability of U.S.-manufactured products to compete fairly in China. Among the areas where manufacturers in the U.S. are facing challenges include electric vehicles, medical equipment and hazardous substances in electric and electronic products.

Trade-Related Investment Restrictions

Investment restrictions are a longstanding concern in key manufacturing sectors, such as agricultural processing, energy, automotive and telecommunications, forcing them to form joint ventures with domestic companies. These caps allow government and company stakeholders leverage to seek concessions from foreign companies, including investment commitments, local sourcing and access to capital and technology, in exchange for investment approval.

China has made changes in recent years to its investment rules and structures to eliminate many restrictions on foreign investment and operations. These changes include revising its foreign investment laws, scrapping its longstanding Catalogue Guiding Foreign Investment in favor of a "negative list" approach to investment management, eliminating targeted investment caps in areas such as the automotive industry, and creating new negative-list-based free trade zones to pilot further investment openings. These changes have accumulated in recent years as the Ministry of Commerce, National Development and Reform Commission and other government entities have sought to successively cut back restrictions in targeted sectors.

These moves are broadly welcome and appreciated by manufacturers for making the investment playing field more level for manufacturers in the U.S. However, they do not fully address remaining concerns from manufacturers in the U.S., given investment caps that remain in critical sectors, efforts to build a national security review system for foreign investment and broader regulatory concerns that disproportionately impact foreign-invested enterprises. Given the role of investment overseas in helping manufacturers reach foreign customers and participate in foreign resource and infrastructure projections, these rules negatively impact market access for manufacturers in the U.S.

Intellectual Property Rights

China has increasingly recognized the value of innovation and IP rights and enforcement, taking steps to upgrade IP laws and regulations, expand its IP legal infrastructure and promote IP awareness. Additionally, China made important commitments to the U.S. on intellectual property through the U.S.-China "Phase One" trade agreement. Taken together, these steps indicate slow but steady improvements to China's IP infrastructure that have resulted in a stronger business environment for innovative sectors and a growing set of high-profile enforcement wins for IP rightsholders.

In practice, however, manufacturers continue facing significant challenges enforcing their IP in China. This includes not only longstanding operational challenges of effectively protecting IP on a day-to-day basis for manufacturers large and small, but also fundamental policy challenges in areas such as inadequate regulatory data protection for clinical trial and undisclosed test data, inadequate trademark procedures needed to protect against bad-faith trademark filings and discriminatory treatment of foreign IP by many local enforcement officials. The NAM provided detailed comments on IP challenges facing manufacturers in China in its January 2022 submission to USTR's Special 301 report, with issues that include:

- Broad industrial policies designed to promote the development of Chinese IP-intensive industries and companies at the expense of manufacturers in the U.S., and to encourage those companies to localize R&D and technology in China;
- Structural barriers to strong IP enforcement, such as value thresholds that effectively preclude criminal enforcement and inadequate or politicized judicial procedures that can effectively discriminate against foreign companies;
- Inconsistent on-the-ground enforcement at the local level, with weak enforcement often caused by inadequate resources and a lack of political will;
- Continued weaknesses in critical areas of IP policy and practices, including inadequate trademark procedure issues to cut back on bad-faith trademark actions and weaknesses in judicial enforcement of trade secrets;
- Persistently elevated levels of counterfeiting, piracy and trade secret theft, both physically and online;
- Cybertheft and hacking that has targeted U.S. companies and their technology; and
- New laws, regulations and policies in areas such as competition, standards and product price controls that undercut U.S.-generated innovation and IP.

Rule of Law Issues

Despite Chinese commitments during its accession to a range of reforms related to the rule of law, including regulatory transparency and consistent implementation of laws and regulations, China continues to struggle with many of these areas in ways that have a significant negative impact on the ability of manufacturers in the U.S. to navigate China's regulatory framework and participate on a level playing field in the Chinese market. Among the most concerning areas are:

- A lack of full regulatory transparency regarding laws and regulations, where new rules are implemented with limited notice and input from the private sector;
- A lack of fair and open processes regarding regulatory approvals;
- Discriminatory treatment for foreign-invested enterprises in the development of laws, regulations and standards that prevents them from participating equally with their domestic counterparts.

Several of these issues fall under clear existing WTO rules and commitments, including provisions in WTO rules (such as Articles III and X of the General Agreement on Tariffs and Trade and Article VI of the General Agreement on Trade in Services), core WTO agreements (such as the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures) and additional agreements (such as the recently concluded Agreement on Services Domestic Regulation). In other cases, Chinese policies and actions are not adequately addressed by WTO rules but are important to resolve to level the playing field for manufacturers in the U.S.