



February 2014

U.S.-CHINA TRADE

United States Has
Secured
Commitments in Key
Bilateral Dialogues,
but U.S. Agency
Reporting on Status
Should Be Improved

GAO Highlights

Highlights of [GAO-14-102](#), a report to congressional requesters

Why GAO Did This Study

China is the largest destination for U.S. exports outside North America and also the source of the largest U.S. bilateral trade deficit. The countries engage in two high-level dialogues to address trade barriers and cross-cutting economic issues. These are the JCCT, co-led for the United States by Commerce and USTR, and the economic track of the S&ED, led by Treasury. GAO was asked to review China's bilateral trade commitments made in these dialogues. This report (1) describes trade and investment commitments China has made at the JCCT and S&ED; (2) describes U.S. agency tracking of China's implementation of these commitments; and (3) evaluates U.S. agency reporting on implementation. GAO analyzed documents, including public fact sheets stating commitments; interviewed officials, industry representatives, and other experts; used a structured process to categorize commitments; and reviewed reports officials identified as reporting implementation status of commitments.

What GAO Recommends

To improve understanding of progress through the bilateral dialogues in increasing access to China's markets, USTR, in conjunction with Commerce and Treasury, should work to improve reporting on China's implementation of JCCT and S&ED trade and investment commitments. In written comments, USTR and Commerce did not directly agree or disagree with the recommendation, but raised several concerns. USTR maintained current reporting is comprehensive and Commerce noted resource constraints. GAO continues to believe improved reporting would benefit policymakers.

View [GAO-14-102](#). For more information, contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov.

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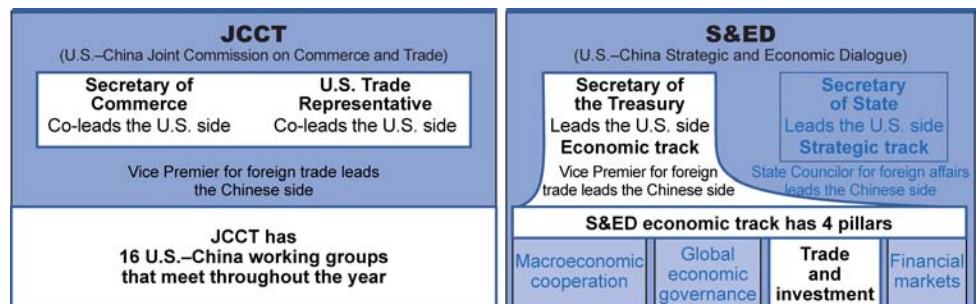
U.S.-CHINA TRADE

United States Has Secured Commitments in Key Bilateral Dialogues, but U.S. Agency Reporting on Status Should Be Improved

What GAO Found

GAO identified 298 trade and investment commitments made by China in the U.S.-China Joint Commission on Commerce and Trade (JCCT)—184 since 2004—and the U.S.-China Strategic and Economic Dialogue (S&ED) and its predecessor—114 since 2007. The commitments range from affirmations of open trade principles to sector-specific actions. GAO identified 11 issue areas to characterize the content of each commitment. The prominence of issue areas, measured in number of commitments associated with an issue area, differs between the dialogues, reflecting differences in the dialogues' structure and focus. Intellectual property rights commitments are among those most common in the JCCT and investment commitments are among those most common in the S&ED. (For a detailed inventory of commitments and their categorization, see [GAO-14-224SP](#).)

U.S. Agency Roles in the JCCT and S&ED



Source: GAO analysis of information from Commerce, USTR, Treasury, and State.

U.S. agencies track commitment implementation through several means, including outreach to domestic stakeholders, issue-based working groups with China in the JCCT, and consultations in advance of S&ED annual meetings. No single document is used to track implementation, according to U.S. officials. In addition, although there have been calls to use metrics such as exports and sales in developing commitments, agencies identified only one such commitment in the dialogues and cited challenges in identifying appropriate data.

Although several reports on trade barriers present information on JCCT and S&ED commitments, information on commitment implementation in these reports does not provide a clear and comprehensive picture of progress across the dialogues. The Office of the U.S. Trade Representative (USTR) produces these reports with assistance from other agencies, including the Departments of Commerce (Commerce) and Treasury (Treasury). GAO's analysis of 10 software commitments from 2008-2011 shows, for example, that the implementation status of most could not be clearly identified. More comprehensive reporting would give Congress and other policy makers a clearer understanding of progress and the role of the dialogues as they continue to assess challenges in the U.S.-China relationship.

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Abbreviations

APEC	Asia-Pacific Economic Cooperation
Commerce	Department of Commerce
GPA	Government Procurement Agreement of the World Trade Organization
JCCT	U.S.-China Joint Commission on Commerce and Trade
NTE	National Trade Estimate Report on Foreign Trade Barriers
OSTP	Office of Science and Technology Policy
S&ED	U.S.-China Strategic and Economic Dialogue
SED	U.S.-China Strategic Economic Dialogue
State	Department of State
Treasury	Department of the Treasury
USDA	U.S. Department of Agriculture
USTR	Office of the U.S. Trade Representative
WTO	World Trade Organization

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February 11, 2014

The Honorable Dana Rohrabacher
Chairman
Subcommittee on Europe, Eurasia, and Emerging Threats
Committee on Foreign Affairs
House of Representatives

The Honorable Frank Wolf
House of Representatives

The Honorable J. Randy Forbes
House of Representatives

Since China joined the World Trade Organization (WTO) in 2001, trade between the United States and China has grown substantially, with China now the largest destination for U.S. exports outside North America. However, U.S. imports from China exceed exports by more than \$300 billion, making the U.S. trade deficit with China significantly larger than with any other trading partner. Despite actions by China to open its markets to the United States, formidable barriers remain. The governments of the United States and China are engaged in a number of forums that address trade issues, including two cabinet-level bilateral dialogues—the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic and Economic Dialogue (S&ED).

The JCCT, initiated in 1983, focuses on addressing bilateral trade matters and promoting commercial opportunities. The S&ED, established in 2009, represents the highest-level bilateral dialogue to discuss a broad range of both strategic and economic issues. (The S&ED was preceded by the Strategic Economic Dialogue [SED] in 2006 through 2008.) Some observers and policy makers have raised questions about what commitments China has made and implemented as a result of these dialogues as well as what tangible benefits for the U.S. economy the dialogues have produced.

You asked us to review issues related to China's JCCT and S&ED trade and investment commitments. In this report, we (1) describe the commitments China made at the JCCT and the trade and investment

commitments China made at the S&ED,¹ (2) describe U.S. agency tracking of China's implementation of these commitments, and (3) evaluate U.S. agency reporting on the status of commitment implementation.

To address these objectives, we analyzed documents and interviewed U.S. officials, industry representatives, and other experts. To describe the commitments, we analyzed public JCCT and S&ED fact sheets issued by the U.S. government to identify individual commitments made by China, including those made jointly with the United States, and categorized them by trade issue areas using a structured review process.² To describe U.S. agency tracking of commitment implementation, we obtained and analyzed documentary and testimonial evidence on relevant agency activities. To evaluate U.S. agency reporting on implementation status, we reviewed key reports that U.S. officials identified as containing their assessments of the implementation of commitments made in these dialogues, and discussed the results with officials and other experts. (Appendix I provides more detailed information on our scope and methodology.) In addition, an inventory of the commitments we identified and their categorization by issue area is provided in an online e-supplement, [GAO-14-224SP](#).

We conducted this performance audit from May 2012 to February 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Since 1979, when the United States and China signed a bilateral trade agreement, China's economy has grown at an unprecedented rate, as has China's bilateral economic engagement with the United States. In

¹For simplicity of exposition, when we refer to "trade and investment commitments China made at the S&ED" we mean commitments made by China in the SED in 2007 and 2008 and in the S&ED from 2009 through 2013.

²According to senior officials from the Department of Commerce, Office of the U.S. Trade Representative, and the Department of the Treasury, the commitments presented in the fact sheets are the official commitments negotiated with the Chinese government.

recent years, China's economy grew an average of 10 percent a year, and in 2010 China replaced Japan as the world's second largest economy. Total U.S.-China trade increased from \$2 billion in 1979 to \$536 billion in 2012. China is currently the second largest U.S. trading partner, the third largest U.S. export market, and the largest source of U.S. imports.

The governments of the United States and China have established two important bilateral dialogues—the JCCT and S&ED, which discuss and resolve trade and investment matters, including reducing trade barriers for U.S. firms and investors.³ (See figure 1 for the organization of the JCCT and the S&ED.) According to senior U.S. officials, the United States also engages with China at all levels of government in other bilateral interactions, such as formal and informal conversations at U.S.-China summits. In addition, the two governments discuss trade and investment issues in multilateral forums, such as the WTO and the Asia-Pacific Economic Cooperation (APEC) forum.⁴

³According to the Office of the U.S. Trade Representative, trade barriers, broadly defined, are government laws, regulations, policies, or practices that either protect domestic goods and services from foreign competition, artificially stimulate exports of particular domestic goods and services, or fail to provide adequate and effective protection of intellectual property rights.

⁴APEC is the primary economic forum in the Asia-Pacific region. Established in 1989 and comprising 21 member economies, including the United States, APEC aims to facilitate economic cooperation and to expand trade and investment throughout the region. WTO standing committees are issue-based groups that meet regularly to permit WTO members to exchange views, work to resolve questions of members' compliance with commitments, and develop initiatives aimed at systemic improvements.

Figure 1: U.S. Agency Roles in the JCCT and S&ED



Source: GAO analysis of information from Commerce, USTR, Treasury, State, and USDA.

Note: On the U.S. side, the Department of Agriculture and the Office of the U.S. Trade Representative (USTR) co-chair the agriculture working group and the sanitary and phytosanitary working group, the Environmental Protection Agency and Commerce co-chair the environment working group, and Commerce and USTR chair or co-chair the remaining working groups.

The JCCT, established in 1983, is the main bilateral dialogue for addressing trade matters and promoting commercial opportunities between the two countries. Since 2004, the U.S. Secretary of Commerce, the U.S. Trade Representative, and China's Vice Premier for foreign trade have co-chaired the JCCT.⁵ The dialogue, which has multiple working groups focusing on specific issue areas, operates year-round and culminates in an annual plenary meeting that alternates between the United States and China. The two most recent JCCT plenary meetings took place in December 2012 in Washington, D.C., and in December 2013 in Beijing, China.

The S&ED, established by the Presidents of the United States and China in April 2009, represents the highest-level bilateral dialogue to discuss a broad range of issues between the two nations. The S&ED addresses

⁵The JCCT was co-chaired by the U.S. Secretary of Commerce and China's Minister of Commerce from 1983 through 2003, when the two sides agreed to elevate the dialogue's leadership in order to address high priority trade issues more effectively.

bilateral, regional, and global economic and strategic issues, both medium and longer term. Under the S&ED, the two sides meet once a year, alternating between Washington, D.C., and Beijing. The fifth S&ED meeting was held in Washington, D.C., in July 2013. The S&ED has strategic and economic tracks; the U.S. Secretary of State and China's State Councilor for foreign affairs co-chair the strategic track, and the U.S. Treasury Secretary and China's Vice Premier for foreign trade co-chair the economic track. From 2006 through 2008, the S&ED was preceded by the SED, in which the two governments discussed the most important economic, but not political, issues in the bilateral relationship.

The S&ED's economic track has four pillars, one of which focuses on trade and investment,⁶ and addresses short, medium, and longer term economic issues. In setting S&ED priorities, the Department of the Treasury (Treasury) and the National Security Staff lead an interagency process, working closely with the Department of Commerce (Commerce), the Office of the U.S. Trade Representative (USTR), and other agencies, on trade and investment issues. According to Treasury officials, discussions of S&ED economic track issues continue throughout the year between the annual plenary meetings.

Agencies report the outcomes of the JCCT and S&ED dialogues through public statements in the form of fact sheets that present commitments made by the United States and China. These fact sheets are issued following the conclusion of the JCCT and S&ED annual meetings. Commerce and USTR issue a JCCT fact sheet following the JCCT annual meeting; Treasury issues jointly with China an S&ED fact sheet for the economic track that presents the joint commitments negotiated by the United States and China following the S&ED annual meeting. Treasury also issues a U.S. fact sheet that discusses the benefits of the commitments for U.S. workers and companies. The Department of State (State) issues the fact sheet for the S&ED strategic track. According to senior U.S. agency officials, these fact sheets outline the official commitments negotiated with the Chinese government.

In addition to reporting commitments, the JCCT and S&ED fact sheets have in recent years included sections that identify cooperative or

⁶The other three pillars of the S&ED's economic track focus on macroeconomic cooperation, global economic governance, and financial markets. The United States and China discuss financial services trade issues under the financial markets pillar.

exchange activities between the United States and China.⁷ (These are referred to as “cooperative activities” in JCCT fact sheets and “institutional arrangements” in S&ED fact sheets.) According to Commerce officials, JCCT cooperative activities are undertaken with the goal of advancing U.S. priorities and are often crucial for developing successful policy commitments from China. They may involve discussions with public and private sector participants focusing on issues or areas at the pre-commitment level. For example, in 2009, China and the United States held a program, pursuant to JCCT commitments, with public and private participants to discuss legal liability for intellectual property rights infringement that occurs on the Internet. There were JCCT commitments related to this issue in 2010 and 2012 that resulted, according to U.S. officials, in the Supreme People’s Court’s publication of a judicial interpretation stating that those who facilitate online infringement will be held jointly liable for that conduct. Similarly, the S&ED allows for activities, such as consultations or technical exchanges, that are separate from commitments but allow the two sides to engage in a dialogue on a range of issues. For example, in 2012 the United States and China agreed to expand technical exchanges under the U.S.-China Transportation Forum and enhance coordination under the APEC framework.

China Has Made Commitments in a Number of Trade and Investment Areas and Sectors

China has made 298 trade and investment commitments since 2004 in the JCCT and S&ED, ranging from statements affirming open trade principles to statements that focus on trade actions specific to a sector.⁸ The prominence of issue areas across the commitments differs between the dialogues, reflecting differences in the dialogues’ structure and focus. Some commitments reaffirm prior commitments and some commitments acknowledge progress since the previous year’s meeting.

⁷Some commitments that are not presented in the fact sheets as “cooperative activities” also focus on cooperation. For example, a commitment in the 2010 JCCT fact sheet states that China and the United States agreed to work closely to cooperate and conduct information exchange concerning counterfeit drug activities and agreed to provide information about cases of counterfeit drugs through regulatory channels.

⁸The “S&ED commitments” in our analysis refer to trade and investment commitments China made at the S&ED and its predecessor, SED. They do not include S&ED strategic track commitments or economic commitments outside of the trade and investment pillar.

Prominent Issue Areas
Include Intellectual
Property Rights for JCCT
Commitments and
Investment for S&ED
Trade and Investment
Commitments

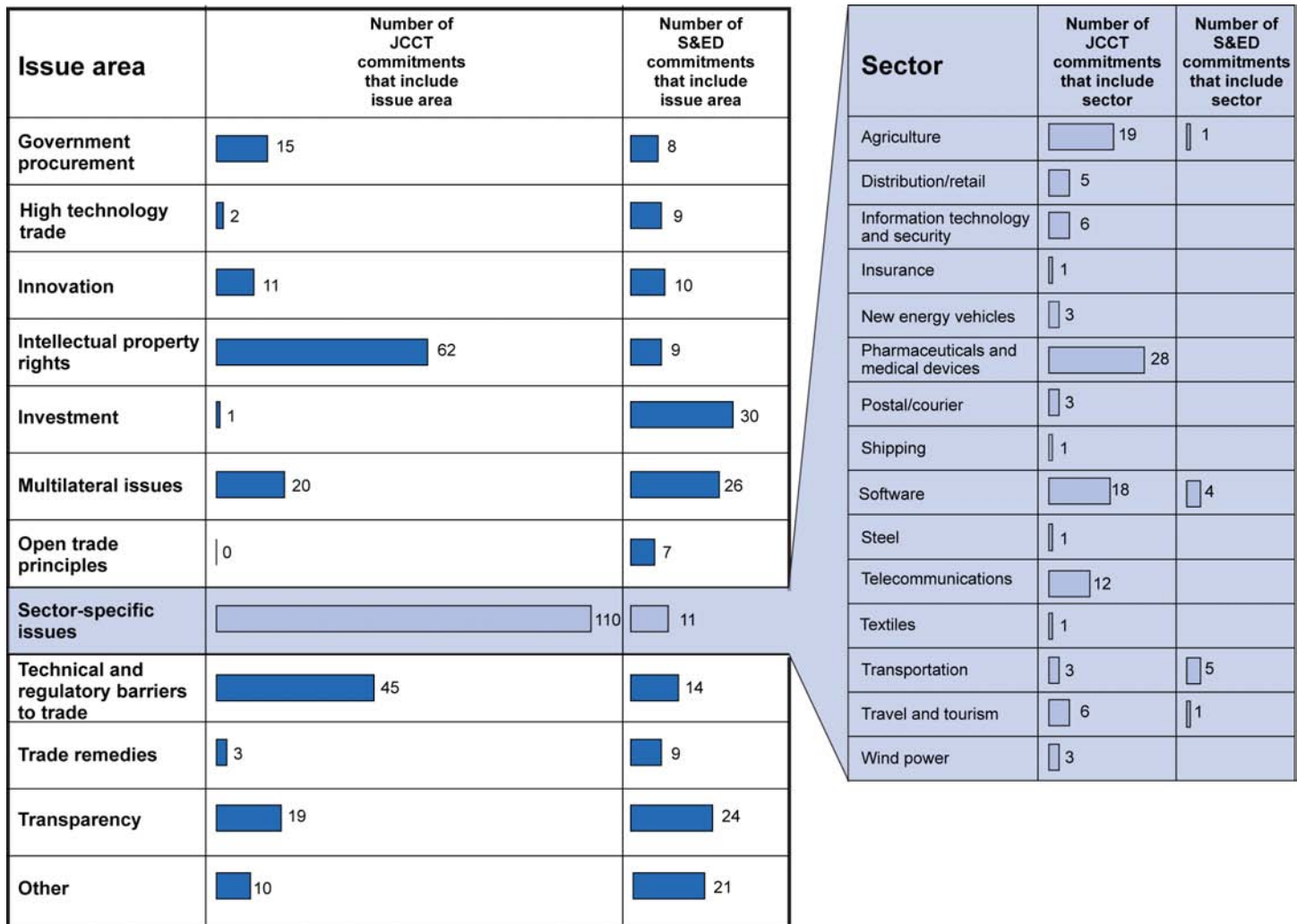
We identified 184 commitments in the JCCT since 2004 and 114 trade and investment commitments in the S&ED since 2007 that involve China or China and the United States.⁹ The commitments include statements affirming open trade principles, statements of policy intent, and statements that focus on trade actions specific to a sector. U.S. officials stressed that not all commitments are of equal value and significance.¹⁰

We examined the JCCT and S&ED commitments to provide an overview of their areas of emphasis and other characteristics. We identified 11 issue areas to characterize the content of each commitment, including sector-specific issues. Fifty-four percent of the JCCT commitments and 48 percent of the S&ED trade and investment commitments were related to two or three issue areas. See figure 2 for the list of issue areas and number of commitments related to each issue area. Table 2 in appendix I describes each issue area and provides examples of commitments.

⁹We excluded commitments that involved only the United States.

¹⁰Our analysis does not address the relative significance of the commitments.

Figure 2: Issue Areas Identified within China's JCCT Commitments (2004-2012) and S&ED Trade and Investment Commitments (2007-2013)



JCCT U.S. – China Joint Commission on Commerce and Trade

S&ED U.S. – China Strategic and Economic Dialogue

Source: GAO analysis of JCCT and S&ED fact sheets.

Note: We categorized commitments that did not fit the 11 issue areas as “other.” We assigned up to three issue areas to each commitment because many commitments were related to more than one issue area. Thus, the numbers shown in this figure exceed the total number of commitments we identified for each dialogue, 184 commitments for the JCCT and 114 trade and investment commitments for the S&ED. See [GAO-14-224SP](#) for a full inventory of commitments and their categorization.

At the JCCT, a large share of commitments are related to intellectual property rights (62 commitments or 34 percent)¹¹ and technical and regulatory barriers to trade (45 commitments or 24 percent). China has made commitments related to both of these issue areas every year since 2004, with at least 20 percent of commitments related to intellectual property rights and at least 10 percent of commitments related to technical and regulatory barriers to trade. In addition, 110 commitments (or 60 percent of all China's JCCT commitments) refer to a specific sector, including 28 commitments related to pharmaceuticals and medical devices, 19 commitments related to agriculture, and 18 commitments related to software use.¹²

For the S&ED, 70 percent of the trade and investment commitments are related to one or more of the following three issue areas: investment (30 commitments or 26 percent), multilateral issues (26 commitments or 23 percent), and transparency (24 commitments or 21 percent).

Differences in the number of commitments associated with specific issue areas across the two dialogues may reflect differences in the dialogues' structure and focus. According to U.S. officials, the JCCT has had greater focus on bilateral trade issues and sectors, in contrast with the S&ED, where trade and investment issues have been discussed within a broader range of economic and strategic issues. In addition, our analysis shows that statements of joint actions by China and the United States are more common at the S&ED (75 percent). According to Treasury officials, this reflects the broad economic focus and cross-cutting discussions of the S&ED's economic track. The majority of China's JCCT commitments (76 percent) involve China alone.

Expected Timeframes of Commitment Implementation

Commitments in the two dialogues generally do not specify timeframes although according to U.S. officials, many commitments are either expected to be implemented by the next annual meeting or are considered to be ongoing. According to Commerce officials, that would be

¹¹As defined in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, intellectual property rights include copyright and related rights as well as protection of trademarks, geographical indications, industrial designs, patents, integrated circuit layout-designs, and undisclosed information, including trade secrets.

¹²If the same commitment was made repeatedly in different years, we counted it as a separate commitment in each year.

the case, for example, for a commitment by China to provide fair treatment to foreign investors.¹³ According to Treasury officials, in the S&ED the two sides work under the general assumption, unless stated otherwise, that each year's S&ED commitments are to be implemented by the next S&ED meeting.¹⁴ Some JCCT and S&ED commitments do specify a timeframe. Of the commitments we identified, timeframes were specified in 17 percent of China's 184 JCCT commitments and 18 percent of China's 114 S&ED trade and investment commitments. For example, at the 2011 JCCT meeting, China agreed to publish procedures for telecommunications network access license and radio type approval by the end of 2011. At the 2013 S&ED meeting, China committed to submit a new revised offer to join the WTO's Government Procurement Agreement (GPA) by the end of 2013.¹⁵

Some Commitments Have Been Reaffirmed and Others Have Evolved

Our analysis shows continuity of issues and objectives pursued at the two dialogues from 2004 through 2013. Some specific commitments have been made repeatedly, while others have evolved.

Within S&ED issue areas, some commitments have been reaffirmed over time. For example, in investment—which is associated with 26 percent of China's S&ED trade and investment commitments—the United States and China committed to bilateral investment treaty negotiations each year, with commitments becoming increasingly specific. The 2013 commitment stated that the bilateral investment treaty will provide

¹³Commerce officials further noted that U.S. understanding of when commitments are to be implemented is shaped by the larger context of those commitments. For example, these officials observed that China's legislative calendar has a bearing on the U.S. government's understanding of when China is to implement legislative changes discussed in JCCT commitments.

¹⁴The joint 2013 S&ED fact sheet explicitly stated that "[t]he two countries reached consensus to work expeditiously to implement the commitments made and, as the Special Representatives of the Economic Track, directed their respective economic teams to take concrete steps before the next Strategic and Economic Dialogue to do so."

¹⁵The GPA is a plurilateral agreement that currently covers the United States and 41 other WTO members. China is not yet a party to the GPA. The agreement requires GPA parties to provide most-favored-nation and national treatment to the goods, services and suppliers of other GPA parties and to conduct their procurement in accordance with procedures designed to ensure transparency, fairness and predictability in the procurement process. China has committed in its WTO accession agreement that all of its central and local government entities will conduct their procurements in a transparent manner until China completes its accession to the GPA.

national treatment at all phases of investment, including market access (“pre-establishment”), and be negotiated under a “negative list” approach.”¹⁶ In another example, China repeatedly affirmed its intent to follow the generally accepted principles and practices of sovereign wealth funds.

Other commitments illustrate how efforts to address trade barriers in an issue area or sector have evolved over time. For example, the United States has secured multiple commitments in both the JCCT and S&ED concerning the terms under which China will accede to the GPA. These have become increasingly specific, moving from initially seeking China’s commitment to submit a revised accession offer to subsequently seeking commitments related to the specific elements of such an offer. USTR reported U.S. concerns with each offer in its annual *National Trade Estimate Reports on Foreign Trade Barriers* (NTE) for 2011 through 2013:

- At the May 2010 S&ED, China committed to submit a revised offer to accede to the GPA by July of that year, which it did. However, USTR reported that China could improve its next offer by, among other things, including sub-central entities and certain state-owned enterprises.
- At the December 2010 JCCT, China committed to submit a second revised offer—whose content would be based on intra-governmental consultations on the entities to be subject to the agreement—to join the GPA before the WTO Committee on Government Procurement’s final meeting in 2011. USTR reported that China submitted the offer but that it excluded too many state-owned enterprises.
- At the May 2012 S&ED, China committed to submit a new comprehensive revised offer that responded to the requests of the

¹⁶Pre-establishment refers to the entry of investments and investors of one member country of a trade or investment agreement into the territory of another. Each member country allows investors of other member countries to establish an investment in their territory on terms no less favorable than those that apply to domestic investors (national treatment) or investors from third countries (most-favored-nation treatment). Pre-establishment is rarely granted without exceptions since every country has sensitive sectors where foreign investment is not permitted. A negative list approach requires that discriminatory measures affecting all included sectors of a trade or investment agreement be liberalized unless specific measures are set out in the list of reservations.

GPA parties to the WTO Committee on Government Procurement before the committee's final meeting in 2012. China submitted its third revised offer in November 2012.

China's commitments in software have also evolved over time. We identified 22 software-related commitments—18 in the JCCT beginning in 2004 and 4 in the S&ED beginning in 2011. In 2004, China committed to extend an existing ban on the use of pirated software in central and local governments. This commitment continued in subsequent years with the inclusion of state-owned enterprises in 2006. In 2010, China committed to establish software asset management systems for government agencies and to allocate budgetary funds for purchasing, upgrading, and replacing agency software, and in 2012, China confirmed that it required state-owned enterprises to use legitimate software. In the S&ED, China committed to strengthening inspections to ensure legitimate government software use in 2011 and to extending software management pilot projects to the enterprise sector in 2012.

Agencies Use Various Means to Track Implementation

U.S. agencies track the implementation of commitments through various means including interactions with their Chinese counterparts and outreach to industry. U.S. agencies identified JCCT working groups and mid-year reviews, discussions with Chinese officials while developing joint fact sheets prior to S&ED meetings, U.S. industry associations and companies, and U.S. officials based in China as key sources for information on progress. U.S. agencies use several tracking documents that capture information on the status of some commitments over time and do not have a single document that encompasses either dialogue. In addition, U.S. agencies have sought to identify commercial metrics such as increased sales to use as indicators of implementation progress where possible, but cited challenges in identifying appropriate data.

U.S. Agencies Track Information on Implementation through Several Means

U.S. agencies collect information on the status of commitment implementation through several means, including ongoing engagement with their Chinese counterparts in preparation for meetings, and regular outreach to domestic stakeholders. One important source of tracking information is the 16 JCCT working groups. The working groups each comprise U.S. and Chinese officials; some focus on specific industries, such as steel, and some on trade issues such as intellectual property. According to U.S. agency officials and documents, the JCCT has added working groups in response to changes in the trade relationship—for example, adding the Trade and Investment Working Group which covers

a range of trade and investment issues.¹⁷ U.S. agencies obtain updated information on implementation status from their Chinese counterparts at working group meetings. For example, Commerce and USTR officials received information from working group meetings about Chinese actions taken to shut down websites selling counterfeit medicines, in response to 2010 and 2011 JCCT commitments. Intellectual Property Rights working group officials stated that their working group has been instrumental in following the implementation of commitments to reduce end-user piracy of software by government agencies and state-owned enterprises.

The Office of Science and Technology Policy (OSTP) tracks implementation of commitments China makes at the Innovation Dialogue which are part of the overall S&ED commitments. Established in 2010 at the request of the U.S. and Chinese leaders of the S&ED, the Innovation Dialogue is a forum to share best practices in promoting innovation.¹⁸ The dialogue established a working group of U.S. and Chinese private sector experts and government officials, which monitors implementation of commitments and advises on barriers to successful implementation.¹⁹

U.S. government officials also analyze commitment implementation while preparing the joint fact sheet for the coming year's S&ED plenary meeting, according to Treasury officials. Treasury solicits and compiles input from key U.S. federal agencies on their priorities, which it exchanges with its Chinese counterparts. They then negotiate the wording of the joint fact sheet. This process can identify information on the status of past commitments, as well as in some cases on follow-on commitments. USTR and Treasury officials stated that participants actively negotiate JCCT commitment language immediately before and during the JCCT plenary meetings, and Treasury officials said that joint

¹⁷The groups are active to varying degrees; the Intellectual Property Rights working group meets twice a year while the Steel Dialogue has met four times since its creation in 2005.

¹⁸The Innovation Dialogue is led by the Director of the U.S. Office of Science and Technology Policy and China's Minister of Science and Technology.

¹⁹This dialogue has also resulted in negotiation of new commitments. In a commitment reported in the 2012 S&ED fact sheet, and negotiated in the Innovation Dialogue, China committed to treat intellectual property owned or developed in other countries in the same manner as intellectual property owned or developed in China. According to OSTP officials, following concerns raised by the private sector concerning tax preferences that appeared to favor Chinese firms, the Innovation Dialogue negotiated a new commitment by China to review these preferences.

fact sheet language is also actively discussed during the time of the S&ED plenary meetings.

In addition, in 2010, the United States and China instituted a mid-year review within the JCCT as an additional tool to track commitment implementation and to prepare for annual plenary meetings. According to a USTR official and our review of mid-year review agendas, the review focuses on selected priority commitments from the previous year and proposing outcomes for the upcoming plenary.

U.S. officials observed that discussions of the status of particular commitments take place across a wide range of settings aside from those directly related to the JCCT and S&ED. Treasury officials stated that they follow up on the implementation of certain types of S&ED commitments in various meetings with their Chinese counterparts, citing government procurement issues as particularly relevant for discussions with their counterparts at the Ministry of Finance, which leads on the issue. One agency cited mechanisms for engaging their Chinese counterparts, such as memoranda of understanding with provisions related to implementation of JCCT commitments. U.S. reports cited forums such as WTO standing committees and the APEC forum as examples of meetings where JCCT and S&ED trade and investment commitment implementation may be discussed. For example, according to WTO documents, China reported to the WTO Committee on Government Procurement that it expected to submit a revised offer on government procurement to the committee before the end of 2013, consistent with its 2013 S&ED commitment.

U.S. agencies obtain information on implementation status from U.S. industry and U.S. officials abroad. U.S. officials based in Washington told us they work with U.S. industry associations and companies in developing information on an ongoing basis on China's implementation progress. For example, USTR solicits written submissions from interested parties through the issuance of *Federal Register* notices issued in conjunction with the preparation of annual mandated reports. U.S. officials based in China provide information on implementation status in reporting to headquarters while preparing annual mandated reports on trade issues, such as the Special 301 Report (on intellectual property rights protection) and the NTE. Embassy staff submits cables on key issues that include discussions of the status of trade barriers raised in the JCCT. U.S. officials serving in China obtain feedback from industry representatives based in that country. For example, locally based industry representatives provided information to U.S. embassy officials that China had effectively

implemented a 2009 JCCT commitment to eliminate redundant medical device product recall regulations. According to Treasury officials, they regularly solicit government and industry sources for information on S&ED priorities in preparation of and after each dialogue.

Various Documents Track Separate Aspects of Implementation Status

U.S. agency officials stated that they use various documents to track the status of implementation over time and that there is no single, consolidated document or system that captures the status of implementation of JCCT or S&ED commitments. USTR officials said that the preparation of documents used to brief senior officials in advance of formal meetings—such as annual plenary meetings, mid-term reviews, and ad hoc high level meetings between U.S. and Chinese officials—is one of the processes used for tracking the status of implementation. According to representatives of the JCCT's Intellectual Property Rights working group, briefing papers, together with other sources, also serve as a useful record of the status of implementation, and can help to facilitate knowledge transfer in the event of personnel turnover.

According to Commerce officials, a Commerce staff person, designated to help coordinate Commerce's JCCT activities, maintained a spreadsheet for the official's own use in tracking follow-up on China's JCCT commitments. The official used the spreadsheet to identify actions taken on the commitments made in the current year and to facilitate briefing senior officials in advance of meetings. Commerce officials stated that this spreadsheet is not an interagency document and does not constitute a department or interagency position on the status of implementation of commitments.²⁰

Agencies Generally Have Not Used Commercial Metrics to Track Implementation of Commitments

Some policymakers and private sector representatives have asked the administration to use commercial metrics (e.g., exports and sales) to track commitment implementation where possible. According to a senior agency official, framing commitments in terms of commercial results such as increased sales can focus attention on the ultimate goal of increased exports rather than on individual trade barriers, which may be removed but replaced by different trade barriers.

²⁰As an example of a different tracking approach, State Department officials stated that they do use a single spreadsheet to track the status of commitments made in the strategic track of the S&ED. They cited a document they maintain which has in the past been shared with officials at other agencies.

Although agency officials identified one JCCT or S&ED commitment directly linking a commercial metric (increased sales) to implementation, they cited the difficulty in identifying appropriate commercial metrics generally. In a 2012 S&ED commitment concerning intellectual property-intensive industries, the United States and China committed to create environments for their respective markets in which the level of sales of legitimate intellectual property-intensive products and services would increase in line with the two countries' status as globally significant producers and consumers.²¹ In addition, officials indicated that it is easier to measure implementation of commitments that entail concrete and transparent legal actions – such as enactment of a law or other measure, or accession to a treaty – than to measure implementation of commitments to reaffirm existing policies or to a general policy direction.

Lack of Comprehensive Information on Implementation of Commitments across Reports Limits Understanding of Progress

USTR includes information in nine reports on trade barriers generally and efforts to address them, but does not provide comprehensive information to Congress and the public on the status of implementation of JCCT and S&ED trade and investment commitments. The reports focus on various aspects of trade barriers and market access and have different areas of focus and structures. Our analysis of selected commitments indicated that reporting on implementation status is not comprehensive because the reports are sometimes not clear and complete. This lack of comprehensive information makes it more difficult for policymakers to understand the progress made by the implementation of these commitments in removing trade barriers.

²¹In 2012, Commerce identified the industries that most intensively use patents and trademarks as well as those responsible for most of the creation and production of copyrighted materials. Commerce defined the 75 industries that were the most patent, trademark, and copyright intensive as “intellectual property-intensive.”

USTR Describes JCCT and S&ED Commitment Implementation Status in Several Trade-Related Reports

USTR reports on the status of trade barriers and market access broadly through nine reports, which it identified as the source for public information on JCCT and S&ED commitment implementation.²² In its strategic plan for fiscal years 2013 through 2016, USTR identifies these reports as important for building congressional support for the administration's trade agenda by helping Congress gain a comprehensive understanding of the efforts the administration undertakes to dismantle trade barriers.²³ Further, it characterized the reports as important to the agency's commitment to transparency and accountability to Congress and stakeholders. In addition, the administration has identified the work of these bilateral dialogues in removing trade barriers in China as critical to the success of the national goal of doubling exports by the end of 2014.

The nine reports respond to statutory requirements and have different focuses and structures.²⁴ The China WTO Compliance report, the only one focusing solely on China trade issues, examines the status of commitments made by China in connection with its accession to the WTO. Since 2008, the China WTO Compliance report has included a section on bilateral engagement that describes the outcomes for the present year; information on the status of past commitments is not included in that section but can be found in other sections of the report. Others among the nine reports have a worldwide scope and may include information on a specific sector, trade barrier, or policy area, including information on China and on the JCCT and S&ED commitments where appropriate. *Section 1377 Review of Telecommunications Agreements*, for example, focuses on trade barriers in a specific sector and the NTE

²²Specifically, USTR states that, collectively, the reports identify the major trade barriers to U.S. exports and the administration's efforts to dismantle them through negotiation, consultation, and dispute settlement. The JCCT and the S&ED are bilateral consultative mechanisms.

²³While USTR is statutorily mandated to report on the status of trade barriers and market access, it is not required to report on the status of implementation of JCCT and S&ED commitments.

²⁴The number of reports responding to specific requirements has changed over time. For example, until 2010, the administration met the requirement for the National Trade Estimate Report on Foreign Trade Barriers with one report. Since then it has responded with three reports (*Report on Sanitary and Phytosanitary Measures*, NTE, and *Report on Technical Barriers to Trade*). Additionally, the administration addressed a reporting requirement on greenhouse gas technologies with stand-alone reports in 2006 and 2007 and subsequently addressed the requirement with an appendix to the NTE report.

identifies key barriers to U.S. trade and describes barriers in a number of countries. Table 1 provides an overview of the nine reports.

Table 1: Key Annual Reports Addressing Trade Barriers with China

Report	Subject	Structure	Year first issued
Report to Congress on China's WTO Compliance	Reports annually on China's progress in complying with commitments made in connection with its accession to the WTO. The report also describes U.S. efforts to reduce trade barriers with China through bilateral and multilateral forums, U.S. enforcement actions, and priority issues.	Divides China's WTO commitments into 9 broad categories, including trading rights, services, and agriculture. ^a The only one of the nine reports that focuses on China.	2002
National Trade Estimate Report on Foreign Trade Barriers	Identifies the most important foreign barriers to U.S. trade and provides some information on some of the actions taken to eliminate them.	Is organized by country and by nine categories including import policies, government procurement, intellectual property rights, and investment barriers. ^b	1985
Special 301 Report	Identifies trade barriers related to intellectual property rights and categorizes countries according to three levels of concern, with Priority Foreign Country designating the highest level. ^c China has been on the Priority Watch List since 2005.	Provides overview of global intellectual property issues and trends and also country-specific trends. ^d According to USTR, elements of an action plan are included in the Intellectual Property Rights working group discussions of the JCCT. ^e	1989
Section 1377 Review of Telecommunications Agreements	Identifies trade barriers related to compliance with trade agreements relevant to the telecommunications sector (e.g., General Agreement on Tariffs and Trade).	Has focused on issues such as limits on foreign investment, competition. Not organized by country.	1989
Report on Technical Barriers to Trade	Identifies standards-related barriers to U.S. exports; provides a focal point for U.S. efforts to resolve standards-related barriers; and documents actions underway. ^f	Includes general information on standards-related measures and chapters on each of 17 countries, plus the European Union. Identifies the JCCT as a key bilateral forum to resolve standards-related issues.	2010
Report on Sanitary and Phytosanitary Measures	Identifies sanitary and phytosanitary barriers to U.S. exports; provides a focal point for U.S. efforts to resolve standards-related barriers; documents the actions underway. ^g	Describes unwarranted measures and explains why they impose barriers to trade, and how the United States is seeking to address them.	2010
Subsidies Enforcement Annual Report to the Congress	Describes the activities of the U.S. subsidies enforcement program.	Describes multilateral subsidy negotiations and ongoing enforcement and monitoring; report includes a section on China's WTO subsidy notification obligations.	1996
Trade Policy Agenda and Annual Report of the President of the United States on the Trade Agreements Program	Provides an update on the trade agreements program and articulates the national trade policy agenda for that year. ^h	Describes the President's trade agenda for coming year and reports on last year's activities. Includes discussions for specific regions and countries.	1957

Report	Subject	Structure	Year first issued
Report by the Office of the United States Trade Representative on Trade-Related Barriers to the Export of Greenhouse Gas Intensity Reducing Technologies	Provides an update on the progress made in removing the trade barriers that U.S. exporters of green technologies face in the top 25 greenhouse gas emitting developing countries. The report also aims to describe U.S. efforts to reduce these barriers.	Since 2008, report has appeared as an appendix to the NTE report. For specific trade barriers in top emitting developing countries—which include China—see relevant sections of the NTE and Special 301 reports.	2006

Source: cited reports, the Office of the U.S. Trade Representative.

Notes:

^aThese categories are (1) trading rights, (2) services, (3) import regulation, (4) export regulation, (5) internal policies affecting trade, (6) investment, (7) agriculture, (8) intellectual property rights, (and (9) legal framework.

^bThe nine categories are: (1) import policies, (2) government procurement, (3) export subsidies, (4) lack of intellectual property protection, (5) service barriers, (6) investment barriers, (7) government-tolerated anti-competitive conduct, (8) trade restrictions affecting electronic commerce, and (9) other barriers. Other barriers are those that encompass more than one category (e.g., transparency) or affect a single sector).

^cUSTR indicates concern with a trade barrier related to intellectual property rights by placing countries on a “Priority Watch List” or “Watch List.” The United States focuses its bilateral diplomatic efforts to improve intellectual property rights protection on Priority Watch List designees. Those countries that have the most egregious policies, acts, or practices with respect to intellectual property rights protection are designated as “Priority Foreign Countries.”

^dUSTR stated that the China section of the Special 301 report is the most comprehensive in the report and provides a means to track progress on issues.

^eThe United States develops action plans and similar programs to address intellectual property rights issues in various contexts, including the Special 301 process. According to USTR, these plans and programs establish benchmarks, such as legislative, policy, or regulatory action by which to measure progress in improving intellectual property rights protection. In May 2011, USTR invited any country appearing on the Special 301 Priority Watch List or Watch List to negotiate a mutually agreed action plan designed to lead to that country’s removal from the relevant list.

^fAccording to the introduction to the report, standards-related measures are documents and procedures that set out specific technical or other requirements for products or processes as well as procedures to ensure that these requirements are met.

^gSanitary and phytosanitary measures, which are measures that governments apply to protect human, animal, or plant life or health from risks arising from the entry or spread of plant- or animal-borne pests or diseases, or from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs.

^hAccording to the International Trade Commission, “the trade agreements program includes ‘all activities consisting of, or related to, the administration of international agreements which primarily concern trade and which are concluded pursuant to the authority vested in the President by the Constitution’ and congressional legislation.”

USTR officials told us that the WTO Compliance report is the primary report on the status of the implementation of commitments, and the other eight reports contain additional information on some commitments. USTR prepares these nine reports with assistance from Commerce, Treasury,

and other agencies on the Trade Policy Staff Committee.²⁵ Such assistance includes reporting from U.S. embassies, reviewing drafts to ensure accuracy and, in the case of the China WTO Compliance and Special 301 reports, holding public hearings to obtain private sector views. For instance, a senior Treasury official told us that Treasury participates in the preparation of the China WTO Compliance report by reviewing a draft for accuracy.

In addition to this public reporting, Commerce, USTR, and Treasury officials stated that they inform stakeholders on the status of implementation through briefings to industry associations and to members of Congress and their staffs, participation in congressional hearings, and briefings to the trade advisory committees. Further, agency officials said they have briefed Congress repeatedly on broader U.S. engagement with China. Agency officials told us that while they did not generally provide reports to accompany the briefings, they may bring fact sheets, remarks, and recent speeches; we did not identify additional regular documentary reporting on the status of implementation of JCCT and S&ED commitments beyond the public reports.

Reports Lack Clear and Comprehensive Information on Status of Implementation of JCCT and S&ED Trade and Investment Commitments

Our review of reporting on implementation status revealed challenges to obtaining clear and comprehensive information. For some commitments, the reports lack information on the status of implementation and for some the reporting is not clear.²⁶ Additionally, differences in the formats of the reports make locating information on a given commitment or issue area across reports difficult in some cases. The lack of detailed information on China's progress in implementing certain commitments makes it difficult

²⁵Key agencies involved in this process include Commerce (including the Patent and Trademark Office), Treasury, State, and USDA. This interagency structure, called the Trade Policy Committee, led by USTR, has two subordinate bodies—the Trade Policy Review Group (a management-level committee) and the Trade Policy Staff Committee (a senior staff-level committee subordinate to the management-level committee). Numerous subcommittees under the Trade Policy Staff Committee have also been established to facilitate interagency coordination on a variety of trade issues. According to USTR, the Trade Policy Staff Committee's Subcommittee on China meets in order to evaluate and coordinate U.S. engagement of China in the trade context and includes representatives from Commerce, Treasury, State, and USDA.

²⁶We reviewed reporting for commitments made in 2010 and 2011 at the JCCT and S&ED, as well as reporting for all software legalization commitments made from 2008 through 2011.

for Congress and other stakeholders to fully understand the progress the United States is making in reducing trade barriers.

Our analysis found several instances of incomplete reporting on the status of specific commitments related to market access barriers in sectors, such as software, and in cross-cutting areas such as industrial policy.²⁷ For example,

- We identified 9 commitments from the 2008-2011 JCCT, and 1 from the 2011 S&ED related to software legalization.²⁸ Based on our analysis of the nine reports identified above, we were not able to clearly identify the implementation status of most of these specific commitments. For example, USTR has not reported on whether China has increased resources devoted to conducting audits and inspections as it committed to do at the 2011 JCCT.
- A second software legalization example illustrates a lack of clarity across reports on implementation status. At the 2011 JCCT, China committed to complete software legalization programs at the provincial level by the middle of 2012 and to publish the results of its software audits. The 2013 NTE report indicated that, because of a lack of published information, USTR could not verify that China had completed a program to ensure provincial governments used legal software. However, the 2013 Special 301 report, issued a month later, stated that China had completed the program. In addition to the difference regarding completion status of the legalization program at the provincial level, it is unclear whether China has implemented its related commitment to publish the results of audits. Thus, it cannot be determined whether the gap in implementation is one of program completion or one of reporting.
- There has not been reporting on implementation of commitments concerning certain Chinese industrial policies. Specifically, at the 2011 JCCT, China committed to ensure open and transparent processes for developing standards for smart-grid products and

²⁷USTR has reported that one of its priority concerns in China is problematic industrial policies and that the beneficiaries of these policies are certain state-owned enterprises.

²⁸According to USTR, software legalization refers to the goal of controlling the unauthorized copying of large numbers of legally obtained software programs by government agencies and state-owned enterprises.

technologies. USTR has not reported on the status of implementation of this commitment, despite having a specific report that describes progress in greenhouse gas reducing technologies. The greenhouse gas reports issued in 2012 and 2013 do not describe the steps taken in the JCCT regarding this issue.

- USTR has not reported on the implementation of some commitments made by China related to its use of technical standards to favor domestic suppliers. In the 2011 JCCT, China reported on the development and publication of revised safety standards for medical devices, acknowledged the value of closer cooperation with the United States on those standards, and committed to participate in an information exchange program with the United States in 2012. The status of that commitment was not addressed in either the 2012 or 2013 reports.
- Reporting on implementation of China's commitments to reform state-owned enterprises has been incomplete. In the 2010 S&ED, China committed to continue its reform of these entities by, among other actions, inviting non-public and foreign investors to take equity stakes in them. China also committed at the 2010 JCCT that all enterprises in China, including state-owned enterprises, will make purchases and sales based solely on commercial considerations. As part of that same commitment, it committed to leave such decisions to those entities and to provide equal treatment to public and private enterprises. USTR has not reported on the status of implementation of these commitments in any of the nine trade-related reports.

In addition to incomplete or unclear reporting on the status of implementation of some commitments, differing report structures make it difficult in some cases to obtain information across reports. For example, we found reporting relevant to a 2010 S&ED commitment on new energy technologies discussed in the import barriers section of the NTE report's chapter on China, whereas the WTO Compliance report discussed it under investment. Similarly, with respect to a 2012 JCCT commitment by China to issue a catalogue for the purchase of official use vehicles, the WTO Compliance report discussed the commitment in the intellectual property rights section, and the NTE report discussed it in a newly created category for the China chapter of the report, "Indigenous Innovation, Technology Transfer and Strategic Emerging Industry Barriers."

In interviews and documents, agency officials emphasized the need to balance reporting on the status of implementation of commitments with the requirement to avoid disclosures that would disadvantage the United States in ongoing consultations. For example, in the NTE report, USTR indicates that it does not provide estimates of the impact of trade barriers that are the subject of ongoing consultations to avoid disrupting them. In the case of the trade agenda, USTR may submit classified information to Congress in confidence, if it deems necessary.

The absence of clear and complete reporting on the status of implementation of commitments makes it difficult for policymakers to gain a comprehensive understanding of the progress made toward reducing trade barriers through the implementation of commitments from the dialogues. Moreover, accountability is reinforced through public reporting of agency results and, if appropriate, confidential reporting to Congress.

Conclusions

China has made a significant number and wide array of commitments to the United States in the JCCT and S&ED, high-level bilateral U.S.-China dialogues which address trade issues. While information on the commitments is available from agency fact sheets, information on the status of implementation is not presented in a manner that provides a comprehensive understanding of China's overall progress in implementing the commitments. Although at least nine reports present information on the status of U.S. efforts to decrease trade barriers with China, in some cases referencing the JCCT and S&ED, obtaining specific information on implementation status from the reports presents challenges. These nine reports aim to provide a comprehensive picture of the administration's efforts to address trade barriers through consultative mechanisms such as the JCCT and S&ED. Without comprehensive reporting—easily accessible in one location and complete—it is difficult for external parties to understand the progress being made in removing barriers to this very important export market through bilateral dialogue. More consolidated and complete information on the status of China's implementation of its JCCT commitments and S&ED trade and investment commitments would give policymakers a better basis to identify areas of success or failure.

Recommendation for Executive Action

To improve policymakers' and the public's understanding of progress through bilateral dialogues in increasing access to China's markets, we recommend that the U.S. Trade Representative, in conjunction with the Secretary of Commerce and the Secretary of the Treasury, work to

provide clearer and more comprehensive reporting on the status of China's implementation of its JCCT and S&ED trade and investment commitments. This reporting should include more complete information on the status of implementation of these commitments, as well as a more clearly identified source for consolidated information, which could be an existing report.

Agency Comments and Our Evaluation

We provided a draft of this report to Commerce, USTR, Treasury, State, USDA, and OSTP. Commerce and USTR provided written comments which are reproduced in appendixes II and III. Commerce, USTR, Treasury, USDA, and OSTP provided technical comments which we incorporated as appropriate.

Neither Commerce nor USTR directly agreed or disagreed with our recommendation. Commerce stated that it would take GAO's ideas and findings under careful consideration, but expressed concern regarding our conclusion that lack of comprehensive reporting makes it difficult for external parties to understand progress made in bilateral trade dialogues with China. It further observed that assessments of reporting needs should include consideration of resource requirements. We agree that resource considerations are a key factor in agency approaches to reporting, but believe that steps to make information on commitment implementation status more comprehensive and accessible can be taken.

USTR stated that it welcomed GAO's suggestions and would consider them carefully, but identified several concerns. First, USTR expressed its view that some commitments are more noteworthy than others and counting and categorizing commitments can be misleading when used as the basis for conclusions about the relative significance of issue areas. We agree that not all commitments are of equal significance and reflected that view in our draft report. We believe, however, that summary quantitative information is one useful tool for conveying information about the issues addressed in these dialogues.

USTR commented that the report's discussion of agencies' tracking of the implementation of China's commitments is generally accurate, but stated that the role of U.S. stakeholders such as industry associations and companies is not adequately reflected in the report. We agree that such organizations are an important source of information on commitment implementation and have added additional information in the report to reflect their role.

With respect to U.S. agency reporting on commitment implementation, USTR stated that in its view the Administration's written reporting currently provides congressional policymakers and other stakeholders comprehensive information on China's implementation of JCCT and S&ED commitments, and stated that it also meets with those parties on these issues. It stated that not all JCCT and S&ED commitments warrant discussion in the reports, but acknowledged that GAO's analysis identifies commitments whose implementation status should be reported on and has not been. Based on extensive analysis of agency reporting on the implementation of these commitments, we concluded that information on the status of commitments made in these bilateral dialogues with China is not complete and easily accessible, which can make it difficult for policymakers to identify areas of success and failure and assess options for moving forward. We recognize that meetings with policymakers and stakeholders are also an important part agency communication on these issues.

We are sending copies of this report to the appropriate congressional committees; the U.S. Trade Representative; the Secretaries of Commerce, the Treasury, State, and Agriculture; the Director, Office of Science and Technology Policy; and other interested parties. The report also is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact David Gootnick at (202) 512-3149 or gootnickd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix IV.

A handwritten signature in black ink, appearing to read "David Gootnick", with a stylized, cursive script.

David Gootnick
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

In this report, we (1) describe the commitments China made at the Joint Commission on Commerce and Trade (JCCT) and the trade and investment commitments China made at the Strategic and Economic Dialogue (S&ED),¹ (2) describe U.S. agency tracking of China's implementation of these commitments, and (3) evaluate U.S. agency reporting on the status of commitment implementation.

To conduct this review, we interviewed knowledgeable U.S. government officials from the Department of Commerce (Commerce), the Office of the U.S. Trade Representative (USTR), the Departments of the Treasury (Treasury), State (State), and Agriculture (USDA) as well as the Office of Science and Technology Policy (OSTP) in Washington, D.C., and in Beijing, China (via a videoconference). We also interviewed representatives of trade associations and research organizations.

To describe the commitments, we conducted a detailed review of the fact sheets issued at the conclusion of annual meetings at the JCCT from 2004 through 2012, the S&ED from 2009 through 2013, and the SED from 2006 through 2008. Commerce and USTR issue a JCCT fact sheet; Treasury issues jointly with China an S&ED fact sheet for the economic track that presents the joint commitments negotiated by the United States and China. (Treasury also issues a U.S. fact sheet that discusses the benefits of the commitments for U.S. workers and companies.) According to senior Commerce, USTR, and Treasury officials, the fact sheets present the commitments negotiated between the U.S. and Chinese governments. In addition to presenting the commitments, the fact sheets also contain details of cooperative activities between the two countries. We used the joint fact sheets for our analysis of China's S&ED commitments because, according to senior officials, they reflect the two governments' understanding of the results of the S&ED plenary meeting. For the S&ED, we limited our analysis to China's commitments in the trade and investment pillar of the dialogue's economic track.² In our analysis, "S&ED commitments" refer to the trade and investment

¹The "S&ED commitments" in our analysis refer to trade and investment commitments China made at the S&ED and its predecessor, the Strategic Economic Dialogue (SED), which took place from 2006 through 2008.

²The other three pillars of the S&ED's economic track focus on macroeconomic cooperation, global economic governance, and financial markets. The United States and China discuss financial services trade issues under the financial markets pillar.

commitments China made in the S&ED in 2009 through 2013 and in the SED in 2007 and 2008.

We discussed the fact sheets with cognizant officials from Commerce and USTR, the two agencies that jointly lead the JCCT for the United States, and from Treasury, which leads the S&ED's economic track for the United States, to obtain an understanding of the information they contain and how they are put together. According to senior USTR officials, the commitments as presented in the fact sheets are high-level political commitments and are the outcomes of the structured dialogues established to address and resolve a range of issues. While the outcomes documents are not legal instruments, the commitments are taken seriously, according to these officials.

To identify the commitments, we separated the fact sheet text describing steps taken by China into individual commitments, created a database, and systematically analyzed individual commitments. The fact sheets state China's commitments, U.S. commitments, and joint U.S-China commitments. We excluded fact sheet text reflecting U.S. commitments, but included statements about commitments made jointly by the United States and China and by China alone.

We identified 184 JCCT commitments and 114 S&ED trade and investment commitments. (An inventory of the commitments we identified and their categorization by issue area, described below, is provided in an online e-supplement, [GAO-14-224SP](#).) JCCT fact sheets, written by the U.S. government, are typically written in bulleted form, with each bullet generally considered by us as one commitment. S&ED fact sheets are different in that the precise wording of every commitment is negotiated jointly by the U.S. and Chinese governments. The 2013 S&ED fact sheet listed the trade and investment commitments in bulleted format. Prior to that, the commitments were written in paragraphs that included statements on multiple topics. The JCCT and S&ED fact sheets vary in terms of the number of areas and activities addressed, and in the specificity of the statements. We discussed with U.S. agencies ways to identify and count specific commitments in fact sheets, and determined that there is no single way to do so. For example, an analysis of the S&ED fact sheets for 2009 through 2012 might treat a paragraph as a commitment. We chose to break some paragraphs into multiple commitments, using decision rules that we developed to ensure the consistency and completeness of this exercise. These included whether the paragraph referred to more than one intended action or discrete concept, and whether it specified a deadline. In addition, if the same or

similarly worded commitment was made in multiple years, we counted it anew each time.

After identifying individual commitments, we categorized them by several characteristics (issue areas, joint or China-only, deadline). We identified 11 issue areas to characterize the content of each commitment after an iterative review of all of the commitments in our database by several analysts. To support development of these categories we used as a reference point categories developed in a previous GAO report on China's commitments³ as well as the headers used in JCCT source documents. (S&ED fact sheets do not use headers and sub-headers for the commitments in the trade and investment pillar.) These were adapted and recombined producing a set of categories that took into account the specific language of the specific sets of commitments from recent years and covered both dialogues. See the list of issue areas with descriptions and examples in table 2.

We then assessed each commitment for the issue area(s) it covered. Because many commitments covered multiple issue areas, we assigned up to three issue areas to each commitment. Ninety-nine of the 184 JCCT commitments and 55 of the 114 S&ED commitments were associated with two or three issue areas. We identified some commitments that did not fit any of the 11 issue areas and categorized these commitments as "other."

³GAO, *World Trade Organization: Analysis of China's Commitments to Other Members*, [GAO-03-4](#) (Washington, D.C.: October 2002).

Table 2: List of Issue Areas Identified in GAO’s Analysis of China’s JCCT Commitments (2004-2012) and S&ED Trade and Investment Commitments (2007-2013)

Issue area	Description of issue area	Examples of commitments associated with issue area
1 Government procurement	Includes policies for purchase of goods and services by government and by state-owned enterprises as well as negotiations for China’s accession to the World Trade Organization (WTO) Agreement on Government Procurement. ^a	The United States and China recognize the importance of non-discriminatory government procurement policies. To that end, the United States and China agree to strengthen their cooperation in order to accelerate China’s accession to the WTO Government Procurement Agreement. This will include China’s submission, to the WTO Government Procurement Committee before the Committee’s October 2009 meeting, of a report that sets out the improvements that China will make in its revised offer. (S&ED, 2009)
2 High technology trade	Includes promotion of U.S. high technology exports to China.	Continue cooperation through the JCCT High Technology and Strategic Trade Working Group by positively implementing “Guidelines for U.S.-China High Technology and Strategic Trade Development” and taking appropriate constructive measures and working out an action plan to expand and facilitate bilateral high-tech and strategic trade. (SED, 2007)
3 Innovation	Includes measures promoting “indigenous innovation” ^b and linkages between innovation policies and government procurement preferences.	The relevant Chinese departments are conducting further modifications to the Implementing Regulations on the Government Procurement Law and will seriously take into account opinions and suggestions from all sides, including from the United States. In government procurement, China will give equal treatment to all innovation products produced in China by foreign-invested enterprises and Chinese-invested enterprises alike. (The United States expressed concerns that under Article 9 of China’s draft Regulations, product lists could be used to provide government procurement preferences to indigenous innovation products.) (JCCT, 2010)
4 Intellectual property rights	Includes laws and regulations providing for the protection and enforcement of intellectual property rights, such as copyrights, trademarks, and patents.	China and the United States agreed to continue cooperation on strengthening library intellectual property rights protection and to continue exchanging views and sharing information with rights holders about library intellectual property rights protection efforts. Specifically, China’s National Copyright Administration described its ongoing efforts to investigate complaints by academic journal publishers about web-based enterprises’ piracy of library academic journals, and agreed to take prompt action at the conclusion of its investigations. (JCCT, 2010)
5 Investment	Includes laws, regulations, and other measures that limit foreign investment, such as regulations on mergers and acquisitions involving foreign investors.	China commits to provide fair treatment to foreign investors in China. China is to focus its security review over mergers and acquisitions by foreign capital solely on national security concerns and adhere to specific timelines and review standards. China is to continue to simplify its foreign investment approval system and enhance transparency on a step-by-step basis. During the 12th Five Year Plan period, China is to implement a more proactive opening-up strategy and expand the areas open to foreign investment and the degree of openness. (S&ED, 2012)

Issue area	Description of issue area	Examples of commitments associated with issue area
6 Multilateral issues	Includes references to international agreements and consistency of domestic laws, regulations, and practices with multilateral commitments.	<p>China has committed to improve protection of electronic data by ratifying and implementing the World Intellectual Property Organization Internet Treaties as soon as possible [and] extending an existing ban on the use of pirated software in central government and provincial agencies to include local governments. (JCCT, 2004)</p> <p>The United States and China recognize that it is critical to follow WTO rules when initiating trade remedy investigations and imposing trade remedy measures, to prevent their abuse, and commit to refrain from using such measures for purposes other than trade remedies themselves, including to achieve industrial policy objectives. The two sides commit to respect the decisions of the WTO dispute settlement mechanism. Both sides commit to handle anti-dumping and countervailing duty investigations in a fair, objective, and transparent manner. (S&ED, 2012)</p>
7 Open trade principles	Includes statements affirming commitment to open trade and investment.	Against the background of deteriorating economic conditions worldwide, the U.S. and China highlighted the importance of and their shared commitment to fighting protectionism and promoting open trade and investment. (SED, 2008)
8 Sector-specific issues	Includes measures and policies—such as custom duties, tariff-rate quotas, export subsidies, domestic support, and restrictions on imports for health and environmental reasons—that limit market access for U.S. companies in specific sectors or industries.	<p>Agriculture: China agreed to immediately allow seven U.S. poultry processing plants to resume exports to China. [The United States has] urged China to work to address underlying systemic issues to eliminate such problems in the future. (JCCT, 2008)</p> <p>Software: China is to further promote the use of legal software by state-owned enterprises, including by strengthening supervision of central state-owned enterprises and large state-owned financial institutions by establishing software asset management systems; enforcing China's requirement to purchase and use legitimate software by these state-owned enterprises; providing budget guarantees for software and promoting centralized procurement. The United States and China are to strengthen cooperation to address technical implementation issues, in order to consolidate the software legalization achievements. (S&ED, 2013)</p>
9 Technical and regulatory barriers to trade	Includes non-tariff trade barriers in the form of product standards, technical requirements, testing, and certification, as well as regulatory barriers to trade.	<p>Technical: China will consider an exemption of requiring product samples to be tested in Chinese test labs prior to approval if the manufacturer demonstrates compliance with international standards and provides sound scientific evidence. (JCCT, 2009)</p> <p>Regulatory: China agreed to convene another meeting of the U.S.-China Insurance Dialogue before the end of 2005 to discuss regulatory concerns and barriers to further liberalization of the sector. (JCCT, 2005)</p>

Appendix I: Objectives, Scope, and Methodology

Issue area	Description of issue area	Examples of commitments associated with issue area
10 Trade remedies	Includes subsidies providing economic benefit granted by a government to domestic producers of goods or services, often to strengthen their competitive position, as well as laws and regulations related to antidumping and countervailing duties.	<p>China will provide a detailed accounting of its subsidies to the WTO by the end of 2005. (JCCT, 2005)</p> <p>Both sides decided to prioritize work during the next six months in several areas: Launch agreement consultations to facilitate Chinese group leisure travel to the United States, continue discussions on the possibility of a bilateral investment agreement, and strengthen consultation and cooperation on China's market economy status. (SED, 2007)</p> <p>Both sides agreed to continue consultation through the JCCT and other channels on trade remedy rules and procedure. (SED, 2008)</p>
11 Transparency	Includes efforts to improve the openness of China's trade regime by, for example, publishing proposed regulations, providing clarifying information on rules, laws, or processes, or providing opportunities to comment on draft regulations.	<p>China and the United States reaffirm their prior SED outcomes on transparency. The United States welcomes China's statement that it will issue a measure in 2011, to implement the requirement to publish all proposed trade- and economic-related administrative regulations and departmental rules on the State Council Legislative Affairs Office (SCLAO) website for a public comment period of not less than 30 days from the date of publication, except as specified in China's Protocol of Accession to the WTO or in public emergency situations. China will steadily increase its solicitation of public opinions on regulatory documents with a direct influence on the rights and obligations of citizens, legal persons, or other organizations. (S&ED, 2011)</p>
12 Other	Includes statements of cooperation on such issues as rules of origin, counterterrorism, sub-national cooperation, trade financing, market access for U.S. small- and medium-sized enterprises, Chinese value-added tax (VAT), and others.	<p>Both sides agreed to strengthen cooperation on Rules of Origin, Customs Trade Partnership Against Terrorism, and the protection of cultural relics. (SED, 2008)</p> <p>China confirmed that a Ministry of Finance-led delegation would hold discussions with the United States, beginning in the first half of 2013, in order to work toward a mutual understanding of China's VAT system and the concepts on which a trade neutral VAT system is based. (JCCT, 2012)</p>

Source: GAO analysis of JCCT and S&ED fact sheets; U.S. agency and WTO reports.

Notes:

^aThe WTO Government Procurement Agreement (GPA) is a plurilateral agreement that currently covers the United States and 41 other WTO members. China is not yet a party to the GPA. The GPA applies to the procurement of goods and services by central and sub-central government agencies and government enterprises specified by each party, subject to specified thresholds and certain exceptions. It requires GPA parties to provide most-favored-nation and national treatment to the goods, services and suppliers of other GPA parties and to conduct their procurement in accordance with procedures designed to ensure transparency, fairness and predictability in the procurement process. China has committed in its WTO accession agreement that all of its central and local government entities will conduct their procurements in a transparent manner until China completes its accession to the GPA.

^b"Indigenous innovation" policies promote the development, commercialization, and purchase of Chinese products and technologies and may disadvantage U.S. and other foreign firms and create new barriers to foreign direct investment and exports to China. These policies are often embedded in government procurement, technical standards, anti-monopoly policy, and tax laws and regulations. See U.S. International Trade Commission, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy*, Publication 4199, November 2010.

Many commitments, including 110 JCCT and 11 S&ED commitments, were related to specific sectors (see examples for agriculture and software in table 2). We identified 15 sectors: agriculture, distribution/retail, information technology and security, insurance, new energy vehicles, pharmaceuticals and medical devices, postal/courier, shipping, software, steel, telecommunications, textiles, transportation, travel and tourism, and wind power. We discussed this methodology with officials from Commerce, USTR, Treasury, State, and USDA.

To ensure the validity of this analysis we performed multiple sets of reviews and checks. Initial testing of subsets of the commitments was done by two analysts and a methodologist. The full analysis of all commitments was performed by two analysts who cross-checked each other's analysis and reconciled differences through discussion. A methodologist provided a spot-check of the analysis. Finally, the full team met and discussed in detail every commitment to ensure final consensus on the issue area categorization.

To describe how agencies track the status of implementation of commitments, we interviewed officials and reviewed documents from Commerce, USTR, Treasury, State, USDA, and OSTP. We also discussed these issues with U.S. embassy staff in Beijing, via videoconference. We discussed with the officials their processes for tracking commitment status, and sought corroborating information where needed. For example, we sought corroborating information from officials concerning their engagement with China in other various bilateral and multilateral forums, and their obtaining input from industry stakeholders and U.S. government officials based overseas. We corroborated this information by reviewing public reports from the outcomes of other diplomatic forums such as minutes from World Trade Organization standing committee meetings and public comments submitted by industry officials in conjunction with agency preparation of public reports.⁴ We also reviewed a cable from the 2010 JCCT mid-year review and a cable about the 2010 S&ED annual meeting. Finally, we reviewed agendas for the 2010-2012 JCCT mid-term reviews. We also interviewed industry associations.

⁴According to USTR, the WTO standing committees meet regularly to allow members to exchange views, to work to resolve questions of compliance with commitments, and to work to improve the global trading system. The standing committees do not include negotiating bodies or dispute settlement panels.

With respect to the use of tools such as tracking sheets to maintain and share information on commitment implementation, we discussed agency staff-level methods for tracking the status of commitments with officials from Commerce. For contextual purposes, we also discussed with State officials their process for tracking the status of commitments in the strategic track of the S&ED. We discussed with Commerce staff the characteristics and use of a tracking document developed by staff for compiling information on commitment implementation for use in briefing senior officials for key meetings.

To evaluate how U.S. agencies report on the status of commitment implementation, we asked agency officials and consulted agency documents to identify relevant public documents and other types of reports they use to inform the public and Congress on the outcomes and status. They identified nine reports that describe administration efforts to reduce trade barriers through negotiations, consultations and dispute settlement, which are identified in the body of this report. To make assessments of the reporting that we identified across the reporting documents, we focused primarily on identifying information that specifically referenced the status of implementation of the commitment by the Chinese government or other relevant Chinese entities. To assess the completeness of the reporting, we examined the nine reports for information on the status of implementation of commitments made in the JCCT and the S&ED in 2010 and 2011 and in additional years—2008 and 2009—related to software legalization. We examined these commitments related to software legalization because intellectual property was a prominent JCCT issue area and we had identified software earlier in our review as a potential illustrative area. For each of these commitments, we reviewed reporting subsequent to when the commitment was made. The assessment included keyword searches of the nine reports. For example, for a software legalization commitment we performed keyword searches using “software,” “legalization,” and other terms specific to the commitment. We also did a more general reading of reporting language relevant to a given commitment. This analysis was reviewed by a second analyst and any differences the reviewer had with the original analysis were reconciled.

We reviewed the congressional budget justifications for Commerce, USTR, Treasury, and USDA to describe how U.S. efforts to track and report on the status of China’s implementation of commitments supported agency and administration goals. We also reviewed comments from industry representatives submitted in conjunction with the preparation of statutory reports.

We conducted this performance audit from May 2012 to February 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Secretary
Washington, D.C. 20230

January 30, 2014

Mr. David Gootnick
Director, International Affairs and Trade Team
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

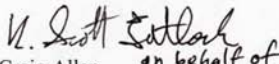
Dear Mr. Gootnick:


The Department of Commerce (DOC) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled *U.S.-China Trade: United States Has Secured Commitments in Key Bilateral Dialogues, but U.S. Agency Reporting on Status Should Be Improved* (GAO-14-102). Our comments are enclosed.

DOC appreciates the observations and advice that GAO provides in its draft report and will take GAO's ideas and findings under careful consideration. At the same time, DOC is concerned with some of the conclusions that GAO submits within the draft report. In particular, GAO concludes that "Without comprehensive reporting – easily accessible in one location and complete – it is difficult for external parties to understand the progress being made in removing barriers to this very important export market through bilateral dialogue." Existing reporting is done pursuant to specific Congressional mandates. It seems misplaced to criticize the Administration for failing to provide such reporting in that format in light of the extensive reporting that the Administration already submits in this area. Whether reporting in that format should be undertaken would require an assessment of the need for such reporting balanced against the resources that would be required, particularly as those resources would come from the same staff that is currently focused on removing barriers to U.S. exports to China and ensuring that China is complying with its commitments.

Thank you for your work on this report. If you have any questions, please contact Brian Eiler within the Office of Legislative and Intergovernmental Affairs at (202) 482-7499.

Sincerely,


Craig Allen
Deputy Assistant Secretary for Asia
International Trade Administration


George Elliott
Deputy Chief Policy Officer for Operations
Office of Policy and International Affairs
United States Patent and Trademark Office

Appendix III: Comments from the Office of the U.S. Trade Representative

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

January 22, 2014

Mr. David Gootnick
Director
International Affairs and Trade
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Gootnick:

I am writing to convey the comments of the Office of the United States Trade Representative (USTR) on the draft report of the Government Accountability Office (GAO), *US-CHINA TRADE: United States Has Secured Commitments in Key Bilateral Dialogues, but U.S. Agency Reporting on Status Should Be Improved* (draft Report).

GAO breaks its draft report into three parts. The draft report first reviews and catalogues the bilateral commitments that China has made to the United States since 2004 in connection with two high-level bilateral dialogues. One is the U.S.-China Joint Commission on Commerce and Trade (JCCT), chaired on the U.S. side by USTR and the Department of Commerce and on the Chinese side by a Vice Premier. The other dialogue is the U.S.-China Strategic Economic Dialogue (SED) and its successor, the U.S.-China Strategic and Economic Dialogue (S&ED). The S&ED is chaired on the U.S. side by the State Department and the Treasury Department and on the Chinese side by a State Councilor and a Vice Premier. With regard to the S&ED, the draft report focuses specifically on the trade and investment commitments made in the S&ED's Economic Track. Second, the draft report discusses how U.S. government agencies have tracked China's implementation of these various JCCT and S&ED commitments. Third, the draft report addresses the written reporting published by U.S. agencies on China's implementation of JCCT and S&ED commitments and recommends that U.S. agencies provide more comprehensive written reporting.

We appreciate the advice offered by GAO to ensure that we are doing the most effective job in reporting on the status of the commitments that the Administration has been able to secure from China through its key bilateral dialogues. The draft Report contains insights and ideas that we will consider carefully.

At the same time, USTR would like to highlight some issues of concern with the draft report. As discussed below, in Part 1, the draft report not only counts and categorizes China's JCCT and S&ED commitments, but also characterizes some issue areas as more prominent than others based on its counting and categorizing of those commitments. USTR would strongly caution against methodologies that count and categorize JCCT and S&ED commitments. They are of limited utility, and are inherently misleading when used as the basis for conclusions about the

prominence or significance of certain issue areas relative to others. In Part 2, the draft report omits a key source of information for U.S. agencies in Washington in tracking China's implementation of JCCT and S&ED commitments, namely, U.S. industry. In Part 3, where it recommends that USTR produce more comprehensive written reports, the draft report seems to equate comprehensive reporting with a discussion of every single JCCT and S&ED commitment, without regard to its significance, and does not seem to appreciate the nuance that some commitments can be much more noteworthy than others, depending on a number of factors. In USTR's view, reporting on our trade and investment relationship with China at any given point in time inherently is a process involving judgment, especially when the reporting involves a multiplicity of vehicles with different emphases and focuses. USTR and other involved agencies make extraordinary efforts to ensure that the reporting is not only consistent and up-to-date, but also comprehensive. The draft report provides anecdotes that reinforce the importance of those efforts, but in our view does not correctly portray current reporting as not being comprehensive. USTR also notes that the draft report's recommendation does not seem to take into account the many actions taken by the Administration to supplement its written reporting with in-person briefings of Members of Congress and their staffs as well as U.S. stakeholders, including industry associations, individual companies and other interested parties.

Part 1: Description of China's Commitments

In Part 1, the draft report reviews and catalogues the bilateral commitments that China has made to the United States since 2004 in connection with two high-level bilateral dialogues, the JCCT and the S&ED. As part of its cataloguing process, the draft report places each of the various commitments made by China in these dialogues over the years – the draft report identifies 298 of them – into one or more of 12 issue areas. The draft report then offers a brief analysis of these commitments. Among other things, it identifies the frequency with which commitments are associated with specific issue areas, compares the number of commitments in one issue area versus another, and on that basis alone – without examining whether any particular commitment is simple or complex, limited or far-reaching in nature, important to a small or large group of companies or industries, or other similar factors – opines on which issue areas are most prominent in the two dialogues. Before embarking on this analysis, the draft report does acknowledge that “U.S. officials stressed that not all commitments are of equal value and significance.” The draft report then notes in a footnote that its “analysis does not address the relative significance of the commitments.”

While the draft report's conclusions about the relative prominence of one issue area versus another based on a counting and categorizing methodology are not relevant to the draft report's ultimate recommendation for more comprehensive written reporting by U.S. agencies, USTR notes that this type of methodological analysis has limited utility and can be misleading. First, a threshold issue is the question of how to decide what constitutes a “commitment,” i.e., how broadly or narrowly to define it. For trade policymakers, deciding how broadly or narrowly to define the borders of a particular commitment is not normally a mission-critical question. Matters being addressed by USTR, Commerce, State and Treasury in the JCCT and S&ED context often have several components. Is each component a separate “commitment,” or is the entire matter one “commitment”? Decisions about how to define a “commitment” in this type of situation can greatly affect the outcome of any quantitative analysis, and there is not necessarily

one correct answer. Second, the nature and scope of particular commitments varies widely. China's commitments can be concrete and involve one time, clear cut action (such as to publish a draft telecommunications value-added services catalogue for public comment). Alternatively, they can be open ended commitments to act in a certain way or to refrain from taking certain action (such as to not make technology transfer a precondition for market access). They can also have several elements, which, as noted above, could lead to questions about how to "count" a commitment. Third, commitments vary widely in their significance to U.S. stakeholders, again limiting the value of a counting exercise. Some issues that are the subject of a commitment can have relatively minor significance but nevertheless help a large group, making them worthy outcomes, while other issues can be of crucial importance to a given U.S. industry. Still other issues can be very helpful to get resolved, so the outcome deserves notice, but they are not of the same lasting importance. All of these nuances make it a fraught – and potentially misleading exercise – to try to draw conclusions about which issue areas are most prominent or receive the most attention, and it is even more problematic if the implication being drawn from these conclusions is that the more prominent issue areas are necessarily the more important ones.

Part 2: Description of U.S. Agencies' Tracking of China's Commitments

Next, the draft report discusses how U.S. government agencies have tracked China's implementation of JCCT and S&ED commitments. The draft report concludes that U.S. agencies track China's implementation progress "by collecting information from a wide range of sources and analyzing it on an ongoing basis." It explains that "U.S. agencies identified JCCT working groups and mid-year reviews, discussions with Chinese officials while developing joint fact sheets prior to S&ED meetings, and U.S. officials based on China as key sources for information or progress."

In USTR's view, the draft report generally provides an accurate portrayal of these elements of U.S. agencies' tracking activities. However, the draft report seems to ignore a key source of information used by U.S. agencies, particularly in Washington. Often the entities most knowledgeable about China's progress in implementing particular commitments are the affected U.S. stakeholders. U.S. agencies work closely with industry associations, companies and other interested parties in developing information on an ongoing basis on China's implementation progress.

Part 3: U.S. Agencies' Written Reports

The third and final part of the draft report addresses the reports that U.S. agencies publish on trade matters and, in particular, the information provided in these reports on China's implementation of JCCT and S&ED commitments. The reports identified by the draft report include the annual *USTR Report to Congress on China's WTO Compliance* and eight other annual reports. The draft report analyzes select commitments from select years and concludes that the Administration's "reporting on implementation status is not comprehensive because [it is] sometimes not clear and complete. This lack of comprehensive information makes it more difficult for policymakers to monitor progress and identify areas for needed focus." On that basis, the draft report recommends that USTR, in conjunction with the Commerce and Treasury Departments, "include more complete information on the status of [JCCT and S&ED]

commitments” for “Congress and other stakeholders” and identify more clearly one source for this information.

In USTR’s view, the Administration currently provides Congressional policymakers and interested stakeholders in the private sector with comprehensive information on China’s implementation of JCCT and S&ED commitments through its written reporting. In addition, it is noteworthy that the Administration supplements this reporting through numerous meetings with Members of Congress and their staffs and through robust engagement with U.S. stakeholders, including industry associations, individual companies and other interested parties.

The Administration’s primary written source for comprehensive information on China’s implementation of JCCT and S&ED commitments is the annual *USTR Report to Congress on China’s WTO Compliance*. Every year, that report includes a section on bilateral engagement in which it explains what the JCCT and S&ED are and how they work, and identifies the key Chinese commitments secured through these two dialogues over the past year. In subsequent sections of the report, each of these commitments is discussed in more detail, as are key commitments from prior years to the extent that they remain relevant and noteworthy. These sections explain the underlying problems, how commitments were secured, progress being made and next steps that the Administration intends to take going forward to address shortcomings in China’s implementation efforts or new or evolving problems. The executive summary of the report also provides similar information, in more general terms, on these commitments. In addition, the report reproduces in appendices the complete lists of JCCT and S&ED commitments over the past year.

It is worth noting that the *USTR Report to Congress on China’s WTO Compliance*, like the other eight reports that cover various aspects of the U.S.-China trade relationship, is the subject of an interagency review process through the Trade Policy Staff Committee (TPSC). This review process enables USTR to draw on the expertise and insights of the TPSC’s 21 member agencies and also helps to ensure that the reporting is not only consistent and up-to-date, but also comprehensive.

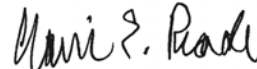
The overall comprehensiveness of the *USTR Report to Congress on China’s WTO Compliance* is also evidenced by its length. USTR’s most recent report, which focuses exclusively on China, is 144 pages long, not including appendices.

At the same time, despite its length, USTR’s report does not discuss every single one of China’s JCCT and S&ED commitments, even though it lists them in appendices. The simple reason for this approach is that not all of the commitments warrant discussion in the report. For example, discussion of a commitment by China to publish a particular draft regulation for public comment or to participate in a meeting on a particular topic in the coming year may not be warranted. In the case of more complex commitments, however, USTR’s practice is to discuss them in the body of the report, both in the year when a commitment is made and in subsequent years to the extent that it remains relevant and noteworthy. I acknowledge that the draft report has identified some instances in which USTR’s report has not provided a full update of a commitment’s implementation status when it would be appropriate to do so, and we will work to ensure that these omissions do not occur in the future.

Finally, I would emphasize that USTR and other U.S. agencies do much more than write reports. Throughout each year, we hold numerous meetings with Members of Congress and their staffs to make sure that the Congress has a comprehensive understanding of our past and likely future engagement with China in the trade sphere, including in the contexts of the JCCT and the S&ED. We also work closely with our advisory groups, as well as a wide range of U.S. stakeholders that have concerns about Chinese trade policies and practices, both in developing strategies for addressing them and in assessing progress made.

In closing, let me reiterate that we welcome the suggestions that GAO has made in its draft report, and we will carefully consider them going forward.

Sincerely,



Claire E. Reade
Assistant United States Trade Representative
for China Affairs

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

David Gootnick, at (202) 512-3149 or gootnickd@gao.gov

Staff Acknowledgments

In addition to the individual named above, Celia Thomas (Assistant Director), R. Gifford Howland, Shakira O'Neil, Sada Aksartova, Karen Deans, David Dornisch, Etana Finkler, and Ernie Jackson made key contributions to this report.

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