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China's Trade Barrier Playbook: Why America Needs a New Game Plan

By Ed Gerwin and Ryan McConaghy

December 2011 marked China's 10th anniversary as a member of the World Trade Organization. Despite progress on market reforms in a number of areas, China has failed to live up to a wide range of promised WTO commitments. To make matters worse, China has actually regressed towards less open markets and "state capitalism" in key sectors. China's unfair currency manipulation has been a flashpoint in its trade relations with the United States and we must aggressively address that practice. But, China doesn't rely on currency alone to get an edge. Rather, it employs an entire array of unfair tactics to block American exports and investments and deny economic opportunity for our workers, manufacturers, farmers and service providers.

If America's economy is to experience the kind of growth necessary for the middle class to thrive, American businesses must have the opportunity to export freely to the world's second largest economy. Currently, the United States is last among major industrialized nations in the share of its economy derived from exports.[1]

Chinese barriers are one of the reasons. If our exports to China increased by just an additional 10%, that would add some $10 billion new American exports and some 60,000 U.S. jobs.[2] But right now, America's approach to trade isn't working with China. The United States must counter China's multifaceted trade restrictions head on with an equally broad and sophisticated strategy of our own—one that combines results-focused dialogue, aggressive enforcement, stricter rules, and strong allies to assure that we get all that America bargained for when China joined the WTO.

THE PROBLEM

China uses a "playbook" of tactics to keep out American exports

The New England Patriots are a model NFL franchise, winning three Super Bowls in the last decade and seemingly in contention for the Lombardi Trophy every season. The Patriots win games through smart coaching, detailed preparation, and skilled, hard-nosed play.[3] But they also prevail because of their legendary playbook—a detailed, phone-book-sized, color-coded compendium of plays and strategies that the team often uses to dictate play and win games.[4]

Since joining the World Trade Organization (WTO) a decade ago, China has become a fearsome competitor on the field of global trade, increasing exports by almost 600% between 2000 and 2008 and growing at annual rates averaging 10%.[5] China has achieved these gains by leveraging its tremendous productive capacity, low labor and capital costs, and strong state support for export-driven growth. And, in recent years, China has also employed an increasingly complex "playbook" of trade policies and strategies, both fair and unfair, to advance its economic interests—often at the expense of American competitors.

In this report, we crack open China's trade playbook and detail some of its key tactics. We focus especially on the unfair strategies that China uses to limit American exports and investments—strategies that prevent our companies and workers from scoring new business and good jobs. We argue that, if America is to achieve a fairer and more beneficial trading relationship with China, we can't simply game plan for one or two plays. Instead, America must update our own trade game plan so that we have a full array of strong and smart tactics to counter China's stingy defense and assure that American companies and workers get the full benefits of China's WTO membership.

A Tilted Playing Field Stops America from Scoring

Trade barriers prevent U.S. exporters and workers from tapping into the fast-growing China market

China is an increasingly lucrative market for U.S. exports. It's America's third largest and fastest growing export market, accounting for over $100 billion in U.S. exports of goods and services annually and growing by an average of over 15% each year.[6] China now has the world's largest mobile phone network, is the largest producer of light vehicles, and leads the world in internet users. Over the next decade, China is expected to be the largest source of global demand, as it adds over 260 million new *middle class* consumers to the world economy and actively encourages significantly increased private consumption.[7]

But, as detailed below, China's playbook of unfair trade barriers also significantly limits America's ability to further advance our products, services and investments in China's growing market.[8]

Highlighting China's Top Plays

Nine key ways China blocks American exports

In the sections below, we highlight nine of the most common and effective "plays" that China uses—either individually or in combination—to block U.S. trade.

In football, coaches will often call a series of running plays to set up a pass. With its track record of mixing and shifting tactics, and creatively adapting its trade policies to create new barriers, China is no different. And it's important to note that this playlist is only a portion of the many trade tactics and strategies that are part of China's coordinated and evolving game plan for winning—within or outside the rules—on trade.

#1 LOCK OUT THE PLAYERS

Keeping American exporters and investors on the sidelines

In last year's labor dispute, the NFL kept its players from competing by locking them out for 135 days. On trade, China locks out imports of fresh potatoes from Idaho, Oregon, and Washington, while it continues to "study" a market-opening request that the United States first made in 2000![9]

China's many market access barriers make it difficult—if not impossible—for America's explosive offense of exporters and investors to be players in China's rapidly growing economy:

- American firms seeking to invest—in sectors ranging from agriculture and chemicals to energy and finance—are subject to increasingly tight rules designed to shelter favored, inefficient or monopolistic Chinese firms.
- U.S. banking, telecom, engineering, express delivery, and other service firms face barriers that include cumbersome entry rules and discriminatory capital requirements.
- China's inefficient and inconsistent customs clearance and valuation process can cause significant delays for American products at Chinese ports.
- China's "Great Firewall" keeps many American companies from providing services and selling goods to China over the Internet.
- Exports from American farms and ranches are frequently blocked by China's non-scientific agriculture rules, including China's import bans on U.S. beef and certain poultry products.[10]

And those American firms that actually get into China's market often pay more for the privilege. China's tax system efficiently assesses VAT taxes on imports from U.S. companies, but frequently fails to collect VAT from their Chinese competitors, due to poor enforcement, special deals or outright fraud.[11]

Piling on Penalties

Nearly all U.S. farm commodities—from wheat and soybeans to meat and poultry—require a Chinese Quarantine Inspection Permit (QIP) to be imported into China. But China's arbitrary administration of QIPs often strands U.S. food exports at China's ports, imposes unnecessary costs on Chinese purchasers, and creates commercial uncertainty for U.S. farm exporters. American traders are hesitant to complain to Chinese authorities about problems with QIPs—lest they incur the wrath of China's food referees and face even more penalties as they are sent to the back of the line or off the field.[12]

#2 TAKE PERFORMANCE ENHANCERS

Pumping up China's domestic companies

Stimulants, steroids and other performance enhancing substances are against the rules because they can give players an unfair advantage, often over more skilled competitors. Similarly, it can be hard for strong American companies to compete in China—and in U. S. and global markets—against "juiced-up" Chinese enterprises that benefit from China's rampant subsidies.

China's dizzying array of unfair and illegal subsidies includes massive government cash grants; raw materials at deep discounts; heavily discounted rates for land, electricity and water; preferential loans; tax incentives and rebates; and indirect benefits from lax enforcement of environmental, labor and intellectual property laws.[13] Since China joined the WTO, the United States has brought three separate WTO cases against unfair Chinese subsidies.[14] Late last year, the U.S. Trade Representative (USTR) submitted to the WTO with a list of some 200 potentially problematic subsidies that China has failed to disclose as required by WTO rules.[15]

China uses a variety of means to deliver performance-enhancing subsidies that unfairly pump up its state-owned enterprises (SOEs) and other favored domestic firms. For example:

- China's state-controlled banks provide extensive government-directed, WTO-illegal, subsidized loans to Chinese SOEs and private firms, especially to industries like green technology that the government views as critical to the nation's economic development.[16]

- China's economic planners use export taxes, export quotas and tax rebates to reduce the price of key raw materials for Chinese producers—and raise them for everyone else. For instance, China's export quotas on 17 "rare earth" elements have severely hurt China's foreign competitors, who face skyrocketing prices and dwindling supplies of materials that that are critical to the production of batteries, communications devices and hundreds of other products.[17]
- Subsidies by China's provincial and local governments account for some 20% of China's industrial investment, and often go to sectors, such as steel, that already have significant excess capacity.[18]
- A wide range of government and business leaders and economists agree that China's significantly undervalued Yuan artificially lowers the price of exports by Chinese producers to the United States, while making U.S. exports to China from American competitors more expensive.[19]

Turn Out the Lights

In October 2011, SolarWorld America Inc. petitioned the U.S. Government for relief against U.S. imports of solar cells from China. SolarWorld's petition identified a wide range of China's subsidies to its solar producers—including massive cash grants, heavily discounted materials and utilities, and multi-billion-dollar preferential loans—and alleged that these unfair advantages have led to the shutdown or downsizing of seven U.S. solar producers and the elimination of thousands of U.S. solar jobs.[20] In December 2011, the U.S. International Trade Commission (USITC) preliminarily determined that these subsidies were causing material injury to the U.S. solar industry.[21]

#3 EXPLOIT HOME FIELD ADVANTAGE

China as owner, player . . . and referee

In the NFL, as of 2009, the home team won 57% of regular season games.[22] There's no scientific explanation for this, but vocal support from the home crowd (often referred to as the "12th man") is no doubt a key contributor to this edge. In China, the Government's role as both owner and regulator makes it the ultimate "12th man," giving domestic enterprises an often insurmountable home field advantage.

One-half of China's economy is owned or effectively controlled by the Chinese government, which uses SOEs as tools to advance important national priorities, such as acquiring foreign technology and creating "national champion" companies—often in ways that violate China's WTO commitments.[23] Many analysts contend, for example, that the primary job of China's extensive network of state-owned banks is to provide subsidized loans to Chinese SOEs.[24]

At the same time, U.S. companies report that the blurry line between China's government and its enterprises often leads to "favorable policy and regulatory treatment" for their Chinese competitors. One unnamed U.S. company notes that "Chinese regulatory agencies . . . tasked with non-discriminatory regulation of specific markets . . . are now specifically engaged with the job of promoting Chinese national champions."[25] A U.S. Chamber of Commerce analysis of China's indigenous innovation program warns international government and technology company leaders that "the same ministers they meet in Beijing for friendly trade talks are also directing plans for creating Chinese technologies and companies to replace them.[26]

Wearing Two Headsets

In the decade since it joined the WTO, China has never licensed any American (or other foreign) telecom firm to provide basic telecommunications services. It's hardly surprising that American telecom services firms have been informally banned from entering China's basic telecommunications market. Telecom in China is overseen by the Ministry of Industry and Information Technology, which serves as China's nominally independent telecom regulator—at the very same time it also acts as a key business leader responsible for actively promoting China's competing state-owned telecom sector.[27]

#4 CHANGE THE RULES

Imposing China's "homegrown" standards

In the NFL, the Competition Committee can propose rule changes, which are then put to a vote of the team owners. When it comes to technical standards, however, China is not so democratic, often simply imposing rules that unfairly favor its domestic producers.

Technical standards establish requirements for products and services, and can include product and service characteristics (such as the composition and purity of a chemical) as well as symbols, packing, and labeling requirements.[28] China seeks to shield its home teams from foreign technologies by developing and mandating unique Chinese technical standards in sectors ranging from autos, information technology, and television to software and fertilizer. These homegrown standards differ from well-established international standards and, because they are often not technology neutral, can require product modifications that place huge additional costs on foreign competitors.[29] China often compounds standards barriers for American companies by denying them meaningful participation in standards development and by imposing discriminatory testing and certification procedures that can block or delay imports and significantly raise their cost.[30]

According to a recent survey, almost half of U.S. companies doing business in China believe that China's standards process is "primarily a tool to protect [China's] local market." More than half identified the abuse of standards as the most prevalent form of Chinese protectionism.[31]

The Rules for Wireless... in Chinese

The Chinese company Nufront has developed, with Chinese government funding, a new wireless broadband technology, Enhanced Ultra-High Throughput (EUHT) WLAN. The company has recently proposed that this technology become China's new national standard for wireless broadband devices—no doubt because such a technology-specific standard would seriously discriminate against foreign competitors who produce products under internationally accepted standards.[32]

#5 STEAL THE PLAY

"Absorbing" American ideas

The football huddle was invented in 1890, when Gallaudet University's team of deaf players noticed that opponents were stealing their hand signals.[33] In trade, China has had a field day appropriating America's most important set of plays—the intellectual property (IP) and innovative ideas on which over half of American exports now depend.[34]

The extent of China's outright IP theft—and its impact on the U.S. economy—is staggering. Business groups estimate that 99% of China's music and 78% of its personal computer software is pirated. China's massive failure to enforce the intellectual property rights of U.S. companies effectively provides free intellectual property to Chinese firms. This includes some $2 billion in benefits to Chinese internet firms that profit from reselling music that they're essentially allowed to pilfer for free.

According to China's own estimates, between 15 to 20% of the products made in China are counterfeits. Over three-quarters of the counterfeited and pirated goods seized by U.S. customs in 2010 originated in China or Hong Kong. A recent analysis by the U.S. International Trade Commission estimates that China's infringement of IP rights cost America's IP-intensive firms over $48 billion annually in lost sales, royalties and license fees.

China's IP theft also saps a key driver of American economic growth and good jobs. The USITC estimates that, if China protected IP at levels comparable to the United States, U.S. exports and affiliate sales to China would increase by $107 billion and the U.S. economy would add some 2.1 million jobs.[35]

China's broader appropriation of key American technologies is perhaps even more troubling because it is encouraged and, indeed, directed by China's government. Chinese leaders give the highest priority to a complex web of "indigenous innovation" policies designed to vault China into global technological leadership by systematically "assimilating and absorbing" advanced technologies from outside China. A recent U.S. Chamber of Commerce analysis ominously notes that indigenous innovation "is considered by many international technology companies to be a blueprint for technology theft on a scale the world has never seen before."[36]

China uses a variety of means to acquire ideas and technologies from American and other foreign firms, including:

- Forcing technology transfer to a Chinese joint venture partner (often a Chinese SOE) as a condition for market access to high technology sectors like automotive and aviation.[37]
- Using product testing and approval systems to delay the introduction of foreign technologies while China studies foreign designs and production processes.
- Making it easier for its domestic companies to use China's patent system to retaliate against IP lawsuits filed abroad by foreign competitors.
- Employing the standards process to attempt to force the transfer of IP, including printing and information security technology, to Chinese firms.[38]
- Permitting free access to protected foreign content through—in the words of one U.S. company—a "conscious policy" relying on an "under-resourced" and ineffective administrative system to deal with IP infringements.[39]

U.S. business executives have likened China's indigenous innovation policies to "the Borg in 'Star Trek,' an enormous organic machine assimilating everything in its path, in this case the inventions of other nations." A top executive with a

U.S. technology firm operating in China notes that China's indigenous innovation program "isn't just the crisis of the day for U.S. business. It's *the* crisis."[40]

Chinese Copycats

Massachusetts-based American Superconductor (AMSC) makes advanced electronic systems for wind turbines. In the spring of 2011, AMSC's biggest customer, Chinese wind turbine giant Sinovel, began refusing to accept and pay for AMSC's product shipments. In June, AMSC found out why—its engineers in China discovered a near perfect knock-off of AMSC's proprietary control software in a Sinovel wind turbine. Sinovel claims that AMSC's products no longer meet Chinese regulations. But legal experts note that Chinese companies often cite Chinese regulations as a pretext when they've stolen what they're after and want to abandon a no-longer-needed Western technology partner.[41]

#6 HIDE THE BALL

China's hidden rules

A skilled quarterback can catch a defense flatfooted by faking a handoff to the running back, hiding the ball, and throwing for a touchdown. Similarly, American exporters and investors are often burned by hidden rules under China's opaque system of laws and regulations.

When China joined the WTO, it agreed that it would only enforce laws, regulations, and measures that were published and readily available and that it would provide translations and reasonable periods to comment on proposed measures.[42] A decade later, however, China's lack of transparent rulemaking and government decision making is still a major and, indeed, growing concern for American companies. China's closed and unclear system of rules makes it difficult for American companies to export, obtain licenses, protect their intellectual property, and contribute to standards development. And, importantly, it can also hide official favoritism for Chinese companies.[43]

American exports face a wide variety of transparency barriers in China:

- The USTR reports that many Chinese departments still issue rules without first providing notice, WTO-mandated translations, and the required 30-day comment period.[44]
- U.S. service providers note that China frequently changes its laws, regulations and administrative practices on services without warning.[45]

- U.S. farm and food exports are stymied by China's non-transparent application of food safety (or "SPS") rules. Between 2003 and 2011, the United States identified over 250 SPS measures that constrain U.S. farm exports and that were never even notified, as required, to the WTO.[46]
- U.S. companies complain that requests for comments "typically come at the 11th hour," providing them little time for translation and comment. A number of companies suspect that China's comment procedures may be "mere window dressing" given China's unwillingness to act on comments and suggestions.[47]
- China's often-closed drafting process for important laws, including postal, telecom, and insurance legislation, denies U.S. express delivery, technology, and other firms the opportunity to offer meaningful comment, in violation of China's commitments to the WTO.[48]

The Game's Unwritten Rules

In 2009, China confirmed to U.S. officials that it was requiring that all mobile phones sold in China be set up to use China's unique Wi-Fi standard, even though China had never written down or published this key requirement or notified it to the WTO.[49]

#7 CHANGE THE PLAY

Switching up China's trade barriers

Quarterback Peyton Manning is legendary for his computer-like ability to analyze the defense and change the play before the football is snapped. In recent years, China has shown similar mastery in frustrating American exports and investments by moving deftly from one unfair trade barrier to another.

China has very effectively used this tactic to dominate its home market for wind turbines and severely restrict foreign competition. In 2005, China required that wind turbines sold in China have 70% Chinese content. This restriction and other policies caused the foreign share of China's wind turbine market to plummet from 75% in 2004 to 14% in 2009. After repeated complaints by the United States and other foreign governments, China eliminated the 70% requirement in late 2009. By this point, however, China's move was largely symbolic because Chinese producers now dominated their home market.

To assure this dominance continues, China now makes foreign wind manufacturers play "whack-a-mole" with an ever-changing array of new wind power restrictions. Lawyers for one company have identified 36 separate wind sector regulations that conspire together to keep foreign wind products out of China.[50]

#8 BEND THE RULES
Searching for holes in China's trade obligations

Some teams try to gain advantage by using unfair tactics that, while anti-competitive in spirit, may not be explicitly against the rules. Similarly, China often adopts policies that flout core principles of international trade but may not be fully covered by the rules of world trade.

China's evolving requirements for foreign investors are a good example of this tactic. When China joined the WTO, it agreed not to restrict foreign investment with "performance requirements," such as rules that dictate technology transfer, or require local content or exports. Over the last decade, China has largely eliminated these explicit requirements. However, some Chinese investment rules still "encourage" foreign investors to transfer technology or meet other performance requirements. And according to the USTR, this "encouragement" can effectively amount to a "requirement" in China, especially because Chinese officials have great discretion in reviewing foreign investment applications.[51] But, because these performance "encouragements" are not explicitly required, they may be harder to challenge under WTO rules.

The China Two-Step

According to the U.S.-China Economic and Security Review Commission, "China has grown more assertive and creative in using WTO procedures to alleviate, eliminate, and avoid certain restrictions in [its WTO obligations]." Trade experts note that China often follows a consistent pattern: First it announces trade restrictions that go far beyond international norms and that greatly advantage China's domestic enterprises. Then, after strong international criticism, China selectively relaxes these rules in ambiguous ways that often maintain restrictions but complicate WTO challenges.[52]

#9 RUN OUT THE CLOCK
Foot dragging on WTO obligations

If a football team is leading late in the game and has the ball, it will often slow down play to "run out the clock" and keep its opponent from scoring. In trade, China has continued a years-long pattern of delay in meeting key WTO commitments, while it continues to reap the many rewards of WTO membership.

When China joined the WTO in December 2001, it gained the significant benefit of fuller access to global markets. In exchange, China agreed to implement a wide range of market-opening reforms, with most key commitments to be phased in by December 2006. China made very noteworthy progress in reforming its economy in its first five years in the WTO. Indeed, in some key sectors, China is actually more open than our other trading partners, including Japan and Europe. But the reform process stalled in early 2006 and, in key areas, actually began to backslide toward more trade barriers, restrictive rules, and "state capitalism" beginning in 2008.[53]

Ten years into its WTO membership, China continues to dawdle in implementing key WTO commitments, slacks off on its adherence to a number of core WTO principles, and even delays keeping new vows to correct past broken promises.[54]

Examples of China's foot dragging on key WTO commitments include the following:

- In 2001, China promised to open its vast government market to American exporters by joining the WTO's Government Procurement Agreement (GPA) "as expeditiously as possible." But China did not formally begin GPA negotiations until late 2007, and has since submitted a series of inadequate offers. All while making it even harder for U.S. firms to compete in its $200 billion procurement market, contrary to basic WTO negotiating principles.[55]
- Under its WTO promises, China was required to allow U.S electronic payment providers to issue their own RMB (Yuan) payment cards beginning in 2007. Instead, China continues to require that RMB bank cards be "co-branded" with a Chinese government-protected monopoly. China's years of stalling have forced the United States to initiate dispute settlement in the WTO.[56]
- China was required to eliminate its state monopoly on imports of "cultural products" (like movies, books and magazines) by December 2004. After China failed to meet this deadline, the United States brought a challenge before the WTO in 2007 and won. In response, China changed its regulations, but did so in a way that would enable China to continue to deny trading rights to U.S. firms.[57]
- China has failed to respond for over a year to petitions by U.S. express delivery firms to provide domestic express delivery services in China, in violation of China's WTO obligations and its own administrative procedures law.[58]

We'll Play by the Rules . . . We Promise.

In its most recent report, the U.S.-China Economic and Security Review Commission pointedly noted that "China has a history of making promises and delivering little, particularly when doing as little as possible benefits the Chinese economy…." According to then Commerce Secretary (and now U.S. Ambassador to China) Gary Locke, "the fundamental problem [with China] often boils down to the distance between the promise of China's government and its actions."[59]

China was able to score touchdowns in trade by joining the WTO. Ever since, China has been padding its lead and denying American competitors a chance to put points on the board by delaying action on its WTO obligations.

THE SOLUTION

An American trade game plan for China

Responding to China's multifaceted trade barrier playbook requires an equally sophisticated strategy by the United States. Against a wily competitor like China, it's unrealistic to assume that America can increase its exports to China if it simply runs a few plays, no matter how well designed. Instead, we need a comprehensive collection of good tactics that are well adapted to the variety of trade challenges posed by China.

In the sections below, we highlight some of the key plays that America should include in an updated trade game plan for China.

#1 APPEAL TO THE COMMISSIONER

Aggressively use the WTO disputes process

If players, coaches or teams feel that there's been foul play or unfair treatment, they can appeal to the NFL's powerful Commissioner. Similarly, when good faith negotiations with China fail, the United States must be prepared to more aggressively challenge China's unfair trade practices through the WTO disputes process and WTO rules.

The United States has a strong track record of successfully using the WTO's disputes process to compel China to eliminate practices that violate the WTO's rules. Of the 14 WTO disputes brought against China as of October 2011, the United States initiated 12, including five cases since the Obama Administration took office in 2009.[60] More recently, the USTR has also used the WTO's procedures to compel China to account for its failure to notify the WTO of some

200 different subsidy programs and for its censorship barriers to trade over the Internet.[61]

The United States should seek to maximize its trade enforcement resources by continuing to challenge Chinese trade practices that are systemic and have the greatest economic impact. These might include cases against the most egregious of the subsidies identified in the USTR's recent "counter-notification" on China's extensive subsidies, challenges to China's continuing "whack-a-mole" restraints on access to its clean energy market, and cases that confront China on its failures to abide by WTO core principles, such as assuring openness and meaningful participation in making and applying rules and in adjudicating trade cases.

The United States should also be prepared to push back when China tries to use the WTO's rules and disputes process to undo its WTO commitments or to retaliate against its trading partners. Ideally, we will be able to convince China that these actions undercut its own credibility at the WTO—and lead by example in our own WTO compliance. However, we should also let China know that we are prepared to respond forcefully to these abuses.[62] America will never be able to "out-protectionist" China.[63] But we should make it clear that China will never "out-lawyer" the United States.

#2 BUILD A STRONGER LEAGUE

Work with other trading partners

China's strong reaction to developments at last November's APEC trade summit illustrates the power of working with like-minded countries.[64] The announcement of the outlines of a comprehensive and high-standard Trans Pacific Partnership (TPP) deal by the United States and its eight TPP partners—and expressions of interest in the TPP by Canada, Japan and Mexico—sent a clear message to China that key countries in its region want to move beyond a low-standard, high-barrier model for trade.[65]

The United States should build on this success by concluding the TPP, using the TPP's leverage to obtain real and measurable trade reforms from potential new members, and seeking expanded, high-standard trade with other partners, including the European Union. And, while we can use these efforts to create international leverage against China's more restrictive trade policies, America must also emphasize that we would enthusiastically welcome China's interest in joining a growing circle of countries that are more fully committed to removing unfair barriers to trade.

The APEC summit also highlighted America's increased international credibility on trade, gained largely as a result of last year's passage of trade deals with Colombia, Korea, and Panama. The United States can further enhance its international influence in trade by continuing to pursue a strong market-opening trade agenda and by assuring that the Obama Administration and future administrations can conclude new trade deals under renewed Trade Promotion Authority.

#3 PUT POINTS ON THE BOARD

Use a "Rules Plus" approach to achieve results

A football team can gain more yards than its opponent, hold the ball longer, and have more big plays. But none of that matters if it doesn't actually score more points and win the game.

Too often, while the United States is looking at the WTO rulebook, China is staring intently at the economic scoreboard. We must, of course, continue to press China to meet all its WTO obligations and closely monitor whether China follows through on its promises to play by the rules. But, especially on critical trade issues, we must also focus on the final score for America.[66]

On the issue of intellectual property protection, for example, we must continue to demand that China meet its WTO obligations by, among other things, fully enforcing its laws and enacting more effective criminal penalties.[67] At the same time, however, we must insist that China deliver concrete and measurable results in the form of greater protection of American IP, increased trade for American companies, and the achievement of specific piracy reduction levels. (And, if China fails to meet these goals, we should even consider pressing it to voluntarily make up the difference through greater government purchase of legitimate IP-related products.) Such a "Rules Plus" approach to China's WTO compliance will help assure that American exporters and workers better reap the benefits that China promised when it joined the WTO.

#4 CHOOSE THE RIGHT FORMATION

Pursue an array of results-oriented dialogues

Success or failure on the football field is often a matter of making sure that players are in the right position to succeed before a play starts. Solving problems in America's complex trade relations with China requires a sustained and comprehensive approach that begins with putting our negotiators in the right position by structuring properly focused dialogues.

Despite our many trade issues with China, frank discussions—including talks through the Joint Commission on Commerce and Trade (JCCT) and the Strategic and Economic Dialogue (S&ED)—have proven to be effective in eliminating specific Chinese barriers to U.S. exports, in areas ranging from IP and indigenous innovation to government procurement and farm barriers.[68] But critics both inside and outside the government increasingly believe that these dialogues could be better structured to achieve results for the United States.

For high-level dialogues like the JCCT and S&ED, the United States should substantially pare down the number of issues and participants in its discussions with China, to assure that these key dialogues remain focused on achieving concrete results on the most critical trade issues for the United States. While we already have a broad range of existing trade dialogues with China (63 by one count), the United States should also, where appropriate, seek new specialized dialogues to solve pressing market access issues, such as a proposed industry-government working group to increase imports of U.S. goods by Chinese consumers.[69] And the United States should more effectively use talks with China's regional and local officials to spotlight those politically ambitious provincial officials who are not following through on trade reforms mandated by China's national leaders.

The United States should also use the WTO and other international forums, including the WTO's specialized committees and its Trade Policy Review Mechanism, to address and resolve its bilateral trade issues with China, and work more closely with Europe and other trading partners that face similar market access issues with China.

#5 CHANGE THE RULEBOOK

Write new rules for current and emerging issues

After the Patriots beat the Indianapolis Colts in a key 2004 playoff game by roughing up Colt pass receivers and impeding their path to the ball, then-Colts President Bill Polian successfully lobbied the Competition Committee to put more constraints on pass defenders.[70] The United States should similarly work to revise trade rules to address China's current and emerging trade barriers.

To do so we should collaborate with other countries to establish stronger international disciplines on issues like state subsidies and SOEs, including requiring that SOEs compete on a commercial basis. Additionally, the United States and its allies should continue to press the WTO and/or other international bodies to establish clear and enforceable international restrictions on unfair currency manipulation.

The United States should also look to negotiate new rules governing our bilateral trade and economic relationship with China. Concluding a bilateral investment treaty with China would reduce China's restrictions on U.S. investment and services trade, limit China's ability to require indigenous innovation as an investment condition, and create new restrictions on China's SOEs.[71] The United States should also seek to limit the many day-to-day impediments that U.S. exporters face in China by pursuing broad trade facilitation talks with China.

#6 SPEND MORE ON OUR PLAYERS

Spend wisely on new trade resources

To make a competitive leap, teams will often increase their payroll to sign needed free agent talent. Similarly, to effectively address China's many barriers to U.S. exports, our trade agencies need more people and resources.

Recent modest funding increases for trade agencies will be helpful, especially the $3.6 million budget increase that will fund at least four new, Chinese-speaking staff at USTR to monitor and enforce China's WTO compliance. But bringing prompt and successful trade actions also requires much detailed groundwork by investigators at the Departments of Commerce and Agriculture, especially in the case of China's many undisclosed subsidies and multifaceted nontariff trade barriers.

The Administration should consider recommending additional China-specific funding for these agencies in connection with its required report to Congress on USTR's China enforcement resources.[72] Additionally, Congress and the Administration should explore additional ways to leverage current government resources and use the considerable expertise of private sector trade experts and investigators who routinely investigate China's trade practices.

#7 PROMOTE BENEFITS OF SPORTSMANSHIP

Focus on what's important to China

Despite its many failures to meet WTO obligations, China has made considerable progress in opening its market since joining the WTO. Additionally, many of China's own leaders recognize that further reforms can significantly help China and its people.[73] The United States should redouble its efforts to convince China's government, business and thought leaders that playing by the rules is ultimately in China's own interest. America might note, for example, that:

- Increasing the value of the Yuan will help China control serious inflation, increase domestic consumption and benefit China's consumers.

- Protecting IP is critical if China is to develop its own new ideas and build a real innovation-based economy.
- Fair, international technical standards will help Chinese companies sell innovative products in foreign markets.
- Assuring fairness for U.S. investors will win China allies as it seeks to increase its own investment in the United States.

China's leaders have also recently announced that they intend to use the WTO process to maintain China's exports in the face of trade barriers imposed by other countries.[74] The United States should certainly encourage China to bring its legitimate trade complaints to the WTO. But we should also stress the benefits to China of assuming a greater leadership role in the WTO. The power of China's example in eliminating its own trade barriers, as well as a more constructive role for China in global trade negotiations, would do much to bolster the system of open trade that has helped China perhaps more than any other nation over the last decade.

CONCLUSION

It is time for the United States to step up its game and win a fairer and more beneficial trading relationship with China. To do this, our "coaches" in the Administration, Congress and the private sector need to break down China's trade barrier playbook and counter it with an updated, comprehensive American game plan. This aggressive American playbook should certainly use tough tactics, hard-hitting plays, and strong teammates to help our companies and workers score more exports in China. But it must also seek to convince China that playing fair is ultimately in its own interest and that, as a global economic power, China should fear neither fair rules nor strong competitors.

Once America designs a new trade playbook for China, we need to make sure we can execute. That means focusing on our own economic fundamentals—including excellent training for our workers, well-designed incentives for innovation, efficient infrastructure, reasonable rules, a sound economy and effective backing from our trade officials. After all, even New England Patriots head coach Bill Belichick—who is legendary for his massive playbook and obsessive attention to game plans—recognizes that playbooks alone don't win games: "In the end, it comes down to . . . blocking and tackling and running and throwing and catching and kicking and solid fundamentals and all that."[75]

A new U.S. game plan for China will allow America to go on offense, breaking down China's unfair trade barriers and providing more opportunity for American exporters and workers to sell to hundreds of millions of new middle class consumers in China. With a well-prepared team and a solid, aggressive trade strategy, no team can match America's on the global economic gridiron.

* * *

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