

China Human Rights and Rule of Law Update

October 2006
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United States Congressional-Executive Commission on China

Senator Chuck Hagel, Chairman | Representative Jim Leach, Co-Chairman

Announcements

Commission Releases 2006 Annual Report

The Congressional-Executive Commission on China released its [2006 Annual Report](#) on human rights conditions and the development of the rule of law in China to the President and the Congress on Wednesday, September 20.

The Commission is deeply concerned that some Chinese government policies designed to address growing social unrest and bolster Communist Party authority are resulting in a period of declining human rights for China's citizens. The Commission identified limited improvements in the Chinese government's human rights practices in 2004, but backward-stepping government decisions in 2005 and 2006 are leading the Commission to reevaluate the Chinese leadership's commitment to additional human rights improvements in the near term.

The Commission's 23 Legislative and Executive Branch members approved the report by a vote of 22-1.

The report is available on the Commission's Web site in [Adobe Acrobat PDF](#) and [plain text format](#) (note these files are over 1mb, and may take some time to download). Readers in China may be unable to view the report using these links, as the Chinese government is currently blocking the Commission's Web site. Those who are unable to access the Commission's Web site can try viewing the report via the [Government Printing Office](#).

- CECC link: <http://www.cecc.gov/pages/annualRpt/annualRpt06/index.php>
- GPO link: <http://www.gpoaccess.gov/congress/joint/prcccommission/index.html>

Hearing: Human Rights and Rule of Law in China

The Congressional-Executive Commission on China held a Commission hearing entitled [Human Rights and Rule of Law in China](#), on Wednesday, September 20. [Senator Chuck Hagel](#), Chairman of the Commission, presided. Commission Members attending the hearing included:

U.S. Senate

- Senator Sam Brownback
- Senator Mel Martinez

U.S. House of Representatives

- Representative Jim Leach - Co-Chairman
- Representative Joseph R. Pitts
- Representative Robert B. Aderholt
- Representative Sander M. Levin - Ranking Member
- Representative Michael M. Honda

Executive Branch

- Steven J. Law, Deputy Secretary, U.S. Department of Labor
- Franklin L. Lavin, Under Secretary for International Trade, U.S. Department of Commerce

The witnesses were: [Jerome A. Cohen](#), Professor of Law, New York University School of Law; [John Kamm](#), Executive Director, The Dui Hua Foundation; Minxin Pei, Director, China Program, Carnegie Endowment for International Peace; and [Xiao Qiang](#), Director, China Internet Project, University of California at Berkeley.

A [webcast](#) of the hearing is available (requires [RealPlayer](#). The hearing begins at minute 32).

- Hearing link: <http://www.cecc.gov/pages/hearings/2006/20060920/index.php>
- Hearing webcast: rtsp://video.webcastcenter.com/srs_g2/hagel092006.rm (paste in Realplayer)

Update on Rights and Law in China

[Human Rights Updates](#) [Rule of Law Updates](#) [All Updates](#)

Authorities Continue to Target Rights Defenders

Local government officials in China have continued to target for repression citizens who attempt to defend their legally protected rights, according to a September 25 Radio Free Asia (RFA) [article](#). RFA reports: "Rather than penning well-crafted essays on broad themes aimed at Party ideologues and the urban elite, the new breed of Chinese activist is more likely to use their pens on countless official forms and letters, culminating in complaints, lawsuits, or appeals to Party disciplinary systems." The article notes that the struggles of these rights defenders "seem inevitably to lead to beatings, detentions, and [criminal] sentences," and that the underlying problem giving rise to their grievances "is systemic, rather than ideological, and therefore isn't going away any time soon."

Since August, authorities in Beijing municipality, Guangdong province, and Shandong province have taken the following actions against rights defenders:

- Officials from the Beijing Municipal Public Security Bureau (PSB) took Beijing lawyer [Gao Zhisheng](#) into custody on August 18, and continue to [hold Gao incommunicado, without charge or access to his defense lawyer](#).
- Officials from the Guangzhou PSB took legal advocate [Yang Maodong](#) (who uses the pen name [Guo Feixiong](#)) into custody on September 14, and have [accused him of illegally operating a business](#).
- Officials from Shandong province took self-trained legal advocate [Chen Guangcheng](#) into custody in September 2005, and [sentenced](#) him to four years and three months in prison on August 24, 2006.

Authorities have also placed [relatives and associates](#) of rights defenders under strict surveillance and [obstructed publicity and legal defense efforts](#) in their cases. According to a September 5 RFA [report](#) (in Chinese), all six of Gao's siblings have been placed under surveillance and cannot travel to Beijing without prior approval from authorities. In addition, Beijing police took into custody three of Gao's nephews when they attempted to deliver a letter of retainer to Mo Shaoping, necessary for formalizing his legal representation in Gao's case. The Epoch Times [reported](#) (in Chinese) on September 20 that Mo received the letter of retainer (from one of the three nephews) on September 19, and that two of the three nephews were held for a total of 16 days before their release. A September 15 Voice of America [report](#) (in Chinese) quotes rights defender [Hu Jia](#) as saying that Guo's detention may have been part of an effort to threaten those who are rallying to provide assistance in Gao's case.

Both Chinese and international law protect a criminal suspect's access to legal counsel and right to present a defense. Articles 32 and 33 of the Criminal Procedure Law (CPL) provide that a defendant shall have the right to "entrust persons as his defenders." Furthermore, Article 30 of the [Lawyers Law](#) mandates that "[a lawyer's] right to argue or present a defense shall be protected in accordance with law." Article 11 of the [Universal Declaration of Human Rights](#) requires that a criminal defendant have "all the guarantees necessary for his [defense]," and Article 14.3(b) of the [International Covenant on Civil and Political Rights](#) requires that he have "adequate time and facilities for the preparation of his [defense] and to communicate with counsel of his own choosing." Moreover, the UN General Assembly adopted in 1990 [Basic Principles on the Role of Lawyers](#), which outline internationally recognized standards on the legal profession. These standards include an assurance that "all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer," and that "[a]ll arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer."

For additional information about Gao Zhisheng, Guo Feixiong, and Chen Guangcheng, see their records of detention, searchable through the CECC's [Political Prisoner Database](#). For additional information about the government's repression of rights defenders, including lawyers, or about access to counsel and the right to present a defense, see the CECC's [2006 Annual Report](#). The Report's [Recommendations](#) note that "China's leaders say they are committed to building a fair and just society based on the rule of law, and, in an effort to control social unrest, have moved toward strengthening government institutions that assist citizens with legal claims." The Recommendations urge that a full commitment to the rule of law will "require the Chinese government to cease its harassment, surveillance, and abuse of citizens such as [legal advocate Guo Feixiong], and to allow courageous lawyers such as Gao Zhisheng ... to resume their important legal advocacy." In addition, the Recommendations propose that the President and the Congress "continue to emphasize that continued detention and imprisonment of rights defenders such as Chen Guangcheng (sentenced in August for speaking out against population planning abuses) will only undermine the legitimacy of government actions and of China's developing legal system."

MFA Spokesman Calls North Koreans in China "Illegal Migrants" and "Not Refugees"

Ministry of Foreign Affairs (MFA) spokesman Qin Gang [reiterated](#) at a September 19 press conference the Chinese government's longstanding view that North Koreans entering China without documents "are not refugees" but "illegal migrants" who "come to China because of economic reasons," according to a [transcript](#) of his remarks (in Chinese) on the MFA Web site. The MFA's [English transcript](#) of Qin Gang's regular press conference on September 19 did not include any discussion of North Korean refugees in China.

The Penal Code of the Democratic People's Republic of Korea (DPRK) criminalizes border crossing without official documentation for any reason, and therefore North Korean defectors fleeing starvation in their homeland [qualify](#) under

international law as refugees *sur place*, or those who may not have met the definition of a refugee when they left their country of origin, but can be categorized as refugees at a later date. Repatriated North Koreans face long prison sentences, torture, and execution.

Qin maintained that the Chinese government consistently deals with North Korean refugees "in accordance with the relevant domestic laws, international laws, and humanitarian principles." The Chinese government, however, forcibly repatriates several thousand North Koreans to the DPRK each year, according to the State Department's [2002](#), [2003](#), [2004](#), and [2005](#) Country Reports on Human Rights Practices (China section). The government's repatriation of North Korean refugees contravenes its obligations under the [UN 1951 Convention and 1967 Protocol relating to the Status of Refugees](#). Article 33 of the convention and protocol mandates that "no Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

"[T]he Chinese government is firmly opposed to [North Koreans in China because they] rush foreign embassies and diplomatic missions ... and disrupt China's public order," according to Qin. North Koreans seeking asylum have done so [consistently](#) from international school grounds and diplomatic complexes. The government continues to refuse the UN High Commissioner for Refugees (UNHCR) access to North Korean refugees, contravening a 1995 agreement between the UN and the Chinese government (the agreement is reproduced beginning on page 30 of Professor Tarik M. Radwan's April 28, 2004, [written statement](#) submitted to the U.S. House of Representatives). The agreement provides that "UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation."

Qin made his remarks in response to a question about whether representatives of the Chinese and U.S. governments would discuss how to resolve the cases of two North Korean refugees who entered the U.S. Consulate General in Shenyang in September. According to a September 19 Yonhap [report](#), the two North Koreans entered the U.S. Consulate by scaling a wall that separates it from the South Korean Consulate. In July, the Chinese government allowed three North Korean refugees who had entered the U.S. Consulate in Shenyang in the same manner to [travel directly](#) to the United States to seek asylum.

For more information on North Korean Refugees in China, see Section IX of the CECC's 2006 [Annual Report](#).

Detention, Torture of Anhui Teens Reflect Continuing Criminal Procedure Violations

The wrongful detentions and torture of four teenagers in 2005 in Chaohu city, Anhui province, reflect continuing criminal procedure violations and abuses by local police, as described in a September 12 Xinhua [report](#) (in Chinese) on the cases. The teenagers, who ranged in age from 16 to 18, were released in January 2006 after more than three months in police custody. According to the Xinhua account, the Anhui provincial-level Public Security Bureau (PSB) acknowledged that officials handled the teenagers' cases in error. In addition, public security officials have agreed to give each teenager 60,000 yuan (approximately US\$7,600) in compensation for their wrongful detentions, pursuant to agreements signed with each individual teenager's guardians. Xinhua reports that authorities currently are investigating the three police officers who handled the cases for their suspected involvement in coercing confessions under torture.

Criminal Procedure Violations and Prospects for Reform

During a September 20, 2006, meeting before the UN Human Rights Council in Geneva, Manfred Nowak, UN Special Rapporteur on Torture, reaffirmed his [finding that torture remains widespread in China](#), according to a UN [press release](#) on the same date. In a September 13 [interview](#) (in Chinese) with Radio Free Asia (RFA), Guangxi lawyer Yang Zaixin also [commented](#) that cases such as the Chaohu case and the wrongful conviction of [She Xianglin, in Hubei province](#), are widespread. Yang noted that inadequate supervision and punishment of police forces in part are to blame for the continuing abuses.

In July 2006, the Supreme People's Procuratorate issued [new standards for prosecuting official abuses of power](#), and clarified that police should be prosecuted for coercing confessions under torture, if those coerced confessions result in a case handled in error. Although Chinese news media report that three police officers are currently under investigation in the Chaohu case, a September 12 South China Morning Post [article](#) (subscription required) points out that reports do not indicate who the officers are, when they were arrested, or what punishments they might face. Yang commented that officials have no choice but to punish wrongdoing by police when their cases are exposed and elicit a strong reaction from the public. In 2006, Chinese news media highlighted several cases of [human rights abuses and deaths while in police custody](#), but one legal scholar argued that the Chinese government has been too lenient in punishing officials who abuse their authority to coerce confessions under torture.

Yang also suggested that in addition to investigating police and compensating victims, the Chinese government should pass additional measures to prevent torture and abuse in police custody. Specifically, Yang argued that the Criminal Procedure Law (CPL) should be amended to provide for the presence of criminal defense lawyers, as well as audio and video taping, at police interrogations. In his September 20 [written statement](#) to the CECC, Professor Jerome A. Cohen of New York University School of Law said that Chinese criminal justice experts have been discussing added protections to reduce the likelihood that suspects will be tortured. Cohen stated that efforts to develop a national consensus on several issues, including torture, may now be stalled "in what is plainly a very conservative climate for law reform," and that "[n]one of

these issues, which have long cried out for legislative resolution, is likely to be dealt with by the [National People's Congress] in the near future." Moreover, at the CECC's September 20 hearing on [Human Rights and Rule of Law in China](#), Cohen testified that prospects for revision of the CPL by the time of the Beijing Olympics in 2008 now appear to be "receding."

For additional information on torture and abuse in custody, see Section V(b), on the "Rights of Criminal Suspects and Defendants," in the CECC's [2006 Annual Report](#). The Report's [Recommendations](#) note that "abuse of power by local police forces remains a serious problem throughout China," and urge support for "reform efforts such as providing criminal defense lawyers with greater access to their clients and case files, audio and video taping law enforcement interrogations of criminal suspects, and excluding evidence at trial that was obtained through torture or other illegal means."

Full Analysis >> <http://www.cecc.gov/pages/virtualAcad/newsletterListing.phpd?NLdate=20061002&show=ALL#id71789>

Government Strengthens Enforcement of Requirements on Injury Insurance

The Chinese government will take "compulsory measures" to promote employer participation in on-the-job injury insurance for migrant workers, according to a September 9 [article](#) in the China Youth Daily (CYD). By the end of July 2006, 18.71 million migrant workers nationwide were covered by the insurance, according to the article. As of April 2006, 87 million workers overall had such insurance, according to a June 23 [Legal Daily](#) article. The government plans to expand coverage to over 140 million people by the year 2010, the articles reported. The CYD article did not detail how the government plans to compel employer participation. A [national regulation](#) effective in 2004 mandates that all employers have injury insurance for their employees.

Wang Dexue, Deputy Director of the State Administration of Work Safety (SAWS), said that although the number of workplace accidents between January and August 2006 fell 11.3 percent in comparison to 2005, "no qualitative changes have occurred in terms of work safety in China," according to a Xinhua [article](#) posted September 11 on the official Web site of the Chinese government. A total of 433,003 industrial accidents and 70,846 deaths occurred in China between January and August, according to the article. The SAWS and the All-China Federation of Trade Unions have begun a campaign to promote work safety among migrant workers, according to a June 21 [article](#) from China Radio International.

State Councilor Hua Jianmin said at a July 2006 State Council meeting that the Chinese government must increase funding to support workplace safety, according to a July 7 [article](#) posted on the official Web site of the Chinese government. Hua said that despite lower rates of workplace accidents, flaws persist in the workplace management system. In August, the government announced it would dedicate 467.4 billion yuan (US\$58.81 billion) over the next five years to curb workplace accidents, according to an August 30 [article](#) from China Daily.

In the July 7 article, Li Yizhong, Director of the SAWS, expressed concern about inadequate criminal penalties for violations of workplace safety. "Compared with punishment in other countries, there is plenty of room for our legislature to revise the Criminal Law and other laws," he said. "We should become determined to use the severest punishment to overawe offenders." Li's comments follow [Criminal Law amendments](#) in June 2006 that broadened punishments for work safety violations. The amendments include new penalties for "responsible" personnel who hinder rescue efforts by covering up or failing to report accidents, though the amendments do not clarify how responsibility for reporting such incidents is determined.

For further information regarding workplace safety and health in China, see the [CECC 2006 Annual Report](#), Sec. V(c).

Officials Demolish Catholic Church, Beat Catholics in Pingtang, Fujian Province

Officials demolished an unregistered Catholic church and beat several Catholics who attempted to prevent the demolition on Pingtang Island in Fujian province on September 1, according to a September 4 [AsiaNews report](#). The AsiaNews account said that officials warned the Catholics that they would demolish another unregistered Catholic church on the same island.

Pingtang Island has a Catholic population of about 10,000 people, according to the Guide to the Catholic Church in China 2004. Local officials there have beaten Catholics in the past. In July 2005, for example, officials [detained a priest](#) and nine parishioners, and beat other parishioners, according to a July 2005 [report](#) of the Cardinal Kung Foundation (CKF), a U.S. NGO that monitors religious freedom in China. Similarly, officials destroyed the altar of a Pingtang church in August 2000 and beat parishioners that were worshipping there, according to a September 2000 CKF [report](#).

In August 2006, officials [demolished two unregistered Protestant churches](#) in Zhejiang province.

For more information on Catholics in China, see the [CECC 2006 Annual Report](#), Section V(d).

Ministry of Education Offers Loan Waivers to Graduates Who "Go West" To Find Work

The Ministry of Education (MOE) announced on September 14 that students graduating from about 100 universities run by the central government and who have borrowed from the government to finance their educations may have their loan repayments waived if they agree to work in China's "western or remote areas," according to a September 15 [China Daily report](#). Graduates will be eligible for loan waivers of up to 24,000 yuan (US\$2,970) if they work for at least three years in

locations at the county-level or below. Five percent of the total number of graduates from these universities will receive waivers each year, but up to 8 percent of graduates may be eligible if they have attended universities that specialize in agriculture, forestry, geology, and "some other majors that usually have a large number of [financially] poor students." According to a September 18 Legal Daily [report](#) (in Chinese), a higher number of waivers will also be available for graduates of universities specializing in studies such as petroleum and mineral development, and water conservation and irrigation.

In July 2005, the General Office of the Communist Party Central Committee and the General Office of the State Council issued an "Opinion on Guiding and Encouraging Graduates of Schools of Higher Learning To Seek Employment in Grassroots Areas," calling for "a large number of trained personnel, especially graduates of schools of higher learning, to go to [grassroots areas, especially the western region] to render meritorious service and make a distinguished career," according to statements officials made at a press conference about the opinion (Xinhua, in [OSC 22 July 05](#)). The opinion recommends that the government and Party "[encourage] university students to serve the western region voluntarily," but also advises that "a certain number" of graduates should be recruited every year during the five-year period starting in 2005, according to the Xinhua report.

The "western region" is the area included in the Great Western Development (GWD) program that then-President Jiang Zemin introduced in 1999. The program covers 12 provincial-level areas, including all five of China's ethnic autonomous regions, according to a map available on the Web site of the [Office of the Leading Group for Western Region Development of the State Council](#) (click on "Basic Facts About the Western Regions"). Great Western Development aims to accelerate economic development in China's poorer western area and promote the integration of ethnic minorities like Uighurs and Tibetans into the Han-dominated mainstream.

Cui Bangyan, the MOE official responsible for the loan program, said that the policy seeks to "encourage students from key universities, especially those who face difficulty in repaying loans, to work in China's western and remote regions, so that the gap between the city and the countryside can be narrowed," according to the China Daily report. Cui explained that graduates of China's top universities generally are reluctant to work in western and remote areas and prefer to stay in eastern urban areas, even if the intense competition prevents them from finding jobs. The new policy would "help adjust the existing [im]balance in the job market," Cui said.

An increased flow of well-educated job-seekers into the western region could put local graduates looking for jobs at a disadvantage. For example, Tibetans aged 20-34 attained a university-level education at about one-third the rate of Han Chinese (0.78 percent of Tibetans compared to 2.15 percent of Han), according to official 2000 census information for the entire country. Moreover, there were 572 Han university graduates nationwide in the 20-34 age bracket for each Tibetan graduate (6,666,286 Han compared to 11,656 Tibetans). Uighurs reached university at nearly the same rate as Han (2.05 percent of Uighurs compared to 2.15 percent of Han), according to 2000 census data, but Han graduates in the 20-34 age bracket outnumbered Uighurs by 148-to-1.

Since 2003, the government has implemented a "University Student Volunteers Serve the West Plan" that sends graduates to do service work in the GWD region, according to an August 21 Xinhua [report](#) (in Chinese). Over 50,000 graduating students applied to participate in the plan in 2006, according to a May 10 China Youth Daily [report](#) (in Chinese). The plan will select 6,500 applicants to maintain the total number of volunteers at about 10,000. A July 19 China Youth Daily [report](#) (in Chinese) described participation in the volunteer plan as beneficial for subsequent employment searches within China's intensely competitive job market.

See Section VIII. - "Tibet," Culture, Development, and Demography, of the [CECC 2006 Annual Report](#) for more information on the Great Western Development program and related population issues, and Section III(a). - "[Special Focus for 2005: China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law](#)," of the [CECC 2005 Annual Report](#) for more information on China's law and policy on ethnic minorities.

Gao Zhisheng Held Incommunicado, Without Charge or Access to His Defense Lawyer

The Beijing Municipal Public Security Bureau (PSB) continues to hold Beijing lawyer [Gao Zhisheng](#) without a formal charge, and has denied him access to a lawyer on the grounds that his case involves "state secrets," according to a September 25 Radio Free Asia (RFA) [report](#) (in Chinese). More than 10 plainclothes police officers abducted Gao on August 15 from his sister's home in Dongying city, Shandong province, where he was visiting his critically ill brother-in-law, according to an August 17 RFA [report](#) (in Chinese). Beijing PSB officials confirmed through an August 18 Xinhua [report](#) (via People's Daily) that they had detained Gao for questioning in relation to his "suspected involvement in criminal activities." [Yang Maodong](#) (who uses the pen name [Guo Feixiong](#)), a former legal advisor to Gao's law firm, speculated in an August 19 Ming Pao [article](#) (in Chinese, subscription required) that authorities are likely to charge Gao with "subverting state power" or other crimes that the Chinese government characterizes as "endangering state security" under the [Criminal Law](#).

Gao, former head of the Beijing Shengzhi Law Firm, has represented numerous activists, religious leaders, and writers. In 2005, Gao took part in the criminal defense of [Guo Feixiong](#), Shanghai lawyer [Guo Guoting](#), house church leader [Xiao Yunfei](#) (the wife of Pastor [Cai Zhuohua](#)), democracy activist [Xu Wanping](#), and Internet author [Zheng Yichun](#). Authorities ultimately convicted [Xu Wanping](#) and [Zheng Yichun](#) for "inciting subversion of state power," a crime under Article 105, Paragraph 2, of the Criminal Law. They refused to grant Gao access to Xu Wanping on the grounds that Xu's case involved state secrets, and [shut down](#) Gao's law practice while the appeal of Zheng Yichun's conviction was still pending. The Beijing Justice Bureau ordered the shutdown on November 4, 2005, less than three weeks after Gao issued an [open letter](#) to President Hu Jintao

and Premier Wen Jiabao to expose widespread persecution, including torture, of Falun Gong practitioners.

Abuse of the "State Secrets" Exception

RFA [reported](#) (in Chinese) on September 21 that the 37-day limit for detaining a suspect without charge (provided for under Article 69 of the [Criminal Procedure Law](#) (CPL)) had already passed in Gao's case. Mo Shaoping, Gao's defense lawyer, [said](#) in a September 25 interview with the RFA that on September 22, the Beijing PSB rejected his request to meet with Gao, citing to the exception under Article 96 of the CPL in cases involving "state secrets." Article 96 of the CPL provides a general guarantee that criminal defense lawyers can meet with their client and find out what crime the investigating agency suspects their client of committing. Mo commented: "[The Beijing PSB] has not explicitly told us what crime they suspect Gao Zhisheng of committing, so we have no way of determining whether it may involve state secrets." According to a September 21 Voice of America [report](#) (in Chinese), Mo also reported that neither he nor Gao's family have received a formal notice of detention, and that without this notice, they could not determine where Gao is being held or which agencies are responsible for investigation in his case. Article 64 of the CPL requires the PSB to produce a detention warrant, and to notify Gao's family of the detention location and reasons for detention, unless notification "would hinder the investigation."

Shandong lawyer Li Jianqiang, who has represented at least one other political prisoner accused of "subverting state power," said in a February 2006 [interview](#) with the Epoch Times:

In political cases in mainland China, it is typical to not allow the lawyer to get involved during the period of investigation; this is a tacitly understood, unwritten rule. Public security typically uses [the excuse of involving state secrets]. Actually, in many cases the issue doesn't exist, but under present conditions it is not even possible to verify whether a case involves state secrets.

The UN Working Group on Arbitrary Detention (UNWGAD) has identified the Chinese government's use of the "state secrets" exception as an area of particular concern, and stated in a 2004 report on China (available on the UNWGAD's [Country Visits](#) Web page): "Where the case concerns charges of endangering State secrets, the rights of the defence are even further restricted [than normal]." The UNWGAD report recognizes that Article 96 of the CPL requires that in cases involving state secrets, a criminal suspect must obtain approval from the investigating agency to appoint or meet with a lawyer. However, the report concludes: "In practice, this provision appears to give rise to numerous abuses, either because the notion of State secret is not defined with sufficient precision, or because it is interpreted in an extensive manner."

Hebei Officials Release Catholic Bishop An Shuxin After 10 Years' Detention

Hebei provincial officials released An Shuxin, formerly the unregistered auxiliary bishop of Baoding diocese in Hebei province, on August 24 after detaining him for over 10 years, according to an August 25 [report](#) of the Cardinal Kung Foundation (CKF), a U.S. NGO that monitors religious freedom in China. Before officials released Bishop An, the government and Bishop An agreed that he would register with the government but would not be required to register with the Party-controlled Catholic Patriotic Association (CPA), according to an August 26 AsiaNews [report](#). Bishop An told the Union of Catholic Asian News (UCAN) that the government has recognized his status as a bishop and permits him to do his pastoral work openly but under government management, according to a September 12 UCAN [report](#) (via Catholic Online). UCAN reported that before releasing Bishop An the local government required him to concelebrate Mass with Su Changshan, the CPA-registered bishop of Baoding, in the presence of 700 Catholics, and that Bishop An's registration with the government has divided the unregistered Catholic community.

Officials detained Bishop An in 1996, according to a March 1996 CKF [report](#), and placed him under house arrest in Xushui county in Hebei province, according to the UCAN report. Xushui county is in Bishop An's diocese of [Baoding](#), which has been a focus of governmental repression of unregistered Catholics. Seventeen of the 41 Catholic clerics in prison, under house arrest, or under strict surveillance in February 2006 were from Baoding diocese, including Bishop Su Zhimin, who has been detained at an unknown location since 1997, according to the CKF's list of [Prisoners of Religious Conscience for the Underground Catholic Church in China](#). Officials detaining Catholic clerics have generally disregarded the procedural requirements established by the [Criminal Procedure Law](#) for the processes of detention, arrest, trial, and sentencing. The detentions of Bishop An and Bishop Su both exceeded legal limits under China's Criminal Procedure Law.

AsiaNews sources confirmed that the Holy See suggested the compromise (of registration with the government but not with the CPA) in order to attain the release of imprisoned clerics and to overcome divisions within the Catholic Church in China. In 2005, formerly unregistered Bishop Li Jingfeng of Fengxiang diocese, Shaanxi province, was permitted to register with the government without registering with the CPA, according to a September 2005 AsiaNews [report](#). Bishop Li had been detained in 2001.

The Communist Party established the Catholic Patriotic Association (CPA), a mass organization under Party control, in the 1950s, to establish a national Catholic Church independent of the Holy See. The CPA took control of Church property while convincing some bishops to register with it. Most Catholic bishops, however, refused to register with the CPA and went "underground" to lead an unregistered Catholic community. In the ensuing decades, the government sought to persuade, and frequently to coerce, Catholics into following CPA-registered bishops. The unregistered bishops continued to refuse to accept CPA interference in religious matters. Since the mid-1980s, many CPA-registered bishops have privately sought reconciliation with the Holy See. The Holy See has received a majority of CPA-registered bishops into communion and has promoted the reconciliation of the unregistered and CPA-registered Catholic communities. At present, some analysts divide the CPA-registered bishops into those who submit to and those who resist the CPA's interference in religious matters,

particularly in the [selection of bishops](#).

For more information on Bishop An, see the CECC [Political Prisoner Database](#). For more information on Catholics in China, see the [CECC 2006 Annual Report](#), Section V(d).

New Measures Increase Xinhua Control Over Foreign News Sources

The Xinhua News Agency (Xinhua) issued on September 10 the [Measures for Administering the Release of News and Information in China by Foreign News Agencies](#) (Measures), which prohibit foreign news agencies from distributing news and information in China without government permission. Xinhua is a Chinese government agency directly subordinate to the State Council. The Measures require foreign news agencies to be licensed by Xinhua and to submit all articles to a Xinhua-approved agency for distribution. The rules impose content-based restrictions on the information that a foreign news agency may release in China, prohibiting information that the government deems harmful to China's constitutional principles, national unity, national security, social stability, religious policies, ethnic groups, or cultural traditions, as well as "other content banned by Chinese laws and administrative regulations." In addition, the rules grant Xinhua the power to select the news released by foreign news agencies in China and to censor news that violates the content-based restrictions. The rules apply to "news and information in text, photo, graphics, and other forms" and replace the [Methods for the Exercise of Administration Over Publication in China of Economic Information by Foreign News Agencies and Their Information Subsidiaries](#) issued in 1996 (1996 Methods), which applied only to financial information.

The Chinese government justified the Measures as necessary to standardize the distribution of information by foreign news agencies and to counter "a near monopoly" over financial information by developed countries. A September 10 Xinhua [article](#) (via People's Daily) said the Measures are intended to "promote the dissemination of news and information in a sound and orderly manner." Lu Wei, a Vice President of Xinhua, said that "information flowing from the developed countries to the developing countries is hundreds of times of that flowing from the developing countries to the developed, which makes it hard for developing countries to obtain, transmit, and share information they really need," according to a September 12 Xinhua [report](#) (via People's Daily). Premier Wen Jiabao also defended the restrictions, calling criticism of the rules a "misunderstanding" and saying that China "will strive to ensure that the flow of financial and economic information will not meet any obstruction," according to a September 14 South China Morning Post [report](#) (subscription required). The Chinese government also said that Xinhua has been regulating foreign news agencies since 1996 and that the new rules do not amount to any change in current policy, according to [September 13](#) (in Chinese) and [September 14](#) Xinhua reports.

The Los Angeles Times conducted a random survey of online comments by Internet users in China about the new rules and found them to be overwhelmingly critical, according to a September 16 [report](#). The report said that the comments accused the government of "turning back the clock, undercutting the media's watchdog role, and keeping its own people in the dark." Spokespersons for the European Union and the United States government expressed concern that the restrictions infringed on freedom of expression and the press, according to a September 11 Associated Press [article](#) (via the International Herald Tribune) and a September 12 Wall Street Journal [article](#) (subscription required).

The new rules also raise concerns regarding China's World Trade Organization (WTO) commitments. When China joined the WTO in December 2001, the Chinese government committed to implementing a system in which the relevant regulatory authority for the provision and transfer of financial information would be separate from, and not accountable to, any service suppliers that it regulated. As the Office of the U.S. Trade Representative noted in its 2006 [National Trade Estimate](#), however, the Chinese government has not established such an independent regulator, and Xinhua remains a "major market competitor" of foreign financial information service providers in China. In 2004, the State Council issued its [Decision of the State Council Establishing Administration Examination and Approval Matters That Must Remain Subject to Administrative Licensing](#), which designated Xinhua as the regulator of foreign financial information service providers in China. According to the American Chamber of Commerce's [2006 White Paper](#), foreign companies have complained that Xinhua has been using its regulatory authority to increase control over the distribution of content, and has been expanding the definition of a wire service so as to establish a monopoly on the dissemination of sports and financial news. The new rules are expected to have a large commercial impact on foreign distributors of financial information, such as Reuters and Bloomberg, who had been allowed to distribute financial information in China under the 1996 Methods, according to a September 15 New York Times [article](#) (registration required).

Full Analysis >> <http://www.cecc.gov/pages/virtualAcad/newsletterListing.php?NLdate=20061002&show=ALL#id70873>

Officials Detain Protestants in Six Provinces

In July and August, provincial officials detained house church Protestants in Anhui, Henan, Hubei, and Yunnan provinces, and the Inner Mongolia Autonomous Region, and placed a registered Protestant pastor under house arrest and evicted him from his parish in Shanxi, according to the China Aid Association (CAA), a U.S. NGO that monitors religious freedom in China.

- On July 16, officials in Pinglu county, Shanxi province, placed a registered pastor under house arrest and on July 25 evicted him from his church, according to an August 9 CAA [report](#). Pastor Hu Qinghua reportedly had invited a pastor based in Hong Kong to visit the church. On July 6, officials from the local Religious Affairs Bureau (RAB) began a series of visits to pressure Pastor Hu, church elders, and congregation members to withdraw the

invitation and to force Pastor Hu to step down and leave the church. The elders and congregation refused to agree to Pastor Hu's departure. On July 16, officials placed Pastor Hu under house arrest in the church. On July 26 an RAB official announced that Pastor Hu must leave, and the pastor is reportedly no longer ministering at the church.

- On July 19, officials raided a house church service in Zhumadian city, Henan province, and took into custody and interrogated more than 60 house church members, according to a July 21 CAA [report](#).
- On July 21, officials in Anlu city, Hubei province, raided a house church meeting and took into custody and interrogated 20 church members, according to a July 21 CAA [report](#). Officials released some of the members the same day, but continued to detain others. According to a July 25 CAA [report](#), officials subsequently placed 10 of the house church members in administrative detention ranging from 10 to 15 days.
- On July 24, officials in Jinghong city, Yunnan province, briefly detained and tortured Xing Baoying and Wang Guizhen, both house church members from Henan province, and Li Jianying and Li Tuying, house church members from Jinghong city, according to an August 11 CAA [report](#).
- On July 27, officials in Huainan city in Anhui province raided a house church Sunday school teacher's training class and took into custody and interrogated about 40 adults, according to an August 3 CAA [report](#). CAA reported that officials placed Pastor Li Lizhong and church member Cai Yili in administrative detention for 15 days.
- On August 19, officials raided a house church in Wuhai city in the Inner Mongolia Autonomous Region, according to an August 28 CAA [report](#). Officials confiscated church property and warned the house church members that they are not permitted to meet except at churches registered with the state-controlled Three-Self Patriotic Movement.

In June and July, officials detained other house church members and accused them of involvement in "cult" activities.

For more information on Protestants in China, see the [CECC 2006 Annual Report](#), Section V(d).

Communist Party Adds Tibetan Affairs Bureau to the United Front Work Department

The Communist Party's United Front Work Department (UFWD) established a new bureau to handle Tibetan affairs in 2005 and appointed Sithar (Sita, or Si Ta), a Tibetan, as Director, according to an article in Singtao Daily (translated in [OSC 15 September 06](#)). The Tibetan affairs portfolio moved from the Second Bureau, which handles ethnic and religious affairs, to the new Seventh Bureau. Sithar previously served as a deputy director of the Second Bureau. The UFWD oversees the implementation of Party policy toward China's eight "democratic" political parties, ethnic and religious groups, intellectuals, and entrepreneurs, among other functions.

The UFWD hosted Special Envoy Lodi Gyari and Envoy Kelsang Gyaltzen, the Dalai Lama's representatives, during visits to China in [September 2002](#), [May-June 2003](#), [September 2004](#), and [February 2006](#), according to statements issued by the Special Envoy. During the visits, the envoys met with UFWD officials including Liu Yandong, Head of the UFWD, Deputy Heads Zhu Weiqun and Li Dezhu (Li Dek Su), and Sithar in an effort to engage Chinese officials in substantive dialogue about the future of Tibetans and their religion, language, and culture. After the envoys' [2006 visit](#), the Dalai Lama disclosed in a March 10 [speech](#) that his envoys relayed a request to Chinese leaders to permit him to visit China as a religious pilgrim.

The creation of the Seventh Bureau may signal that the Party leadership has attached increased importance to Tibetan issues. The mission of the Seventh Bureau, according to the Singtao Daily report, is "to cooperate with relevant parties in struggling against secessionism by enemies, both local and foreign, such as the Dalai Lama clique, and to liaise with overseas Tibetans." The report comments, however, that Party leaders are concerned principally about the "development of the Tibet independence movement in the 'post-Dalai Lama era'." The UFWD Web page (in Chinese) summarizing [organizational structure](#) does not mention the Seventh Bureau, but it is described in a November 2005 UFWD [article](#) (in Chinese).

The U.S. State Department observed in its 2006 Report on Tibet Negotiations that it is in the interest of both the Chinese government and the Tibetan people to resolve the problems facing Tibetans, and that "the lack of resolution of these problems leads to greater tensions inside China and will be a stumbling block to fuller political and economic engagement with the United States and other nations."

See Section VIII - "Tibet," The Status of Discussion Between China and the Dalai Lama, of the [CECC 2006 Annual Report](#) for more information.

Authorities Accuse Rights Defender Guo Feixiong of Illegally Operating a Business

Guangzhou police have accused rights defender [Yang Maodong](#) (who uses the pen name [Guo Feixiong](#)) of posing as a publisher, misappropriating the book numbers of various publications, and illegally publishing, printing, and issuing over 20,000 publications, according to a September 15 Guangzhou Daily [report](#) (in Chinese, via the Guangdong provincial government Web site). The report characterized Guo's alleged wrongdoing as "illegal operation of a business," a crime

punishable under Article 225 of the [Criminal Law](#). The Voice of America (VOA) and Radio Free Asia (RFA) have both reported that police took Guo from his home during the early morning of September 14, and that they are currently holding him at the Guangzhou No. 1 Detention Center. According to a September 15 RFA [report](#), police delivered a search warrant to Zhang Qing, Guo's wife, to search the couple's home and also gave her a notice stating that they had placed Guo in criminal detention. An RFA [report](#) (in Chinese) on the same day noted that Guo was previously a book dealer, but that he has dedicated himself to rights advocacy in 2006 and currently earns no income.

Guo served in 2005 as an advisor to the law firm of Beijing lawyer [Gao Zhisheng](#), and took part in an early 2006 [hunger strike relay](#) that Gao initiated to protest government abuses. Hong Kong news media have recognized both men as [lawyers who have been subject to Chinese government repression](#) as a result of their criminal and civil rights defense work. Beijing authorities [shut down Gao's law firm](#) in late 2005 and [have held him incommunicado](#) since August 15, 2006, for alleged criminal activity. A September 15 VOA [report](#) (in Chinese) quotes rights defender [Hu Jia](#) as saying that Guo's detention may be part of an effort to threaten those who are rallying to provide assistance in Gao's case.

Guo's current detention comes one year after police initially held him incommunicado in connection with a [recall campaign](#) by villagers in Taishi, Guangdong province. Authorities held Guo incommunicado from September 13, 2005, until October 4, when they [charged](#) him with the crime of "gathering people to disturb public order." On December 27, they [released](#) Guo and dismissed all criminal charges against him. After Guo's release, the Guangdong Public Security Bureau circulated a report that [blamed](#) a succession of mass protests in 2005 on "disputes over so-called rights defense," and indicated that public security officials would concentrate in 2006 on striking against "hostile forces" who attempt to politicize or write about sensitive issues that may threaten social stability in Guangdong. About one month before Guangzhou police detained Guo on September 14, 2006, they took into custody [Feng Qiusheng](#), one of the leaders of the Taishi recall campaign, according to an August 5 South China Morning Post report. No update on Feng's case was available as of the date of Guo's detention.

For additional information about Guo, see his record of detention, searchable through the CECC's [Political Prisoner Database](#). For additional information about the government's repression of rights defenders, including lawyers, or about the Taishi recall campaign, see the CECC's [2006 Annual Report](#). The Report's [Recommendations](#) note that "China's leaders say they are committed to building a fair and just society based on the rule of law, and, in an effort to control social unrest, have moved toward strengthening government institutions that assist citizens with legal claims." The Recommendations urge that a full commitment to the rule of law will "require the Chinese government to cease its harassment, surveillance, and abuse of citizens such as [legal advocate Guo Feixiong], and to allow courageous lawyers such as Gao Zhisheng ... to resume their important legal advocacy."

Authorities Release One China Democracy Party Leader, Detain Another

Authorities in Hangzhou city, Zhejiang province, released Zhu Yufu, a China Democracy Party (CDP) leader, on September 15 after he completed a seven-year sentence for participating in pro-democracy activities, according to a September 17 Voice of America (VOA) [article](#) (in Chinese). Other sources, such as a September 14 Radio Free Asia (RFA) [interview](#) (in Chinese), report that Zhu was released on September 14, the date that his sentence expired under Article 47 of the [Criminal Law](#). The VOA article and the RFA interview further note that Zhu was released from Zhejiang No. 6 Prison, also known as Qiaosi Prison, where he served most of his sentence. Zhu is subject to three years' deprivation of political rights after release.

Several leading Chinese activists founded the CDP in 1998 to promote multi-party politics, direct elections, and checks on abuse of state power. The CDP's [founding declaration](#) (in Chinese) calls for an orderly and peaceful transformation of Chinese politics. Chinese authorities, however, [do not tolerate](#) independent political parties that might challenge one-party rule. For example, in the July 1 [edition](#) (in Chinese) of Seeking Truth, the official journal of the Party Central Committee, Liu Yandong, Deputy Chairman of the Chinese People's Political Consultative Conference and head of the Central Committee's United Front Department, wrote: "In modern times the form and duty of the development of Chinese society has determined that there is no room for Western two-party or multi-party systems to exist. ..." In a crackdown on the CDP in 1999, Chinese courts convicted numerous CDP members, including Zhu, according to the RFA interview. About 30 more CDP members remain in prison, according to a September 15 Associated Press (AP) [article](#) that appeared via Forbes.

The Hangzhou Intermediate People's Court convicted Zhu for having circulated pro-democracy articles online and publishing a political journal, among other activities, according to the AP article. Zhu previously participated in the Hangzhou Democracy Wall Movement in 1978, and supported the Tiananmen democracy protests in 1989, according to the RFA interview. The VOA reports that Zhu helped to establish the CDP's Zhejiang provincial branch in 1998. Major events in his 1999 arrest and imprisonment include:

- June 19, 1999: Local authorities place Zhu under house arrest.
- September 15, 1999: Local authorities detain and formally arrest Zhu.
- October 25, 1999: The Hangzhou Intermediate People's Court tries Zhu, as well as CDP members Xu Guang, Wu Yilong, and Mao Qingxiang.
- November 2, 1999: The Hangzhou Intermediate People's Court convicts Zhu, Xu, Wu, and Mao of "subversion of

state power," a crime under Article 105, Paragraph 1, of the [Criminal Law](#), and sentences them to 7 years, 5 years, 11 years, and 8 years in prison, respectively.

- December 18, 1999: Zhu's appeal of his conviction is rejected.

On the same day as Zhu's scheduled release, Chinese authorities detained CDP leader Chen Shuqing under accusations of "incitement to subvert state power," a crime under Article 105, Paragraph 2, of the [Criminal Law](#), according to a September 15 Boxun [article](#) (in Chinese). A September 19 Reporters Without Borders [article](#) noted that police searched Chen's home and confiscated documents as well as disk drives from his computer.

Chen participated in pro-democracy student movements in the late 1980s, and was detained for four months in 1999 for organizing CDP activities, according to a September 19 RFA [article](#) (in Chinese). In 2005, he passed the national bar examination, but the Zhejiang provincial Justice Bureau denied him a license to practice law due to his involvement with the CDP, according to the RFA article. Chen appealed this decision twice, but lost, according to the Reporters Without Borders article.

For additional information on Zhu Yufu, see case information searchable through the CECC [Political Prisoner Database](#). For more information on the Chinese government's view of representative democratic institutions, see Section VII(b) on Institutions of Democratic Governance and Legislative Reform in the CECC's [2006 Annual Report](#).

Health Ministry Criticizes Hospitals Failing To Report Disease-Related Deaths

The Ministry of Health (MOH) issued a [circular](#) on August 8 announcing the results of an investigation that identified "gaps and omissions" in the online reporting of disease-related deaths, calling the lapses a "grave phenomenon." Investigators surveyed 130 medical facilities at the county-level and above in 31 provinces, autonomous regions, and municipalities. They found that 20 percent of the hospitals surveyed had failed to develop an online network for the reporting of disease-related deaths. The investigation also found that hospitals that had developed online reporting failed to report deaths more than 30 percent of the time. The MOH identified the lack of a unified nationwide reporting network as a major problem, and called for greater speed and accuracy among all medical facilities in the reporting of disease-related deaths.

The MOH issued [Administrative Standards on the Reporting of Infectious Disease Information](#) on May 29. The standards require that all medical facilities strengthen their systems for infectious disease diagnosis and reporting, train medical personnel in infectious disease reporting, and assist in infectious disease investigations. The standards also mandate prompt reporting of outbreaks and suspected cases of anthrax, contagious pneumonia, polio, human cases of avian flu, and other infectious diseases of unknown causes. Such outbreaks must be reported online within two hours of being discovered or, if no online reporting system has been put into place, reported to the county-level disease prevention and control organization.

Central government officials continue to express concern about slow, inaccurate local-level reporting of deaths caused by infectious diseases. The MOH issued a [circular](#) on March 20 that warned authorities that cover-ups or delays in reporting potential cases of human avian flu infection could risk spreading the disease. The circular stated that some medical facilities had not promptly reported on "pneumonia cases with unknown causes," and that some local health departments failed to promptly organize supervision and inspection into these cases. On August 8, the MOH confirmed that avian flu, not severe acute respiratory syndrome (SARS), had caused the November 2003 death of a 24-year old man in Beijing, placing China's first human infection of avian flu two years earlier than previously identified, according to an August 9 Wall Street Journal [article](#) (subscription required).

A World Health Organization official has also expressed concern about the Chinese government's practice of reporting only confirmed cases of avian flu among humans and urged the Chinese government to act with greater transparency, according to a March 24 Wall Street Journal [report](#) (subscription required). For more information on central and local government efforts to improve transparency in responding to avian flu, see the CECC's February 2006 roundtable on [China's Response to Avian Flu: Steps Taken, Challenges Remaining](#).

Anhui Government Amends Provincial Religious Regulation

The Anhui Province People's Congress Standing Committee issued a [decision](#) on June 29 that amended its 1999 [Anhui Province Regulation on Religious Affairs](#). The decision made the Anhui government the fifth provincial-level government to [amend or issue a new comprehensive regulation on religious affairs](#) since the national [Regulation on Religious Affairs \(RRA\)](#) entered into force in March 2005. [Henan](#) and [Shanxi](#) provinces both issued new regulations in July 2005, and [Shanghai](#) municipality and [Zhejiang](#) province amended earlier regulations in April 2005 and March 2006, respectively.

The Anhui decision makes only a few amendments to the original regulation, in contrast to the detailed amendments issued in Shanghai and Zhejiang. The decision reflects a modest decentralization of authority, but nonetheless maintains strict controls over registered religious communities. Article 14 now specifies that when registered clergy are invited to lead "religious activities" in other provinces or outside clergy are invited to Anhui, the relevant religious organization within a given city must notify the city-level religious affairs bureau (RAB) after the religious organization has approved the invitation. The regulation previously required a provincial-level religious organization to approve the invitation and notify the provincial RAB of the event. The second amendment, to Article 34, removes a previous requirement that students applying

to religious institutions outside the province must report their application for the record to the provincial RAB. To attend an out-of-province religious institution, such applicants still must obtain a recommendation from the provincial-level religious organization.

The amended Anhui regulation retains provisions that differ from the national RRA. Although Article 13 of the RRA and a related [new national regulation](#) stipulate new procedures for registering religious venues, Article 19 of the Anhui regulation continues to refer to a now-annulled regulation in its registration procedures. In addition, Article 2 of the Anhui regulation retains a reference to [five recognized religions](#), although the RRA does not include such a reference. Shanghai and Zhejiang amended their regulations to remove previous mentions of the five religions, although the new regulation from Henan refers to them.

Inconsistencies between local and national regulations on religion, as well as the failure of many provinces to amend or issue new regulations, call into question government efforts to [promote implementation of the RRA](#). In some cases, such variations in religious regulations and religious policy can result in greater accommodation of religious communities. For example, regulations from [Heilongjiang province](#) and the [Inner Mongolia Autonomous Region \(IMAR\)](#) recognize the Orthodox Church, even though central government policy does not. In addition, local authorities have [registered Orthodox communities](#) in cities in Heilongjiang, the IMAR, and the Xinjiang Uighur Autonomous Region. At the same time, such inconsistencies cause uncertainty about government actions regarding religion and can result in a more restrictive environment for religious practice than already provided for under the national RRA.

For more information on religion in China, see section V(d), Freedom of Religion, in the CECC 2006 [Annual Report](#).

Agencies Limit Foreign Role in Government Procurement of Equipment, Software

The [National Development and Reform Commission \(NDRC\)](#) has issued an order prohibiting foreign participation in equipment procurement for projects related to China's national high voltage electric grid, according to an Economic Observer [report](#) (in Chinese). The report says that, except for "key technology that can be provided by foreigners," the NDRC would prohibit foreign enterprises and joint ventures in which foreign enterprises hold controlling shares from manufacturing or supplying the estimated 250 billion yuan (US\$33 billion) worth of equipment that will be required for the 15-year construction project. Instead, the government will use the project to spur the development of domestic enterprises. The NDRC order marks the first time the Chinese government has issued an order restricting foreign participation in the area of equipment purchases, according to the report.

Yan Xiaohong, Deputy Director of the National Copyright Administration, has said that the government is encouraging government agencies "to use more home-made software," according to a September 6 China Daily [report](#). "Home-made software" includes software "developed by foreign software firms that have registered copyright, paid taxes, and achieved 50 percent of added value in China," according to the China Daily article.

The Chinese government first attempted to define "domestic" in March 2005, when the Ministry of Finance and the Ministry of Information Industry jointly issued draft [Implementation Measures for Government Procurement of Software](#) for public comment. The draft measures defined "domestic" software to include only those products that take final form in China, have copyright belonging to a Chinese natural or legal person or other organization, and have domestic development costs that are not less than 50 percent of the total development cost of the software product. In April 2005, Charles Freeman, then an Assistant U.S. Trade Representative, [told](#) the House Committee on Government Reform that these measures represented one case in which the Chinese government had implemented policies intended to "limit market access by non-Chinese origin goods and that aim to extract technology and intellectual property from foreign rights-holders," to "support the development of Chinese industries that are higher up the economic value chain than the industries that make up China's current labor-intensive base, or simply to protect less competitive domestic industries."

The National People's Congress Standing Committee enacted the [Government Procurement Law \(GPL\)](#) in June 2002, and it went into effect in January 2003. The GPL is only framework legislation, however, and contemplated sector-specific implementing regulations that would both define the scope of "domestic" goods and services and also provide for exceptions to the general preference for purchasing goods and services in China. Specifically, Article 10 stipulates that the government must procure "domestic" goods and services, except where the goods or services are not available in China, the items to be procured are for use abroad, or where otherwise provided for by other laws and administrative regulations. The Ministry of Finance issued three implementing measures for the GPL in August 2004 addressing [bidding and tendering](#), [public notice](#), and [complaint handling](#). These measures did not provide, however, any guidance on exceptions to the general rule for domestic preferences or the scope of "domestic" goods and services.

The Ministry of Finance announced that China's government procurement scale in 2005 was 292.76 billion yuan (US\$36.6 billion), up 37.1 percent from 2004, according to an August 11 Ministry of Commerce [press release](#). When China acceded to the World Trade Organization (WTO) in December 2001, the government made several commitments regarding government procurement (described in the [Working Party Report](#)) that included beginning negotiations for membership in the WTO Government Procurement Agreement (GPA) "as soon as possible." China became an observer to the WTO Committee on Government Procurement in February 2002, and the Chinese government committed to commencing formal negotiations to join the GPA at the plenary session of the [17th U.S.-China Joint Commission on Commerce and Trade](#), held in Washington, D.C. in April 2006. Yu Guangzhou, Vice Minister of Commerce, announced on May 16 that the government planned to start negotiations for its entry into the GPA before the end of 2007, according to a May 17 Xinhua [article](#) (via Ministry of

Commerce). Nevertheless, at least [one Chinese expert](#) has said that China's government procurement market may remain closed to foreign companies until 2010.

As the CECC noted in its [2005 Annual Report](#), the measures caused significant concern among foreign suppliers of software products and services, and at the July 2005 Joint Commission on Commerce and Trade (JCCT) meeting, the Chinese government agreed to withdraw the draft measures.

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