

September 20, 2013

Trade Policy Staff Committee
Office of the US Trade Representative
600 17th Street NW
Washington, DC 20510

Re: China's WTO Compliance, FR Doc. 2013-19846

To the members of the TPSC:

The US-China Business Council (USCBC) is pleased to submit its analysis of China's compliance with its World Trade Organization (WTO) commitments for your October 4, 2013 hearing.

USCBC is in regular contact with your agencies about the concerns its members have in their business operations in China. As a consequence, this submission is a summary of some of the key issues, as well as a compilation of our most recent reports on several WTO-related issues. Those reports are attached:

- China's Innovation and Government Procurement Policies, September 2013
- Legal Market Access Issues, June 2013
- China Regulatory Transparency Scorecard, May 2013
- Intellectual Property Rights Review and Recommendations, May 2013
- China's Strategic Emerging Industries: Policy, Implementation, Challenges and Recommendations, March 2013

USCBC estimates that China is approximately a \$300 billion market for American companies—but should be larger, given continued market access barriers. It is the third-largest market in the world for US exports. Companies with operations in China sell more than \$130 billion in goods and services there. Those operations continue to support jobs for these companies here in the United States. And despite China's recently lower growth rate, the economy is still growing at more than 7 percent per year, with a middle class set to double to 600 million persons over the next decade. As a consequence, China is—and should continue to be—an increasingly important component of economic growth and jobs in the United States.

As USCBC has reported in the past, China is often in compliance with the letter of its WTO commitments, yet falls short of the spirit of the WTO in critical areas such as non-discrimination.

These shortcomings create a non-level playing field for many foreign companies in both the terms of market entry as well as in post-establishment operations in China.

Because of those shortcomings, it is vital that the United States and China maintain effective and robust dialogue through the current dialogue structure, including the US-China Strategic and Economic Dialogue (S&ED), the US-China Joint Commission on Commerce and Trade (JCCT), and the US-China Investment Forum. We have seen progress on issues thanks to this consistent, high-level engagement. We were particularly pleased with China's announcement at this year's S&ED that it would use the United States' approach in its negotiations of a US-China bilateral investment treaty (BIT), namely using a negative list for market access exceptions, based on the principle of pre-establishment national treatment. USCBC has been messaging at a high level in China about these two conditions for the past two years and we were pleased to see China publicly embrace them. US negotiators must now quickly determine China's interest in significantly reducing foreign ownership restrictions and developing a narrow negative list.

Market Access Barriers and the BIT

China maintains foreign ownership barriers in nearly 100 sectors, ranging from automobiles to financial services to agriculture processing to cloud computing to NEV batteries. US companies overwhelmingly invest in China to reach the China market, so investment ownership barriers are in effect market access barriers – that is why negotiations such as the BIT are so important.

A meaningful BIT with China will provide protections to investors in both countries and encourage two-way investment that will promote economic growth and jobs. In USCBC's view, a "meaningful" BIT must significantly reduce foreign ownership barriers and cover all aspects of China's economy except a narrow list of excluded sectors. US negotiators must ensure that China's negative list is not simply their current list of ownership restrictions. Importantly, China should reduce its ownership barriers now, not simply at the end of the BIT negotiations. Doing so will build crucial support in the United States during the BIT negotiations that will be necessary for ultimate approval and implementation of the agreement by the US Senate.

Intellectual Property Rights

China has made progress in its protection of intellectual property rights, but it remains a top concern of USCBC's members. More can be done to ensure that legitimate goods are protected in China. China should continue its work in this area including improving protection of trade secrets, setting and implementing regulations and policies in areas such as standards, taxation, R&D, and government procurement that do not discriminate against IP based on location of ownership, restricting the use of compulsory licenses and removing market access barriers to legitimate products such as imported films.

There is no single fix to these challenges, but an important component of China's enforcement efforts should be adoption of tougher deterrents. In particular, China should increase the effective level of fines and damages for IPR infringement and replace current value-based thresholds for criminal prosecution with a system that applies criminal penalties for commercial-scale infringement in line with World Trade Organization (WTO) practices. Not only is this a

global best practice, but it will help Chinese companies as they expand into higher-value services and products.

In addition, USCBC will soon release additional recommendations on improving China's trade secrets protection; a copy of that will be submitted as an addendum to this submission once it is completed.

Government Procurement

China's government procurement market is huge – over \$1 trillion, by one estimate – especially once provincial and local government purchases are taken into account. All legally-established companies in China should have equal access to the market. To do that, China should finalize the draft *Implementation Regulations of the Government Procurement Law* and the 2010 draft *Administrative Measures for Government Procurement of Domestic Products* to ensure that goods and services provided by all legal entities in China are treated equally during procurement processes, regardless of ownership. These two regulations require additional modifications to address information technology products and other areas and would roughly parallel similar rules applied to Chinese companies in the United States. In addition, China should join the WTO's GPA under meaningful terms, such as expanding the sectors and levels of government that are subject to the agreement.

National Treatment

Foreign companies experience problems with licensing at the central, provincial, and local levels and these issues affect almost every aspect of doing business in China. Further complicating the issue, most USCBC members report that their domestic competitors are not facing the same licensing problems. China's central government has begun an initiative to reduce the number of approvals necessary to do business in China. USCBC analysis of the changes through summer 2013 indicated that the changes to date did not make significant improvements in administrative licensing issues for foreign companies, but may signal a shift from central to local oversight and administration in areas related to manufacturing and transportation. It is an issue that should be monitored closely, particularly to determine if subsequent changes address the concerns of foreign companies. Ultimately, the only appropriate solution to these problems is for China to ensure equal treatment in licensing for all companies, regardless of nationality.

USCBC is concerned with the broad range of foreign companies that have recently been reported as being targeted by price investigations under China's anti-monopoly law. Illegal activity should not be tolerated, but it seems unlikely that so many sectors are experiencing illegal price fixing under Chinese law. Unfortunately, because many of companies cited by press reports as under investigation are foreign-owned, it makes it appear that China is targeting them. This undermines foreign companies' confidence that they will be treated fairly in China. China's government should use a fact-based approach to this issue and ensure that these investigations are initiated only when there is sufficient evidence to warrant them.

USCBC is also concerned about reports that China is implementing policies that will exclude US technology companies from key areas of China's market. American companies have significant operations in China and have been partners and suppliers in China for many years. They are

responsible corporate citizens with world-class product offerings. Decisions about the technology purchases should be made on commercial factors and not politicized.

USCBC's 2013 Survey Report

Finally, USCBC's annual member survey on the business environment in China will be released soon, which will provide important context on how American companies are performing in China and describe the key issues and barriers they encounter. We will submit the survey report as an addendum to this submission as soon as it is completed.

In closing, USCBC would like to also offer a recommendation that could streamline the assessment of China's WTO compliance each year. Much of the information gathered for this compliance report is duplicative of the Office of the US Trade Representative's annual National Trade Estimate. We suggest relevant policymakers consider consolidating these statutory reporting requirements, particularly given USTR's limited budget and human resources. The purpose of conducting a regular review of China's compliance record would still be achieved by combining the reports, and such a move would more efficiently use limited US government resources.

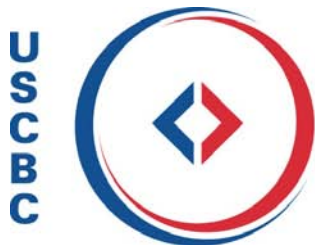
Please let us know if you have questions on the issues raised in this submission.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Erin Ennis', is written over a light blue rectangular background.

Erin Ennis
Vice President

Attachments



Status Report: China's Innovation and Government Procurement Policies

May 1, 2013

Executive Summary

PRC officials made a series of commitments in 2011 to break existing links between indigenous innovation and government procurement preferences – a significant concern for the US-China Business Council and its member companies. These included a State Council notice, issued in November, requiring provincial and local governments to halt implementation of any measures that link innovation and government procurement within regulatory documents, to review existing regulatory documents for provisions that may need to be eliminated, and to report results to the State Council before the end of December 2011.

Not all such sub-national governments have yet announced their compliance with these requirements. To facilitate continued discussion on China's full implementation of its pledges, USCBC is regularly updating a report covering the central, provincial, and local policy changes on indigenous innovation. This report is designed to ensure full implementation of China's commitments at the provincial and local level since January 2011, with a particular focus on those documents released since the November 2011 notice.

- As of May 2013, 18 provinces have released notices and announcements to comply with central government requirements. Fourteen provinces – Anhui, Beijing, Chongqing, Guangdong, Guizhou, Hebei, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Liaoning, Tianjin, Xinjiang, and Yunnan – have complied to some degree after the November State Council notice was issued. An additional 4 provinces – Fujian, Gansu, Shandong, and Shanghai – did so before the notice.
- An additional 38 sub-provincial units – ranging from Chengdu, Sichuan to Wuxi, Jiangsu – have issued notices and announcements to comply with central government requirements.
- USCBC has found only three local regulations formally linking indigenous innovation and government procurement released since the State Council's November 17 notice, suggesting that the central government's efforts have seen a measure of success but that further vigilance is needed.
- However, significant work still remains: 13 provinces have not released any measures since January 2011 to implement central-level pledges, including some notable locations where foreign companies have investment such as Sichuan and Zhejiang provinces.
- USCBC recommends that US government officials continue to raise this issue to ensure full and consistent compliance, including raising this issue at the 2013 Strategic & Economic Dialogue, Joint Commission on Commerce and Trade and other relevant bilateral meetings.

In January 2011, PRC President Hu Jintao committed his administration to breaking links between China's innovation and government procurement policies, including removing government procurement preferences for products on "indigenous innovation" catalogues. This was followed by subsequent commitments at the May 2011 Strategic and Economic Dialogue and the November 2011 Joint Commission on Commerce and Trade to eliminate regulations and policies linking innovation and government procurement. The US-China Business Council (USCBC) has prioritized the elimination of discriminatory innovation-related procurement rules at all government levels in its advocacy work and has provided various PRC government agencies with a list of rules and policies that need to be revised or revoked.

In the intervening months, central and provincial governments have taken specific steps toward implementing these commitments. In June the PRC Ministry of Finance (MOF) and other agencies published notices invalidating three regulations linking indigenous innovation and government procurement and removed the draft accreditation rules for indigenous innovation products in July. These national regulations had composed important parts of the PRC regulatory framework promoting government procurement of indigenous innovation products and had spurred national, provincial, and local government agencies to release similar policies.

Such discriminatory links, however, remained at the sub-national level, with policies and regulations such as the accreditation rules for indigenous innovation products and catalogues for those products. As confirmed at the JCCT, the State Council on November 17, 2011 released a notice stating that sub-national governments at all levels must halt implementation of any measures that link innovation and government procurement within regulatory documents by December 1, 2011. The notice also requires these governments to announce to the public which regulatory documents remain in effect, which are eliminated and which are suspended, and to report progress to the State Council by the end of December 2011. (For a copy of the notice, see zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=59679).

Recent government actions to amend or eliminate some of these regulations and catalogues demonstrate that the government is keeping its commitments. Based upon publicly available information, 22 of China's provinces and provincial-level cities can show some kind of specific, concrete action since early 2011 to implement pledges at the provincial or local level, with many of those doing so in direct response to the November 2011 circular.

Not all provincial and municipal governments, however, have publically announced the results of their work, and USCBC and other industry groups will continue to watch for new local policies and regulations where such links between indigenous innovation and government procurement persist. To date, USCBC has uncovered only new policies released since the November 2011 State Council notice requiring provincial and local governments to halt implementation of any such measures.

- [Rules to support local enterprises](#) released in June 2012 by the local government in Zhenjiang, Jiangsu, that encourage use of the indigenous innovation product catalogue and government procurement to support local enterprises.
- A [notice reviewing 2012 government procurement work](#) released in December 2012 by the local government in Yantai, Shandong that listed a scoring mechanism to evaluate government agencies' procurement work with points given for their procurement of indigenous innovation products.
- A [notice announcing 2013-2014 government procurement work](#) released in February 2013 by the Hangmianhouqi county government (Inner Mongolia) claiming that the government should "actively support" indigenous innovation products through government procurement, and should give prior consideration of procurement for domestic indigenous innovation companies, if they have the same quality or price conditions.

In addition, despite the central government push to delink indigenous innovation and government procurement, data from USCBC's [2012 member company survey](#) reveals that 85 percent of companies surveyed said they had seen no positive change in sales opportunities to PRC government entities at the national, provincial, or local levels since the 2011 release of the State Council notice, implying that the delink effort on paper has yet to translate into real change. In direct advocacy with the PRC government and in government-to-government meetings and dialogues, USCBC will continue to ensure that resolution of this issue remains a priority.

To facilitate continued discussion on China's full implementation of its pledges, USCBC has compiled – and is regularly updating – the following report covering the central, provincial, and local policy changes designed to ensure full implementation of China's commitments at the provincial and local level since January 2011, with a particular focus on those documents released since the November 2011 notice.

I. Provincial- and Local-Level Government Actions Designed to “Delink” Indigenous Innovation and Government Procurement

Anhui

- On July 8, 2011, the Anhui Finance Bureau announced that it would suspend the implementation of 2007 provincial rules that regulate government procurement of indigenous innovation products, including provisions that cover drafting and use of provincial catalogues.
www.ahcz.gov.cn/portal/zwgk/zbcg/1321546398264922.htm
- In late November or early December 2011, the Anhui provincial government issued a circular that is believed to order all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.
(Full text unavailable; referenced in
www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html)
- On November 30, 2011, four Anhui governmental agencies – including the Anhui Commission of Science and Technology and the Anhui Finance Bureau – jointly released a circular announcing that it would halt implementation of the 2007 Anhui Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011.
www.ahzwwgk.gov.cn/xxgkweb/showGKcontent.aspx?xxnr_id=95297
- On December 8, 2011, the Chuzhou municipal government released a circular announcing the launch of its work to eliminate measures linking innovation and government procurement. The notice required relevant departments to draft a list specifying which regulatory documents would remain in effect, and which would be discarded or suspended. Departments should eliminate such documents by December 12, 2011, and should report results to the public and to the Anhui provincial government.
www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html

Beijing

- On September 7, 2011, the Beijing Finance Bureau released a circular, which referenced the June MOF circular, calling on municipal government agencies to implement MOF government procurement policies. It also stated to stop implementation of three local measures transmitting the central-level notices invalidated in the June MOF circular: the 2007 Evaluation Measures on Indigenous Innovative Products for Government Procurement, the 2007 Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products, and the 2007 Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products.
www.bjsjs.gov.cn/zfcg/zcfg/8a8481d2345a594701355ba4a2ef028c.html
- On December 1, 2011, the Beijing municipal government released a circular announcing that it would suspend the implementation of some related measures linking innovation and government procurement, including specific provisions in the 2006 Opinions on Strengthening Indigenous Innovation Capacity and Building an Innovative City, the 2008 Opinions on Pilot Work to Develop Government Procurement of Indigenous Innovation Products in Zhongguancun Science & Technology Park, the 2009 Opinions on Scientific Promotion of Industry Development in Ecological Conservation Development Zones, and the 2010 Opinions on Promoting the Establishment of Industry Development Guidance in Beijing.
cwc.bjedu.gov.cn/publish/portal13/tab784/info18781.htm

- On April 17, 2012, the Shunyi district Government under Beijing city released a circular, announcing that it would halt the implementation of any measures that link innovation and government procurement, including specific provisions in the 2009 Circular on Helping Enterprises Deal with the International Financial Crisis and the 2010 Circular on Boosting the Development of Cultural and Creative Industries.
www.bjshy.gov.cn/Item/48041.aspx

Chongqing

- On July 14, 2011, the Chongqing Finance Bureau announced that it would no longer award extra points for indigenous innovation products in the Chongqing municipal government procurement process. The bureau also said it would eliminate such points from the 2010 standard text for tendering documents.
www.cqgp.gov.cn/portal/documentView.do?method=view&id=478226
- On November 29, 2011, the Chongqing municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies and district governments must submit lists of regulations that will remain in effect, as well as those that will be eliminated or suspended, to the city government by December 15. The Chongqing Legislative Office will summarize progress reports and submit its final report to the State Council by December 25.
www.cqfzb.gov.cn/Pro_General/ContentShow.aspx?ProID=49&myid=8655
- On December 5, 2011, the Banan district government under Chongqing city released a circular announcing that government entities within the district must halt implementation of any regulations linking innovation and government procurement by December 1, 2011, and must also halt implementation of any regulations based on related regulations now invalidated by NDRC, MOST, and MOF. Agencies must submit suggested regulations to eliminate to the Banan Legislative Office by December 12, which must then report the results of such work to the Chongqing Legislative Office by December 15.
zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=59679
- On January 17, 2012, the Chongqing municipal government announced the results of its round of regulatory changes, stating that county governments had eliminated five regulatory documents linking innovation and government procurement and had revised two others. Chongqing's government is also currently revising Article 8 of the 2008 Opinions on Encouraging Enterprises to Expand Research & Development Investments to Increase Indigenous Innovation Capabilities.
zfxq.cq.gov.cn/zfxqgk/jsp/view/infoview.jsp?xxbid=58948

Fujian

- On July 11, 2011, the Fujian Finance Bureau announced that it would suspend implementation of 2007 provincial rules regulating government procurement of indigenous innovation products, as well as all policies on government procurement preferences for indigenous innovation products.
www.fjicpa.org.cn/article.cfm?f_cd=56&s_cd=404&id=82FB052A-D605-5850-CBD6FFA4714C7316
- On July 11, 2011, the Xiamen Bureau of Science and Technology released a circular announcing that the city would "temporarily suspend" its 2011 work on accrediting indigenous innovation products in light of the July central-level interagency circular. Xiamen's circular made no reference to existing catalogues in Xiamen.
www.xminfo.net.cn/index.php?m=content&c=index&a=show&catid=12&id=17176
- On July 20, 2011, the Zhangzhou Government Procurement Center released a circular announcing that it would suspend implementation of any policies providing preferences in government procurement to indigenous innovation products that appear in the center's bidding documents.
www.zzzfcg.gov.cn/viewbody.cfm?id=9078

- On August 24, 2011, the Fujian Finance Bureau announced that it would suspend implementation of the 2007 Fujian Trial Administrative Measures on the Accreditation of Provincial Indigenous Innovation Products.
www.shanghang.gov.cn/dzzw/dwzw/gfxwj/sjwj/201108/t20110829_97301.htm

Gansu

- On July 6, 2011, the Gansu Finance Bureau announced that it would suspend implementation of indigenous innovation-related provisions included in broader provincial measures on procurement of energy saving, environmental, and indigenous innovation products.
www.gsdfcg.gansu.gov.cn/web/147/110287.html

Guangdong

- On August 2, 2011, the Guangdong Finance Bureau announced that it would suspend implementation of the 2009 guidance on government procurement of indigenous innovation products starting on August 1, 2011.
www.caigou2003.com/news/notice/20110817/notice_190868.html
- On August 16, 2011, the Qingyuan municipal government released a circular referencing the August 2011 Guangdong Finance Bureau circular and requesting relevant government agencies, including finance and science & technology bureaus at the city, district, and county level, to comply.
qingyuan.gdgpo.com/gdgpmsPortal/jsp/article_content.jsp?articleId=4028708332b5d20e0132f752ffde0c92
- In late 2011, the Guangdong provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents.
(Full link not available, but referenced in zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html)
- On January 9, 2012, the Chaozhou municipal government released a circular calling for governments at or below the municipal level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Chaozhou Finance Bureau by February 15, 2012.
zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html
- On January 9, 2012, the Xinhui district government under Jiangmen city released a circular calling on governments and agencies at or below the district level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Xinhui Legislative Office by February 15, 2012.
www.xinhui.gov.cn/zwgk/GBYTJ/QZFGB/201205/P020120524638115803821.doc
- On March 8, 2012, six Jiangmen municipal government agencies, including the Jiangmen Science and Technology Bureau and the Jiangmen Finance Bureau, released a circular announcing revisions to the 2009 Jiangmen Provisional Management Rules for Indigenous Innovation Product Accreditation, including the elimination of Article 10, which had called for advantages in government procurement for indigenous innovation products.
fzj.jiangmen.gov.cn/FileDiscuss.aspx?Id=639
- On March 13, 2012, the Zhuhai municipal government released a circular calling for all relevant government agencies to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed before December 1, 2011, and must be posted for the public on the municipal government website as well as reported to the Zhuhai Finance Bureau and the Zhuhai Legislative Office.
www.zhcz.gov.cn/ljcz/gzdt/201203/t20120313_279376.html

- On April 17, 2012, the Guangzhou municipal government released a circular announcing that the city would immediately halt the implementation of Guangzhou Management Rules for Indigenous Innovation Product Accreditation.
sfzb.gzlo.gov.cn/sfzb/file.do?fileId=2C9089253734F024013739EB5CC90000

Guangxi

- On January 5, 2012, the Liuzhou municipal government autonomous region released a circular announcing that the city would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the municipal government would halt implementation of any such regulatory documents by December 1, 2011. Agencies must submit suggested regulations to eliminate to the Liuzhou Legislative Office by January 20; that office must then report the results of such work to the municipal government by January 16.
www.liuzhou.gov.cn/zwgk/fggw/ysq/lzf/201202/t20120223_519915.htm
- On January 9, 2012, the Liunan district government under Liuzhou city released a circular announcing that the district would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the district government would halt implementation of any such regulatory documents by December 1, 2011.
www.liuzhou.gov.cn/lzgovpub/lzsf/gqzf/A090/201203/t20120331_523792.html
- On February 13, 2012, the Fangchenggang municipal government announced the results of its work to clean up regulatory documents linking innovation and government procurement released before December 20, 2011. According to its report, the review included five documents released by the municipal government, all of which remain in effect, and four departmental documents, of which one remains in effect and three have been suspended.
www.gx-law.gov.cn/old/news_show.asp?id=14540

Guizhou

- On November 29, 2011, the Guizhou provincial government released a circular announcing that it would halt implementation of any measures linking innovation and government procurement included in the 2008 Implementing Opinions for Guizhou Government Procurement of Energy-saving and Environmental Protection Products to Promote Indigenous Innovation and the 2008 Provisional Rules of Conduct for Government Procurement by Guizhou Provincial-Level Units.
www.caigou2003.com/news/notice/20111209/notice_214101.html

Hebei

- On December 22, 2011, the Hebei Finance Bureau released a circular referencing the June 2011 State Council and requesting relevant government agencies at all levels to comply.
www.hebgp.gov.cn/upnews/upfiles/zfcg_zcfg/TS_LX20111222162415jg@ng.htm
- In early February 2012, the Hebei Finance Bureau issued a circular calling on all government entities at or below the provincial level to halt implementation of the 2011 Hebei Indigenous Innovation Product Government Procurement Catalogue.
(Full link not available, but referenced in
www.hebgp.gov.cn/upnews/upfiles/zfcg_zcfg/LF2012314152831jg_nf.htm)

Hunan

- On December 1, 2011, the Hunan provincial government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Government entities must complete this work by December 31, 2011 and report results.
www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html
- On December 14, 2011, the Yueyanglou district government under Yueyang city released a circular announcing that government entities, in accordance with Hunan provincial measures, must eliminate

or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.

www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html

- On December 19, 2011, the Hengyang municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies must submit suggested regulations to eliminate to the Hengyang Legislative Office by December 20. Regulatory changes must be completed by December 25, 2011.
www.hengyang.gov.cn/main%5Chyzw/zfxxgk/fggw/szfbgswj/1_17888/default.shtml
- On December 19, 2011, the Beihu county government (Chenzhou city) released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be completed by December 20, 2011.
www.czbeihu.gov.cn/dtxx/tzgg/content_61384.html
- On December 31, 2011, the Taoyuan municipal government released a circular announcing that it had completed the required document removal work, confirming that the two existing regulations dealing with government procurement were both valid and that there were no documents that required elimination or suspension.
www.taoyuan.gov.cn/html/2011/12/31/22016.html
- On February 20, 2012, the Hunan provincial government released a circular announcing the results of its work to clean up regulatory documents linking innovation and government procurement, including revisions to the three provincial measures: the Notice on Certain Supporting Measures for the Implementing the State Council's Medium- and Long-Term National Plan for Science and Technology Development (2006-20), the Notice on Certain Opinions for Supporting New Energy Industry Development, and the Implementing Opinions on Further Strengthening and Reforming Government Procurement Management Work.
www.hnfgw.gov.cn/xxgk/sdfxfg/27119.html
- On January 29, 2012, the Xiangtan municipal government released a circular announcing that it would immediately halt the implementation of four regulatory documents linking innovation and government procurement: the 2003 Critical Notice on Prohibiting Secret and Uncontrolled Construction of Tombs, the 2007 Implementing Opinions on Supporting the Development of Independent Brand Automobiles and its clarification circular, and the 2010 Notice Issuing the Implementing Plan for Government Procurement of Indigenous Innovation Products and the Administrative Measures of the Certification of Indigenous Innovation Products.
www.xiangtan.gov.cn/new/wszf/wjgz/zfwj/szfgfxwj/content_26596.html

Inner Mongolia

- On December 21, 2011, the Inner Mongolia autonomous regional government issued a circular referencing the November 17 State Council notice and calling on governments below the provincial level to implement the policy and submit progress reports to the Inner Mongolia Legislative Office by January 31, 2012.
(Link inactive, but formerly available at www.nmfzb.gov.cn/information/fzb17/msg548586222.html)
- On February 24, 2012, the Inner Mongolia Health Department announcing that it would halt implementation of a 2007 notice aimed at implementing the spirit of MOF rules on indigenous innovation and government procurement.
www.nmwst.gov.cn/html/ywlm/ghcw/ztxx/201202/27-46596.html

Jiangsu

- In November 2011, the Jiangsu provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.
(Full link not available, but referenced in www.jscz.gov.cn/pub/jscz/zfxxgk/zfxxgkml/zfcg/11/201112/t20111231_22292.html)
- On November 25, 2011, the Changzhou Municipal Working Group for Comprehensive Promotion of Legal Administration Work released a circular announcing that implementation of any measures that link innovation and government procurement within regulatory documents should be halted no later than December 1, 2011, and that all government agencies at or below the Changzhou municipal level should review existing regulations for compliance. The municipal committee, city government, and directly administered offices should report initial results of their review and recommended changes to the Changzhou Legislative Office by December 5, 2011, while all municipal-level government organs, district governments, and governments of other directly administered cities should report to the same office by December 10, 2011.
mail.changzhou.gov.cn/gi_news/133994310012279
- On November 29, 2011, the Qidong municipal government released a circular announcing that any measures that link innovation and government procurement within regulatory documents should be eliminated and implementation halted no later than December 1, 2011. Regulatory changes should be completed by December 10, 2011, with progress reports given to the Qidong Legislative Office the same day.
www.qidong.gov.cn/art/2011/11/30/art_1768_125686.html
- On December 6, 2011, the Wuxi municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should submit progress reports to the Wuxi Legislative Office by December 10, 2011. That office will summarize and submit a final report to the municipal government by December 15, 2011.
www.wuxi.gov.cn/zfxxgk/szfxxgkml/zfcg/szfbgswj/5969581.shtml
- On December 8, 2011, the Donghai municipal government released a circular announcing that government entities, in accordance with Jiangsu provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.
xxgk.jsdh.gov.cn/zhengfuxinxigongkai/xianzhengfubangongshi/2011-12-31/2583.html
- On December 27, 2011, the Jiangsu Finance Bureau released a circular announcing that it would halt implementation as of December 1, 2011 of three provincial notices: the 2006 Jiangsu Provincial Administrative Measures Indigenous Innovation Product Accreditation, the 2007 Jiangsu Implementing Opinions on Indigenous Innovation Products and Government Procurement, and the 2010 Jiangsu Provisional Implementing Measures for Initial Government Procurement and Ordering of Indigenous Innovation Products.
www.jscz.gov.cn/pub/jscz/zfxxgk/zfxxgkml/zfcg/11/201112/t20111231_22292.html
- On January 10, 2012, the Nanjing municipal government issued a decision announcing the elimination and revision of a broad mix of documents – including some of those related to innovation and government procurement. These changes include the elimination of 2008 measures to promote innovation in enterprises and revisions to 2009 measures on promoting enterprise growth and stable, rapid development and to 2010 policies for promoting the software and information service industries. While revisions removed explicit ties between government procurement and innovation, the notices

do still call for government support and promotion of indigenous innovation software products and services.

www.js.gov.cn/xxgk/bmhsxwj/sxwj/201201/t20120119_712053.html

- On February 3, 2012, the Xuzhou municipal government announced the results of its round of regulatory changes designed to eliminate or revise regulatory documents linking innovation and government procurement, stating that city government agencies had eliminated specific provisions in the 2006 Circular on Encouraging and Promoting Scientific and Technological Innovation and Start-ups and the 2009 Outline of Xuzhou's Intellectual Property Strategy. (Link inactive, but formerly available at xxgk.xz.gov.cn/xzxxgk/nrglIndex.action?catalogID=ba5a42a118c5c8140118c5ef68980046&type=2&messageID=ff80808135a7cddd0135ebc1c7f604a2)

Jiangxi

- On December 31, 2011, four Jiangxi governmental agencies – including the Jiangxi Commission of Science and Technology and the Jiangxi Finance Bureau – jointly released a circular announcing that it would halt implementation of the 2009 Jiangxi Provisional Indigenous Innovation Product Accreditation Management Rules as of July 10, 2011. www.ncinfo.gov.cn/Newsite/content_detail.asp?id=40904

Liaoning

- On December 23, 2011, the Liaoning Finance Bureau announced that it would halt implementation of the 2006 Opinions on Vigorously Promoting Government Procurement Policies to Promote Indigenous Innovation, as well as specific provisions in the 2009 Liaoning Provisional Management Rules for Indigenous Innovation Product Accreditation, the 2008 Implementing Opinions on Further Modeling Government Procurement Bidding and Tendering Activities, and the 2009 Guiding Opinions for the Promoting Small- and Medium-Sized Enterprise Development through Government Procurement Policies. www.fd.ln.gov.cn/web/detail.jsp?id=8a98819d34cfac22013540d6d25b02d1
- On January 11, 2012, the Shenyang Finance Bureau released a circular announcing that it would halt implementation of 2009 implementing measures to promote model government procurement bidding activities no later than January 1, 2012. www.ccgp-shenyang.gov.cn/syzfcgweb/Notice_view.aspx?news_id=335

Ningxia

- On December 21, 2011, the Yanchi county government released a circular calling for governments at or below the county level to eliminate or revise regulatory documents linking innovation and government procurement. All departments and agencies should report suggestions for regulatory changes or results of such work to the Yanchi county government by December 25, 2011. (Link inactive, but formerly available at xxgk.yanchi.gov.cn/detail.asp?id=1592)
- On January 18, 2012, the Dawukou autonomous regional government announced that it would halt the implementation of the Administrative Regulations for Dawukou Government Procurement. govinfo.nlc.gov.cn/nxfz/xxgk/dwkqrmzfwgk/201201/t20120119_1309802.html?classid=363
- On February 17, 2012, the Wuzhong Legislative Office released a review of its 2011 work and its direction for 2012. This report notes that it had completed a review of local regulations to ensure compliance with requirements not to link innovation policies and government procurement, and had not found any regulations that were out of compliance. xn-xcrtj123e.xn--fiqs8s/article/dfxx/dfzxx/nx/201202/20120200360611.shtml

Shandong

- On July 4, 2011, the Shandong Finance Bureau released a circular, which referenced the June MOF circular, calling on provincial government agencies to implement MOF government procurement policies.
www.cccp-shandong.gov.cn/fin_info/servlet/attach?type=site&id=832

Shanxi

- On December 13, 2011, the Anze county government called for governments at all levels to eliminate or revise regulatory documents linking innovation and government procurement in line with China's external commitments. Such regulatory changes must be completed by December 25, 2011, and should post online a list of which documents are still in effect and which have been eliminated or suspended. Regulatory documents that are not listed online in this manner should cease implementation after January 1, 2012.
www.anze.gov.cn/shows.jsp?urltype=news.NewsContentUrl&wbtreeid=1007&wbnewsid=2697
- On February 12, 2012, the Gujiao municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents, and must begin work to eliminate or revise regulatory documents linking innovation and government procurement. Results of the work must be reported to the Gujiao Legislative Office by February 20, 2012.
www.sxgujiao.gov.cn/gfgw/bgtwj/2010bgt/201203/561314199.html

Shanghai

- On July 1, 2011, the Shanghai branches of MOST and MOF announced the immediate invalidation of Shanghai's catalogue of indigenous innovation products.
www.czj.sh.gov.cn/zcfg/gfxwj/zfcg/201107/t20110708_128211.html

Sichuan

- On July 11, 2011, the Chengdu Government Procurement Service Center announced that it would no longer award extra points for indigenous innovation products during the evaluation process for five specific municipal-level government procurement projects as of July 1.
www.cd-procurement.gov.cn/zfcgsite/Secondary/BulletinInfo.aspx?nav_id=03010000&id=611

Tianjin

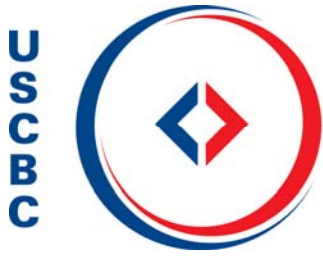
- On July 1, 2011, the Tianjin Finance Bureau announced that it would no longer award extra points for nationally and locally accredited indigenous innovation products in the evaluation process for government procurement programs starting July 1, and released a list of bidding projects prior to July 1 that would need to be reviewed for compliance with the new notice.
www.caigou2003.com/news/notice/20110810/notice_189881.html
- On November 30, 2011, four Tianjin governmental agencies – the Tianjin Finance Bureau, Tianjin Commission of Science and Technology, Tianjin Intellectual Property Office, and the Tianjin Development and Reform Commission – released a circular announcing that it would halt implementation of the 2010 Tianjin Indigenous Innovation Product Government Procurement Catalogue 1 and the 2011 Tianjin Indigenous Innovation Product Government Procurement Catalogue 2, as of December 1, 2011.
www.tjj.gov.cn/upload/File/20111215160915059.pdf
- On June 26, 2012, Tianjin municipal government released a circular, announcing that the city would halt implementation of the 2009 Tianjin Provisional Management Rules for Indigenous Innovation Product Accreditation Management Rules.
www.tjfxgk.gov.cn/tjep/ConInfoParticular.jsp?id=33352

Xinjiang

- On November 23, 2011, the Bayingolin Mongol autonomous prefectural government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be complete by December 13, 2011, and reported to the Bayingolin Legislative Office. www.xjbz.gov.cn/fzb/html/tzgg/2011-11/25/10_55_20_462.html
- On November 30, 2011, the Xinjiang Science and Technology Bureau released a circular announcing that it would halt implementation of the 2009 Xinjiang Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011. www.xjkjt.gov.cn/www.xjkjt.gov.cn/kjdt/tztg/2011/40592.htm
- On December 8, 2011, the Hutubi county government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should complete regulatory changes and report to the Hutubi Legislative Office by December 10, 2011. (Link inactive, but formerly available at www.htb.gov.cn/10016/10016/00012/2011/34896.htm)

Yunnan

- On August 16, 2011, the Yunnan Finance Bureau released a circular referencing the June 2011 State Council and requesting relevant government agencies at all levels to comply. www.ynwscz.gov.cn/show.asp?id=1925
- On September 20, 2011, the Wenshan municipal government released a circular referencing the August 2011 Yunnan Finance Bureau circular and requesting relevant government agencies, including finance bureaus at the city, district, and county level, to comply. www.ynwscz.gov.cn/show.asp?id=1925
- In late November or early December 2011, the Yunnan Legislative Office released a circular that is believed to call on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. (Full link not available, but referenced in www.cxlaw.gov.cn/show.asp?id=4674)
- On December 8, 2011, the Chuxiong Yi autonomous prefectural government issued a circular, referencing a similar notice from the Yunnan provincial government, calling on that government entities to carry out regulatory changes and should submit progress reports to the Chuxiong Legislative Office by December 16, 2011. www.cxlaw.gov.cn/show.asp?id=4674
- On December 20, 2011, the Qujing municipal government in a report released on its performance in 2011 stated that it had begun the work of eliminating or revising documents that link innovation and government procurement measures. qj.xxgk.yn.gov.cn/canton_model25/newsview.aspx?id=1645716
- On January 17, 2012, the Yongshan county government released a notice, soliciting comments on the results of work to eliminate or revise regulatory documents linking innovation and government procurement. The government asked for comments on elimination or revision of eleven relevant documents. Comments and recommended changes are due to the government by February 20, 2012. zt.xxgk.yn.gov.cn/ztnode/newsview.aspx?id=1666995



THE US-CHINA BUSINESS COUNCIL

美 中 贸 易 全 国 委 员 会

Legal Market Access Issues in China

Updated June 2013

As the US-China commercial relationship has developed over the past four decades, US law firms have increasingly invested in China, and have sought to help foster a compliant and mutually beneficial business environment for foreign and Chinese clients. US law firms expanding into China provide distinct benefits to a wide clientele, not only supporting foreign multinationals but also increasingly working with Chinese investors and companies that operate both in China and abroad. These law firms have helped contribute to the growth and development of China's legal services sector, and offer unique expertise in China's market.

Currently, US law firms face significant barriers in China that prohibit them from fully contributing their expertise to both Chinese and foreign clients. The challenges discussed in this paper are among the most prominent faced by law firm members of the US-China Business Council (USCBC) in China.

USCBC continues to raise its concerns about legal market access issues with the US and Chinese governments, and remains active in promoting US legal industry interests with each government. USCBC will also continue to underscore these issues in its recommendations to the US-China Joint Commission on Commerce and Trade (JCCT) and its Commercial Law Working Group (CLWG).

Barriers to US Law Firms in China

Several regulations restrict US law firms' ability to provide comprehensive legal services in China's market. The challenges described in the following sections can generally be classified into three categories: market access barriers, discriminatory tax policies, and the inability to represent clients in government meetings.

Market Access Barriers

Current regulations prohibit US law firms from employing lawyers licensed to practice in China. Chinese lawyers hired by foreign law firms are required to turn over their legal licenses to China's Ministry of Justice (MOJ) upon being hired, effectively stripping them of their ability to practice law. In contrast, US regulations permit Chinese law firms in the United States to hire US-licensed lawyers who may practice in the United States without similar restriction.

China's policies have a negative impact on law firms, lawyers, and their clients. Such restrictive policies impede US law firms' practice, and also restrict the growth of China's legal service market. These policies therefore limit the quality and quantity of the choices available in the legal services market for clients, both foreign and domestic. Separately, these policies also restrict employment opportunities for Chinese-licensed lawyers, who may contribute to the expertise and practices of US law firms while also gaining valuable experience working with multinational clients in an international workplace. Allowing Chinese lawyers working at US law firms to retain their licenses would provide China-based clients broader access to skilled legal professionals, and help expand employment opportunities in China's legal services market.

USCBC recommends allowing lawyers with Chinese licenses the ability to retain their licenses when joining foreign firms, thus contributing to the development of China's legal industry by keeping qualified lawyers fully participating in and contributing to the advancement of the legal system.

Discriminatory Tax Policies

US law firms in China are subject to discriminatory tax treatment that puts them at a competitive disadvantage against Chinese law firms. In China, US firms are taxed as "permanent establishments" of non-resident entities under the Corporate Income Tax Law (CITL), and are required to pay a 25 percent corporate tax rate. In contrast, Chinese firms are treated as "individual businesses" for tax purposes, and pay 5-35 percent according to a five-tier system. In addition, employees of US firms must pay a progressive tax on compensation under the Individual Income Tax Law, which can range up to 45 percent. However, Chinese partners with local firms are often free from paying individual income tax. In contrast, PRC law firms operating in the United States and their employees are treated equally under US tax law without discrimination.

The discrepancies between US and Chinese firms' tax laws create an uneven playing field that distorts competition in the legal services sector and leaves US firms at a significant disadvantage. USCBC recommends that China eliminate burdensome and inequitable taxes on foreign law firms, and treat foreign law firms as "pass-through entities" to avoid discriminatory income tax requirements.

Participation at Government Proceedings

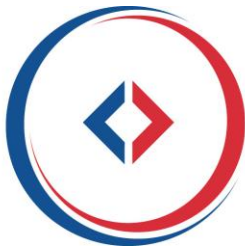
US law firms in China are limited in their dealings with Chinese agencies. As mentioned previously, attorneys working at US law firms cannot represent their clients directly in court as they are not permitted to hold MOJ practice licenses. Additionally, however, many ministries, including the Ministry of Commerce, prohibit foreign firms from accompanying their clients to proceedings regarding their clients' business. Such exclusion hinders US law firms' ability to provide comprehensive legal services to their clients, and uniquely targets foreign firms. In addition, these restrictions appear to conflict with China's World Trade Organization (WTO) accession commitments.¹

USCBC recommends that foreign and domestic law firms be given equal access to Chinese government agencies on matters affecting their clients and ensure that policies are in accordance with China's WTO commitments.

Conclusion

Allowing US firms equal and fair access to China's legal services market will help promote a robust legal services industry that expands the pool of qualified domestic lawyers, thus strengthening China's legal services sector so that Chinese and US companies are fully equipped to engage in the global marketplace.

¹Report of the Working Party on the Accession of China (2001), *Professional Services (a, b)*; US Trade Representative, *2011 Report to Congress on China's WTO Compliance* (December 2011)



China 2013 Regulatory Transparency Scorecard

May 2013

Executive Summary

Transparency—including solicitation of public feedback during the creation of new laws and regulations, open government decision-making, and the ability to access information—is consistently cited as a concern for US-China Business Council (USCBC) member companies operating in China in USCBC's annual membership survey. To monitor this issue, USCBC compiles an annual review of PRC government agencies' records in increasing transparency in their rule-making processes. This year's report, covering mid-March 2012 to mid-November 2012, shows that China continues to significantly lag in its commitments in promoting regulatory transparency.

- Both the National People's Congress (NPC), China's legislative body, and the State Council, the equivalent of the United States' cabinet, have made high-level commitments to improve regulatory transparency. In 2008, the NPC announced that it would solicit public comments on most draft laws and amendments it reviews. The State Council pledged in 2008, 2011, and 2012 to release drafts of all trade- and economic-related administrative regulations and departmental rules for 30-day public comment periods.
- USCBC analysis of the NPC, the State Council, and other selected government agencies shows varying levels of compliance with these transparency commitments, and that all agencies need considerable improvement.
- The NPC continues to have a mixed record of posting draft laws and keeping them open for comment for a full 30-day period. Only 40 percent of laws passed over a recent eight-month period had been published to the NPC website for comment at some point during their drafting process.
- The State Council posted less than 15 percent of its own administrative regulations and departmental rules for public comment through the State Council Legislative Affairs Office (SCLAO).
- Other government agencies did no better. During the eight-month period tracked in this report, the National Development and Reform Commission (NDRC), Ministry of Commerce (MOFCOM), Ministry of Finance (MOF), Ministry of Industry and Information Technology (MIIT), General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), State Administration of Industry and Commerce (SAIC), and Ministry of Human Resources and Social Security (MOHRSS) all posted only a small fraction of relevant documents for comment on either the SCLAO or their respective agency websites, posting less than 10 percent of regulations to the SCLAO site and less than 17 percent of additional regulations to their agency sites.
- Among the small percentage of regulations that are being posted for public comment in line with State Council's commitments, however, the majority are being posted for at least the full 30-day period, as the average comment period for administrative regulations and departmental rules posted for public comment on either the SCLAO or agency websites exceeded 25 days.

USCBC recommends that the PRC government ensure that all administrative regulations and departmental rules are posted on the designated SCLAO information website comment page for a full 30-day public comment period. The office should also consider going further by posting for a longer comment period of 60 or 90 days. For additional recommendations, see page 7.

Transparency—including solicitation of public feedback during the creation of new laws and regulations, open government decision-making, and the ability to access information—is a concern member companies consistently raise in the US-China Business Council’s (USCBC) annual survey of the operating environment in China. Over the past several years, the PRC central government has made a number of high-level commitments to improve rule-making transparency, including commitments to publish laws, regulations, and departmental rules for public comment. USCBC commends PRC regulators for these commitments, which can contribute to a regulatory system that increasingly reflects and promotes greater government transparency.

To benchmark Chinese efforts to promote transparency, USCBC tracks PRC government compliance with these regulations and commitments. Each year, USCBC monitors the drafting and issuance of relevant laws and regulations to determine whether they had been posted for comment on the relevant webpages of the National People’s Congress (NPC), State Council Legislative Affairs Office (SCLAO), and other government agencies for a full 30-day period. USCBC then publishes a detailed report summarizing the results. This is the fifth report USCBC has issued on China’s transparency efforts since 2009 and covers the eight-month period from mid-March 2012 to mid-November 2012.

This year’s report shows that China continues to significantly lag its commitments in promoting regulatory transparency.

- The NPC continues to have a mixed record of posting draft laws and keeping them open for comment for a full 30-day period. For example, 40 percent of laws passed over a recent eight-month period had been published to the NPC website for comment at some point during their drafting process.
- USCBC analysis of the State Council and other selected government agencies shows varying levels of compliance with bilateral transparency commitments, and that all agencies need considerable improvement. The State Council posted less than 15 percent of its own administrative regulations and departmental rules for public comment through SCLAO. Other government agencies did not do much better, posting only a small fraction of relevant documents for comment on either the SCLAO or their respective agency websites, with the rate of posting to either site generally falling below 10 percent of relevant regulations on the SCLAO site and an additional 17 percent on their own agency websites.

Detailed Methodology

USCBC’s analysis has focused on areas in which the central government has stated, either on its own or through bilateral agreements, its intentions to improve transparency, including:

- Compliance with the NPC Standing Committee’s April 2008 announcement that, to promote open participation in its legislative process, it would solicit public comments on most draft laws and amendments it reviews (www.npc.gov.cn/npc/flcazqyj/2008-04/22/content_1464905.htm);
- Adherence to the June 2008 Strategic Economic Dialogue (SED IV) transparency commitment to “publish for public comment all trade and economic-related administrative regulations and departmental rules” for at least 30 days on the SCLAO information website comment pages (www.uschina.org/public/documents/2008/12/sed_outcomes.pdf)¹;
- Adherence to the State Council’s 2010 directive to “strengthen” compliance with its transparency commitments (www.gov.cn/zwggk/2010-11/08/content_1740765.htm);

¹ SCLAO posts documents for public comment on several web pages, including yijian.chinalaw.gov.cn/lisms/action/guestLoginAction.do (State Council documents); bmyj.chinalaw.gov.cn/lisms/action/guestLoginAction.do (ministry-level documents); and www.chinalaw.gov.cn/article/cazjgg/ (lists most laws posted on the above web pages and links to their respective comment pages).

- Adherence to the May 2011 Strategic & Economic Dialogue (S&ED) commitment to “issue a measure this year requiring that all proposed trade- and economic-related administrative regulations and departmental rules be published” for at least 30 days on the SCLAO website (www.treasury.gov/press-center/press-releases/Pages/TG1172.aspx);
- Adherence to SCLAO’s April 2012 Interim Measures on Draft Laws and Regulations for Public Comment that state that relevant draft regulations should “in general” be released for a 30-day comment period (www.chinalaw.gov.cn/article/cazjgg/201204/20120400367358.shtml); and
- Other efforts to increase transparency, including policies implemented in accordance with the State Council’s Regulations on the Disclosure of Government Information (www.gov.cn/zwggk/2007-04/24/content_592937.htm), which was issued in May 2008.

As in previous years’ reports, this report tracks drafting and issuance of relevant laws and regulations by the NPC, SCLAO, and government agencies to judge China’s compliance with its transparency commitments. This year’s report differs from previous years’ reports in that it narrows the agency focus to a set of PRC ministries and agencies and broadens the search methodology, allowing USCBC to delve deeper into the records of targeted agencies. These agencies were selected because they play key roles in formulating and releasing trade-related regulations that are important for US companies doing business in China. The agencies examined are:

- National Development and Reform Commission (NDRC)
- Ministry of Commerce (MOFCOM)
- Ministry of Finance (MOF)
- Ministry of Industry and Information Technology (MIIT)
- General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)
- State Administration of Industry and Commerce (SAIC)
- Ministry of Human Resources and Social Security (MOHRSS)

To compile data for this report, USCBC staff conducted detailed reviews of relevant agency webpages on a fixed schedule, and also monitored other government websites, press sources, and a broad mix of information channels to identify measures that directly or indirectly related to business concerns in China.

Chinese regulations do not provide explicit guidance as to what formally constitutes the “trade and economic-related administrative regulations and departmental rules” cited in China’s June 2008 SED IV and May 2011 S&ED transparency commitments. While these commitments did not formally define which regulatory documents would fall under these rules, other PRC laws and regulations—such as the PRC Constitution (www.gov.cn/gongbao/content/2004/content_62714.htm), the 2001 Regulations on the Procedures for the Enactment of Administrative Regulations (www.law-lib.com/law/law_view.asp?id=16619), and the 1990 Decision on the Registration of Regulations and Rules (www.law-lib.com/law/law_view.asp?id=6358) — provide clues as to what types of regulations and departmental rules should be included.

For the purposes of this report, USCBC used two separate filters:

- A “narrow” interpretation that includes only those documents explicitly labeled as State Council or departmental administrative regulations, such as “provisions” (规定), “regulations” (条例), and “measures” (办法); and
- A “broad” interpretation that includes not only those regulations included in the “narrow” interpretation but also other administrative regulations that appear to function as State Council or departmental administrative regulations, such as “opinions” (意见), “notices” (通知), and “catalogues” (目录).

For categories of administrative regulations and departmental rules and a full list of the types of documents included under “administrative regulations and departmental rules,” see Appendix 1.

Findings

Implementation of NPC Transparency Commitments

The NPC has been inconsistent in complying with the transparency measures it outlined in April 2008, though its compliance improved slightly this year compared to last year. Out of 15 laws (including amendments) passed during the eight-month period covered in this update, only six (40 percent) were posted to the NPC website for comment at some point during the drafting or revision process. This is a slight improvement from the 33 percent compliance during USCBC's previous mid-March 2011 to mid-March 2012 tracking period, but remains low.

This number also represents a lower figure than in years past. Until 2011, USCBC scorecards consistently showed that the NPC released most draft laws for a 30-day comment period at least once during their standard three rounds of NPC Standing Committee review. We encourage the NPC to return to its previous record of legislative transparency.

Implementation of State Council Transparency Commitments

The frequency of comment solicitation on draft rules and regulations continues to vary considerably among China's central government agencies. USCBC analysis of the State Council and seven key government agencies that fall under the State Council over this eight-month tracking period shows a poor record in complying with China's transparency commitments.

The State Council posted only a small portion of its own administrative regulations and departmental rules for public comment through SCLAO: less than 15 percent of relevant documents under the "broad" definition and less than 30 percent under the "narrow" definition (see Table 1).

Table 1: State Council's Administrative Regulations and Departmental Rules Posted for Public Comment

Government Agency and Tracking Period	"Broad" Definition		"Narrow" Definition	
	Total	Posted to SCLAO	Total	Posted to SCLAO
State Council (including SCLAO) mid-March 2012 to mid-November 2012	66	9 (13.6%)	22	6 (27.3%)

Other government agencies posted an even smaller proportion of their regulations to one of the relevant SCLAO comment websites, with the majority of agencies tracked posting less than 10 percent of relevant rules and regulations covered under the "broad" definition. Under the "narrow" definition, the compliance rate improves somewhat, but still remains very low (see Table 2). USCBC uncovered a considerable number of relevant trade and economic-related items – more than 300 in this tracking period – not released for comment on relevant SCLAO websites (see Appendix 1).

These agencies did no better in posting relevant rules and regulations to their own websites. In general, agencies posting draft rules and regulations to the SCLAO site also posted to their own websites, but some posted additional draft regulations to their respective agency websites only. While doing so does not meet the requirements of the State Council's commitment, it provides some measure of transparency for stakeholders. Those numbers, however, were also quite small – ranging from zero to 16.7 percent of regulations – indicating that the majority of regulations not posted to a SCLAO site are, in fact, not being posted for public comment anywhere (see Table 2).

Table 2: Selected Government Agencies' Administrative Regulations and Departmental Rules Posted for Public Comment

Government Agency	"Broad" Definition			"Narrow" Definition		
	Total	Posted to SCLAO ²	Posted to Agency only	Total	Posted to SCLAO	Posted to Agency only
National Development and Reform Commission (NDRC)	118	1 (0.8%)	4 (3.4%)	28	1 (3.6%)	3 (10.7%)
Ministry of Commerce (MOFCOM)	73	5 (6.8%)	7 (9.6%)	19	5 (26.3%)	0 (0%)
Ministry of Finance (MOF)	175	4 (2.3%)	7 (4.0%)	62	3 (4.8%)	0 (0%)
Ministry of Industry and Information Technology (MIIT)	130	4 (3.1%)	6 (4.6%)	31	3 (9.7%)	1 (3.2%)
General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)	13	1 (7.7%)	0 (0%)	5	1 (20%)	0 (0%)
State Administration of Industry and Commerce (SAIC)	20	1 (5.0%)	0 (0%)	4	1 (25%)	0 (0%)
Ministry of Human Resources and Social Security (MOHRSS)	12	2 (16.7%)	2 (16.7%)	3	2 (66.6%)	0 (0%)

Among the small percentage of regulations that have been posted for public comment in line with China's commitments, however, the majority have been posted for or close to the full 30-day period. For those regulations posted for public comment on either the SCLAO or agency websites, the average comment period exceeded 25 days (see Table 3).

Table 3: Length of Time State Council and Government Agency Administrative Regulations and Departmental Rules Are Posted for Public Comment

	Total Regulations	Adjusted Mean ³	Non-Adjusted Mean
State Council Regulations Posted to SCLAO	9	30 days	31.9 days
Agency Regulations Posted to SCLAO	17 ⁴	26.1 days	28.5 days
Agency Regulations Posted to Agency Websites	26	25.6 days	29.9 days

These numbers suggest that the main challenge is getting ministries and agencies post their relevant regulations at all, much less to the SCLAO website. Greater scrutiny of overall ministry and agency compliance is necessary to provide additional perspective and improve China's transparency compliance. For methodology and sources, see Appendix 2.

² Items posted to the SCLAO website may also have been announced and posted on one or more agency websites for comment.

³ USCBC found that a number of documents had been posted for longer than 30 days, skewing the figure for the average number of days posted for comment. To present a more accurate average, USCBC adjusted the data to treat documents posted for comment for more than 30 days as documents posted for comment for exactly 30 days.

⁴ This number excludes duplicate regulations released jointly by multiple ministries that may be included separately in Table 2.

Challenges to Tracking Transparency

Tracking the transparency performance of the State Council and selected agencies is complicated by several factors. First, as previously discussed, PRC government commitments—such as the 2008 SED IV agreement—do not define key terms, such as “trade and economic-related” or “administrative regulations and departmental rules.” This allows multiple interpretations of the commitments and multiple ways of measuring compliance. Furthermore, the 2011 S&ED commitment states that posting rules and regulations is “subject to limited exceptions,” but does not provide clarification on what these exceptions are.

Second, SCLAO’s April 2012 Interim Measures on Draft Laws and Regulations for Public Comment states that draft regulations should “generally” be released for a 30-day comment period (Article 6), but exempts “emergency or special circumstances” as well as “regulations involving state secrets, national security, the exchange rate, and monetary policy that are not suitable for public comment” (Article 3). While it is possible that some regulations not released for public comment fall into these exempt categories, they are unlikely to cover all of the unreleased regulations uncovered by USCBC. SCLAO’s 2012 measures do not provide clarification on the scope and definition of these exceptions.

Third, the URLs to which some administrative items are initially posted expire after a short time, especially for those posted on agency websites, making it difficult to locate regulations later. Broken URLs hinder the effectiveness of government efforts to improve transparency.

Fourth, some draft administrative items, including amendments to laws and draft regulations, may undergo more than one comment period. These drafts are not always posted publically, but instead may be circulated to select stakeholders in government, industry, and academia. For some rounds of comment, the public comment periods can vary in length and may only last a few days.

Finally, because no centrally maintained record of items that have been released for comment appears to exist, the only way to verify whether laws and regulations issued for implementation were published for comment is to check the SCLAO and departmental websites regularly for the release of new documents, and compile these into a database. This makes it nearly impossible for anyone—public and private sector alike—to track transparency in a comprehensive fashion, and very difficult without a significant time commitment.

Because of these factors, USCBC tracks the activity of PRC agencies that are most relevant to US industry issues and concerns, but recognizes that such lists may not be all-inclusive due to the nature of China’s transparency challenges.

Recent Additional Developments in PRC Transparency

The PRC government has continued to emphasize its commitment to increasing transparency through various statements and regulations, despite its uneven implementation of existing commitments. Some recent developments pertaining to information disclosure follow.

- **State Council statement to strengthen transparency efforts** The State Council in April 2012 stated that PRC government and Chinese Communist Party departments should focus on key areas of information disclosure: budgeting (particularly spending on government receptions and entertainment, overseas trips, and vehicles—known as the “three publics”), housing information, food safety information, environmental protection, bidding, production safety and accidents, land acquisition and settlement, and pricing and fees. (news.xinhuanet.com/politics/2012-04/18/c_111803278.htm)
- **China Software Testing Center (CSTC) report on government websites** CSTC noted in December 2012 improved ministry information disclosure through both official websites and microblog interaction with users. According to the Chinese Government Websites Evaluation 2012 report, more than 80 percent of government agencies updated government documents on websites in 2012. MOFCOM, AQSIQ, and

Ministry of Transportation were ranked among the most transparent agencies.
(city.sina.com.cn/city/t/2012-12-05/102534286.html)

- **The Chinese Academy of Social Sciences (CASS) government transparency rankings by ministry** CASS ranked government ministries by their progress on transparency commitments in March 2013. MOFCOM and AQSIQ, as well as the Ministry of Water Resources, State Administration of Work Safety, and State Postal Bureau were ranked among the most transparent agencies. The CASS report ranked Hainan, Sichuan, Shanghai, Tianjin, and Jiangxi as having the most transparent provincial governments. (See Appendix 3 for a list of top ranked central government agencies and local PRC governments, as well as an explanation of the methodology.)
(www.china.com.cn/zhibo/2013-02/25/content_28028506.htm)
- **PRC agencies summarize 2012 information disclosure activities** According to the 2007 PRC Regulation on the Disclosure of Government Information (www.gov.cn/zwgk/2007-04/24/content_592937.htm) and other relevant documents, administrative departments should release annual reports on information disclosure before March 31 of each year. Examples released in late March 2013 include reports from SCLAO (www.chinalaw.gov.cn/article/jggz/zffzxxgk/201303/20130300385225.shtm), NDRC (www.gov.cn/gzdt/2013-03/26/content_2362757.htm), and MOFCOM (politics.people.com.cn/n/2013/0331/c70731-20978568.html). These reports show some progress on transparency issues but still indicate wide variation among agencies.

USCBC Recommendations

USCBC welcomes the State Council's requirements for agencies to solicit public comment on all administrative documents, and offers the following recommendations for improving the process and increasing public participation:

- Ensure that all administrative regulations and departmental rules are posted on the designated SCLAO information website comment page for the full 30-day comment period. As the USCBC 2013 Board Priorities Statement (www.uschina.org/info/board-priorities/2013/board_priorities.pdf) notes, an even longer comment period of 60 or 90 days would be preferable and result in better comments for the consideration of government regulators and contribute to improved legislative and regulatory outcomes.
- Publish a clear definition of the documents covered under the State Council's transparency commitments that specify the inclusion of documents such as catalogues, measures, standards, and opinions, which often affect industry significantly. The lack of such a definition creates challenges for companies and regulators alike. In this report, USCBC examines regulations under both a narrow definition as well as a broader definition that includes administrative regulations that appear to function as State Council or departmental administrative regulations. None of these regulations are explicitly included in any State Council definition.
- Explain in detail, and within the bounds of confidentiality, the economic methodology and rationale that underpin administrative reviews and decision-making by central government bodies, including antimonopoly merger reviews, countervailing duty and antidumping investigations and case rulings, and decisions made based on "national economic security" considerations to allow greater transparency in these processes.

Appendix 1: Categories for Relevant Administrative Regulations and Departmental Rules

Administrative regulations and departmental rules may include a variety of documents:

- Articles 89 and 90 of the PRC Constitution (www.gov.cn/gongbao/content/2004/content_62714.htm) note that the State Council is responsible for drafting and releasing “administrative regulations” (行政法规), “decisions” (决定), and “orders” (命令). The State Council is also responsible for changing or cancelling relevant regulations released by ministries and agencies, including “orders” (命令), “directives” (指示), and “rules” (规章).
- Article 4 of the 2001 Regulations on the Procedures for the Enactment of Administrative Regulations (www.law-lib.com/law/law_view.asp?id=16619) states that State Council administrative items may be titled “regulations” (条例), “provisions” (规定), and “measures” (办法).
- Article 2 of the 1990 Decision on the Registration of Regulations and Rules (www.law-lib.com/law/law_view.asp?id=6358) states that departmental administrative items may be titled “provisions” (规定), “measures” (办法), “rules” (细则), and “general rules” (规则).

The following numbers are estimates based on the US-China Business Council’s (USCBC) detection of administrative items released on the websites of the National Development and Reform Commission, Ministry of Commerce, Ministry of Finance, Ministry of Industry and Information Technology, General Administration of Quality Supervision, Inspection and Quarantine, State Administration of Industry and Commerce, and Ministry of Human Resources and Social Security that were not posted tith SCLAO website for public comment. These include two categories:

- A “narrow” category, which includes only those documents explicitly labeled as State Council or departmental administrative regulations.
- A “broad” category that also includes administrative regulations that appear to function as State Council or departmental administrative regulations, but are not included in the State Council definition.

Terms Used for Administrative Items Circulated or Issued by Key Ministries but Not Released for Comment on the SCLAO Comment Pages, Mid-March 2012–Mid-November 2012

“Narrow” definition of terms specified in PRC law as administrative regulations and departmental rules	Number issued	Other titles used for administrative items and departmental rules covered under the “broad” definition	Number issued
Provisions (规定)	10	Opinions (意见)	34
Decisions (决定)	0	Notices (通知)	121
Orders (命令)	0	Guides (指引)	0
Regulations (条例)	0	Standards (标准)	8
Measures (办法)	75	Catalogues (目录)	25
Directives (指示)	0	General Rules (通则)	0
Rules (细则)	16	Requirements (条件)	8
General Rules (规则)	2	Measures (方法)	0
Rules (规章)	0	Other	81
Total	103		277

Appendix 2: Information Sources

US-China Business Council (USCBC) staff regularly checked a range of sources for PRC economic and trade-related regulations, conducting a detailed review of State Council Legislative Affairs Office (SCLAO) and agency webpages on a fixed schedule. When compiling regulations, USCBC notes the date issued, comment period (if applicable), total days open for comment (if applicable), where it was posted, whether the document was jointly released, and the category to which the item belongs (see Appendix 1). Prior to calculation of total regulations, mean and adjusted means, and totals in each category, USCBC conducts regular reviews to check for accuracy in the included and categorized regulations.

National People's Congress (NPC)

USCBC tracks laws passed by the NPC on the NPC's website (www.npc.gov.cn/npc/xinwen/node_12488.htm). In addition to ascertaining which and how many laws were passed in a given period of time, USCBC looks at which drafts of these laws were posted for comment on the NPC's public comment portal (www.npc.gov.cn/npc/flcazqyj/node_8176.htm) at any point during the drafting process.

Consequently, USCBC is able to track which drafts are posted for comment out of the total laws passed and which draft laws were not posted for comment. For the laws passed in a tracking period, USCBC notes whether they were previously issued for comment at any point during their drafting process.

SCLAO

USCBC tracks items posted on the State Council's website (www.gov.cn), as well as the SCLAO's websites (www.chinalaw.gov.cn/article/cazjgg/201204/20120400367358.shtml and www.chinalaw.gov.cn/article/fgkd/xf/).

Ministries and Agencies

USCBC tracks items released by key government agencies on their individual websites. As each agency may organize data differently, USCBC conducts in-depth review of pages where relevant items may be posted, including announcement, policy, laws and regulations, and public comment pages, if any. For the key agencies examined in this report, USCBC tracks documents posted to these webpages.

National Development and Reform Commission (NDRC)

Policy releases (政策发布)	www.ndrc.gov.cn/zcfb/default.htm
Development and reform-related announcements (发展改革委公告)	www.ndrc.gov.cn/zcfb/zcfbgg/2012gg/default.htm
Notices (通知)	www.ndrc.gov.cn/zcfb/zcfbtz/default.htm
Development plans (发展规划)	www.ndrc.gov.cn/fzgh

Ministry of Commerce (MOFCOM)

Policy releases (政策发布)	www.mofcom.gov.cn/b/b.html
Seeking public comments (征求意见)	www.mofcom.gov.cn/au/au.html
Commerce-related legislation (商务法规)	www.mofcom.gov.cn/swfg/swfg.html

Ministry of Finance (MOF)

Policy releases (政策发布)	www.mof.gov.cn/zhengwuxinxi/zhengcefabu/
Notices and announcements (通知公告)	www.mof.gov.cn/zhengwuxinxi/bulinggonggao/
Collection of comments (意见征集)	www.mof.gov.cn/gongzhongcanyu/yijianzhengji/

Ministry of Industry and Information Technology (MIIT)

Policy and legislation (政策法规)	www.miit.gov.cn/n11293472/n11293832/n11294042/index.html
Document releases (文件发布)	www.miit.gov.cn/n11293472/n11293832/n12843926/index.htm
Planning and investment (规划投资)	www.miit.gov.cn/n11293472/n11293832/n11294072/index.html

General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)

Orders and announcements (局令公告)	www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/
Notices and developments (通知动态)	www.aqsiq.gov.cn/xxgk_13386/tzdt/
Projects and plans (计划规划)	www.aqsiq.gov.cn/xxgk_13386/jhgh/
Public information (信息公开)	www.aqsiq.gov.cn/xxgk_13386/jhgh/gh/
Drafts for public comments (草案征询意见)	www.aqsiq.gov.cn/gzcypt/cazxyj/

State Administration of Industry and Commerce (SAIC)

Projects and plans (计划规划)	www.saic.gov.cn/zwgk/jhgh/
Policy and legislation (政策法规)	www.saic.gov.cn/zcfg/
Important announcements (重要发布)	www.saic.gov.cn/zwgk/zyfb/

Ministry of Human Resources and Social Security (MOHRSS)

New documents (最新文件)	www.mohrss.gov.cn/page.do?pa=40288020246a7c6601246ad809e8032b
Plans and statistics (规划与统计)	www.mohrss.gov.cn/page.do?pa=40288020246a7c6601246ad9ea22032f
Seeking public comments (征求意见)	www.mohrss.gov.cn/page.do?pa=402880202451289901245633d6e70e8b
Social security (社会保障)	www.mohrss.gov.cn/page.do?pa=8a81f0842f8ffbb7012f95c6706d04d8

Appendix 3: Chinese Academy of Social Sciences Report on PRC Government Transparency

The Chinese Academy of Social Sciences (CASS) on an annual basis evaluates the transparency of ministries directly under the State Council, including ad hoc organizations, institutions, state bureaus, departments related to foreign affairs, and departments that have direct responsibility for the well-being of PRC citizens. The evaluation was conducted by a combination of phone, mail, and self-surveys by ministries. Its most recent report was released in March 2013.

CASS ranked ministries on a scale of 1 to 100 points. Points were based on five criteria: government information disclosure catalogues (20 points), government information disclosure guidelines (20 points), disclosure portals and implementation (20 points), annual reports on information disclosure (20 points), and budget information disclosure (20 points). Selected rankings for ministries that the US-China Business Council (USCBC) regularly tracks are listed below.

Selected Ministry and Agency Transparency Rankings, 2013

State Council Ministry or Agency	Rank	Score
Ministry of Commerce	1	66.9
General Administration of Quality Supervision, Inspection and Quarantine	2	64.2
State Administration of Work Safety	4	61.5
Ministry of Human Resources and Social Security	8	56.7
Ministry of Industry and Information Technology	11	56.5
National Development and Reform Commission	13	55.6
Ministry of Finance	27	49.7

CASS also ranked local governments on a scale of 1 to 100 points. These points were based on six criteria: government information disclosure catalogues (20 points), government information disclosure guidelines (15 points), disclosure portals and implementation (20 points), annual reports on information disclosure (15 points), housing deconstruction information disclosure (15 points), and food safety information disclosure (15 points).

Provincial-Level Government Transparency Rankings, 2013⁵

Local Government	Rank	Score
Hainan	1	70.1
Sichuan	2	69.8
Shanghai	3	68.0
Tianjin	4	67.3
Jiangxi	5	67.0
Zhejiang	6	65.7
Beijing	7	65.0
Fujian	8	64.8
Anhui	9	63.1
Shaanxi	10	60.3

⁵ CASS's rankings includes provinces (省) and the four centrally-administered municipalities (直辖市) – Beijing, Shanghai, Tianjin, and Chongqing. It does not include any of China's autonomous areas (自治区) – Inner Mongolia, Xinjiang, Tibet, Ningxia, or Guangxi – or either of its two specially administered regions (特别行政区) – Hong Kong and Macao.

City Government Transparency Rankings, 2013

Local Government	Rank	Score
Ningbo, Zhejiang	1	69.6
Chengdu, Sichuan	2	69.0
Nanjing, Jiangsu	3	68.8
Guiyang, Guizhou	4	65.2
Guangzhou, Guangdong	5	64.0
Hefei, Anhui	6	63.4
Qingdao, Shandong	7	63.5
Wuxi, Jiangsu	8	62.8
Fuzhou, Fujian	9	60.1
Hangzhou, Zhejiang	10	59.8



USCBC Intellectual Property Rights Review and Recommendations

May 2013

Executive Summary

- China has made considerable progress in recent years in its efforts to boost innovation and intellectual property (IP), with an improved legal and regulatory framework, stronger efforts to enforce intellectual property rights (IPR), an expanding body of registered IP, and the growth of corporate research and development (R&D) activities.
- While domestic and foreign stakeholders recognize the value of these achievements, both remain concerned about their ability to protect their IPR. Many companies view IPR protection as an important priority for their operations in China.
- Stronger IPR enforcement could have a significant positive impact on the Chinese economy, and would boost domestic industry development, spur innovation, strengthen Chinese companies, and promote the interests of Chinese consumers.
- Based on regular communication with its members, the US-China Business Council (USCBC) has compiled a list of priority areas and suggestions to further strengthen Chinese government efforts to improve IPR protection.
- USCBC's top concern remains that penalties imposed during IPR enforcement proceedings do not provide a sufficient deterrent to IPR infringement, and that existing value-based criminal thresholds effectively limit the number of criminal cases.
- Other priorities include further expanding the work of the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods, increasing enforcement resources, ensuring equal treatment for foreign and domestic firms, addressing uneven enforcement of IPR, increasing enforcement of Internet-related IPR, and boosting trade secret protection.

Introduction

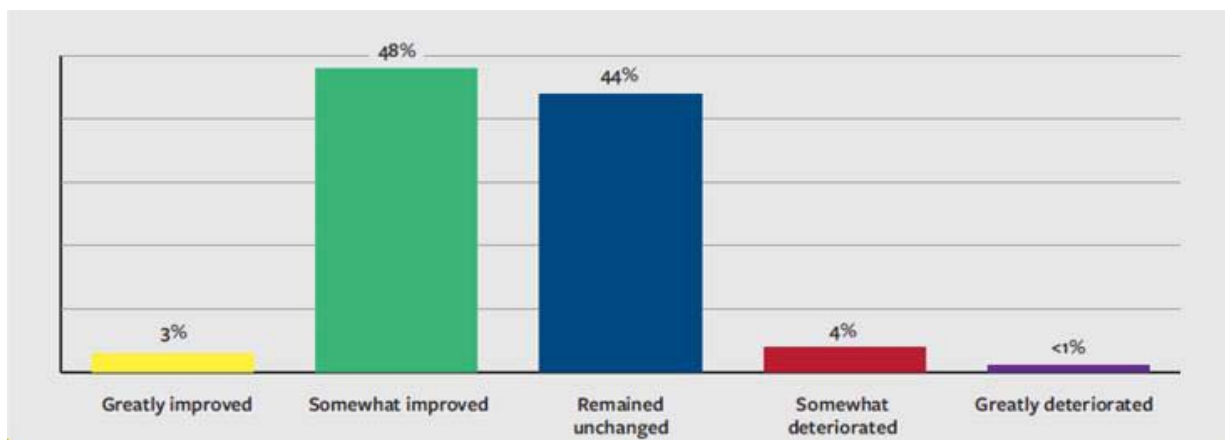
China has made considerable progress in recent years in its efforts to boost innovation and intellectual property (IP), with an improved legal and regulatory framework, stronger efforts to enforce intellectual property rights (IPR), an expanding body of registered IP, and the growth of corporate research and development (R&D) activities. The US-China Business Council (USCBC) and its members recognize these achievements as important steps towards China's goal of building a robust environment for creating and protecting intellectual property in China. Such efforts are also directly in line with important Chinese framework documents like the [12th Five-Year Plan \(2011-15\)](#) and the [National IPR Strategy](#).

China Has Made Incremental Progress in Legal, Enforcement Environments

Chinese government agencies have made improvements to China's legal and regulatory framework for IPR protection. For example, the Chinese government in recent years has actively sought to revise many of its core IP laws—including the Patent, Trademark, and Copyright Laws—to reflect emerging IP issues and evolving regulatory practices, and has drafted many other regulations, notices, and judicial interpretations that provide important clarification for regulators and industry representatives. These revisions have provided important opportunities for recommendations and feedback that improve the system of laws and regulations that govern IPR.

USCBC and its member companies also appreciate the Chinese government's efforts to improve IPR enforcement. *More than half (51 percent) of member companies surveyed in 2012* noted some progress on IP protection in the previous year (see Chart 1). China's 2010-2011 IPR enforcement campaign provided a notable example of this progress, in which greater attention to intellectual property at all levels of government delivered measurable results for many companies. USCBC applauds the Chinese government's efforts to institutionalize enforcement by creating the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods to continue this work.

Chart 1: Over the past year, China's protection of IPR has...



Source: US-China Business Council 2012 China Business Environment Survey Results

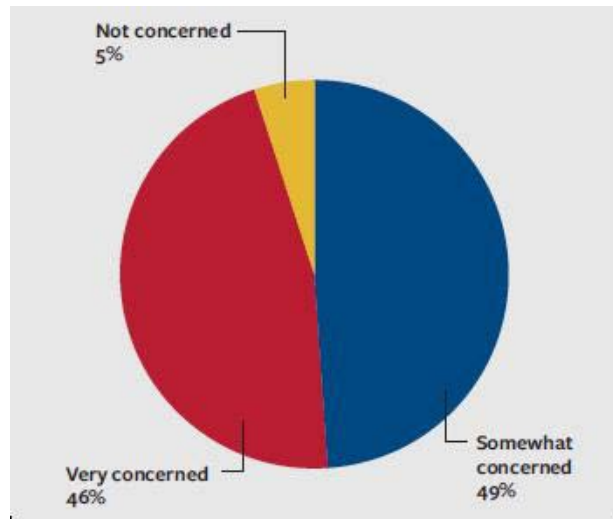
These efforts have yielded some positive results. For example, China's invention patent filings have skyrocketed. In 2011, China's State Intellectual Property Office (SIPO) received more than 526,000 invention patent applications and—for the first time—surpassed the United States as the world's largest filing destination. The number of invention patents filed in China has only grown since then. Official Chinese statistics in January 2013 predicted that overall 2012 spending on R&D would exceed RMB 1 trillion (\$160.8 billion), and Chinese companies increasingly rank among global leaders in important IP-intensive sectors.

IPR Protection Remains a Priority for Chinese, Foreign Companies

Despite such progress, enterprises – both Chinese and foreign – remain concerned about their ability to protect IP. Chinese companies are now more active than ever before in applying for patents at home and abroad, developing and commercializing new technologies, innovating new branded products, and developing movies and cultural products – all of which require IP that must be

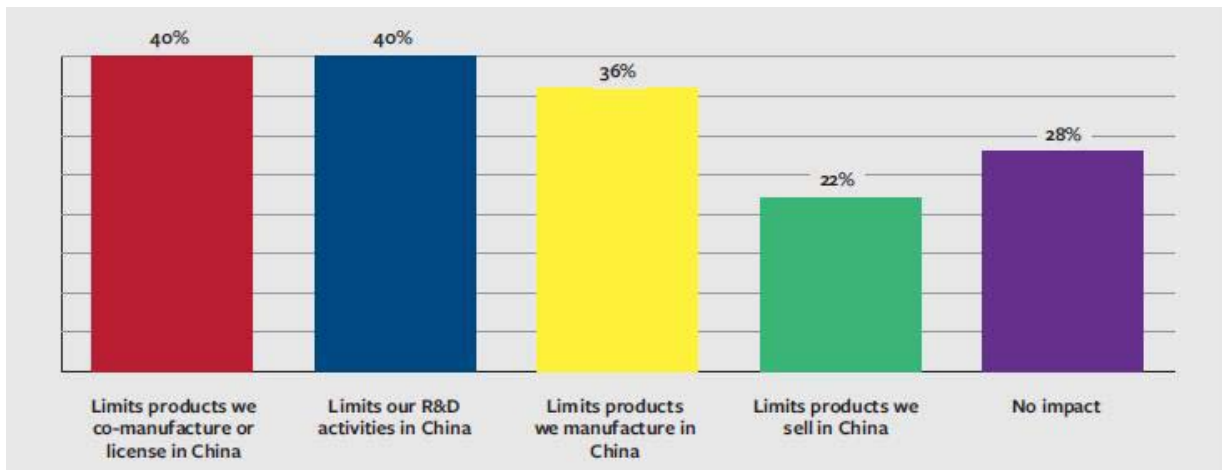
protected. A 2013 survey of more than 1,100 Chinese and foreign businesses conducted by the China Europe International Business School showed that 64 percent of Chinese businesses believed that IP is “important” or “very important” to their business. In addition, IPR protection has ranked among the top 10 challenges facing USCBC members each year since 2003 – ranking fifth in 2012. In that same survey, 95 percent of companies said they were either “very concerned” or “somewhat concerned” about intellectual property rights protection (see Chart 2).

Chart 2: Level of concern about IP enforcement



Source: US-China Business Council 2012 China Business Environment Survey Results

Chart 3: Impact of China’s level of IP enforcement on activities undertaken in China



Source: US-China Business Council 2012 China Business Environment Survey Results

Strengthening IPR Protection Would Greatly Benefit the Chinese Economy

Stronger IPR enforcement will benefit domestic industry development, support Chinese companies, and promote the interests of Chinese consumers. Ongoing IPR infringement harms both Chinese and foreign companies in a number of important ways. First, it limits their growth and development by limiting the economic benefits they derive from their present products and technologies. Both Chinese and foreign companies are negatively impacted by IPR infringement: well-known domestic companies such as ZTE, Moutai, Sany, and Baidu, as well as influential Chinese authors and sports figures, have all been involved in high-profile IPR infringement cases over the last year.

Ongoing infringement creates disincentives for companies to develop and commercialize further technology in China, thus hindering the Chinese government's stated goal of promoting innovation. For example, IPR infringement narrows the types of products and technologies that US companies are willing and able to research, manufacture, and sell in the China market. In [USCBC's 2012 member company survey](#), for example, at least one-third of companies surveyed indicated that China's level of IPR enforcement limits the types of products they are willing to co-manufacture or license in China (40 percent), the R&D that they conduct (40 percent), and the types of products they manufacture (36 percent) (see Chart 3). Such concerns about the level of IPR infringement lead foreign companies to avoid bringing many high-technology products and technologies to China.

These factors limit the products and technologies that Chinese consumers and businesses can access. This ultimately slows the development of many technology-driven industries, slowing economic growth and job creation in key sectors. These policies thus work counter to government goals for integrating advanced technology and improving innovation, and to government efforts to promote technology-incentive sectors such as China's strategic and emerging industries.

Further steps to improve China's intellectual property environment would promote the growth and success of enterprises in China and around the world. USCBC research illustrates the need to address IPR infringement and the value of continued reforms at both the national and local levels to tackle and prevent IPR infringement. While some of the reforms that would address these challenges are specific to one set of problems or one type of intellectual property, other recommendations cut across specific types of IP to address broader structural issues that limit the development of China's IPR environment.

USCBC IPR Recommendations

USCBC is pleased to present suggestions designed to further strengthen Chinese government efforts to improve IPR protection. These recommendations are based on detailed USCBC conversations with member companies about their experience protecting IPR in China. We hope that this document is useful for both US and PRC stakeholders in discussions on IPR and related issues.

Although USCBC and its member companies have an interest in all types of IP protection, our members' priority concerns are focused in a few specific areas, such as penalties and damages for IPR infringement and enforcement efforts of the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods.

Addressing Penalties and Damages for IPR Infringement

Our member companies' top concern remains that penalties imposed during IPR enforcement proceedings do not provide a sufficient disincentive to IPR infringement. Specifically, administrative penalties levied against infringers are often too low to deter infringement and are sometimes viewed by the infringer as the cost of doing business. Moreover, existing value-based thresholds to determine potential criminal penalties are too high and effectively limit the number of criminal cases that appear each year by eliminating the option of criminal penalties for many cases.

USCBC and its members applaud statements by senior Chinese leaders at the 2012 US-China Strategic and Economic Dialogue confirming that they are studying criminal liability for IPR infringement as a positive step. We encourage relevant Chinese government agencies to accelerate this process and to engage US companies along with other stakeholders as they consider potential revisions to the PRC Criminal Law and other laws and regulations.

To improve China's system to deter IPR infringement, USCBC recommends that relevant Chinese government agencies:

- Eliminate value-based thresholds laid out in the Supreme People's Court 2004 judicial interpretation that counterfeit goods must meet to qualify for criminal prosecution, replacing them with a system that applies criminal penalties for commercial-scale infringement in line with World Trade Organization (WTO) practices.
- Increase the effective level of penalties for IPR infringement – both judicial damages and administrative penalties for trademark and copyright infringement – by instituting statutory minimums and raising or eliminating the statutory maximums on fines and damages. In addition, encourage local regulators and judicial officials to levy fines that will serve as more effective deterrents and reward those who do so.
- Revise existing standards for calculating the value of infringing goods so that penalties are based on the market value of the infringed goods (i.e. what the original goods would sell for in the same marketplace), not the market value of the infringing goods (i.e. what the counterfeit goods would sell for in the marketplace).

Expanding the Scope and Efforts of the State Council's IPR-Focused Leading Group

USCBC and its members appreciate the establishment and ongoing work of the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods and view it as a positive sign of the Chinese government's commitment to progress on these issues. To further strengthen and expand its efforts to coordinate a robust government effort to protect IPR, USCBC suggests that the Leading Group:

- Actively and visibly coordinate the IP-related efforts of various government agencies through regular releases of work plans, public meetings, and other means.
- Expand its efforts beyond counterfeiting to more actively address protection of other types of IPR, including patents, copyrights, and trade secrets, and to address emerging IPR issues such as compulsory licensing.
- Foster frequent collaboration between the Leading Group, its supporting office housed in the Ministry of Commerce, and US government and industry stakeholders to discuss progress on IP enforcement and emerging IP-related issues, such as hosting quarterly or biannual meetings with groups of stakeholders and open communication channels for smaller group meetings.

Other Priority Issues

USCBC suggests that Chinese government agencies may consider other important topics, such as:

Cross-Cutting Areas

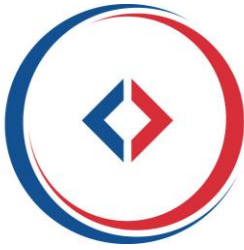
- Enforcement resources: Equip regulators, enforcement agencies, and courts at all levels to enforce IPR by significantly increasing resources (both funding and personnel) for local administrative agencies that investigate IPR infringement, particularly of trademarks and copyrights; establishing benchmarks for IP protection in regular performance evaluations of relevant government officials; and conducting regular, targeted professional training for IPR personnel at all levels of government.
- Equal treatment for foreign and domestic firms: Promote a fair and open landscape for innovation and IPR by setting and implementing regulations and policies in IPR-related areas (such as standards, taxation, R&D, and government procurement) that treat foreign-invested enterprises (FIEs) equally with their domestic private and state-owned enterprises, to ensure that all IPR holders – foreign and domestic – receive equal legal protection for their IPR.

- Uneven enforcement: Encourage consistent IPR enforcement across regions and jurisdictions by providing clearer guidance to local government agencies and fostering increased communication between central and local government agencies, including information sharing and dialogue between provincial and local IPR regulators to share experiences and best practices.
- Transparency in drafting laws and regulations: Actively engage with foreign and domestic stakeholders in revising IP-related laws and regulations, including both core IP laws such as the Patent, Trademark, and Copyright Laws and regulations such as the Measures for the Compulsory Licensing of Patents and the Provisional Administrative Measures for National Standards Involving Patents. Release such laws and regulations for multiple rounds of public comment for at least 30 days, if not 60 or 90 days. Such transparency will promote better, more widely accepted regulatory outcomes.

Specific Areas of IPR Protection

- Internet-based IPR infringement: Increase enforcement of Internet-related IPR by drafting new regulations relevant to Internet-related trademarks and copyrights to cover issues such as use of trademarks on websites, trademark-related aspects of domain name registration, and use of websites as platforms for counterfeit and pirated products. In addition, boost resources and attention to monitoring and investigating Internet sales and distribution of infringing products.
- Trade secret protection: Expand government efforts to address trade secrets concerns, including expanding efforts by the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods to enforce trade secrets in China, strengthening regulatory protections by drafting a unified Trade Secrets Law, and broadening judicial protections by addressing evidentiary concerns related to potential trade secrets cases.
- Inventor remuneration: Further revise the draft Regulations on Service Inventions in close consultation with all stakeholders, including foreign businesses, to ensure that efforts to boost innovation do not create significant administrative burdens for companies with active patent portfolios or drive up compensation costs above international norms.
- Regulatory data protection: Draft and enforce measures that require government officials to keep confidential all technology and IPR gathered during regulatory reviews and product approvals, with concrete penalties when such penalties for those who violate the measures. Relevant types of IPR include trade secrets, formulas, test data, and product information.
- Software legalization: Promote the use of legal software, as agreed by China and the United States in multiple high-level dialogues, through fully implementing existing policies and regulations focused on boosting use of legal software, increasing funding to government agencies to purchase legal software, auditing use of legal software by government agencies, publishing the results of those audits broadly, and actively promoting the use of legal, licensed software in state-owned enterprises and private companies via various means, including software asset management programs.
- Counterfeiting tools: Revise existing laws and regulations, such as the Criminal and Trademark Laws, to mandate that infringing goods – and the equipment used to produce them – be destroyed upon seizure and not be permitted to re-enter the marketplace under any circumstances.
- Copyright barriers: Remove market access and distribution barriers for legitimate copyrighted products, such as imported feature films and television programs, to better meet domestic demand with legitimate products as opposed to pirated ones.

USCBC is happy to engage further with government officials and other stakeholders to provide more detailed suggestions on specific IPR areas, including IPR infringement, trademarks, trade secrets, and judicial enforcement.



China's Strategic Emerging Industries: Policy, Implementation, Challenges, & Recommendations

March 2013

Executive Summary

- China's central government has identified seven "strategic emerging industries" (SEIs) that officials hope will become the backbone of China's next phase of industrial modernization and technological development.
- Many of these policies are still being drafted or are in the early stages of implementation. Foreign companies have increasingly sought to understand how these policies may affect them and what market opportunities may exist within these sectors.
- Senior leaders have noted on several occasions that foreign-invested enterprises should enjoy equal treatment in regards to all SEI policies. However, past experience with central government industrial plans that have placed limits on foreign companies' opportunities to participate in key markets has led companies to be cautious about current opportunities.
- While central and local governments will both play important roles in developing SEI policies, provincial and municipal governments will be the primary drivers of SEI implementation nationwide and have significant authority to draft plans, funding schemes, preferred technology catalogues, and pilot projects.
- Local government transparency about local implementation strategies varies greatly by province or municipality. Most provinces appear to lack coordination with regard to implementing SEI development policies, and only limited government information is publicly available, making information gathering difficult.
- Local government financial subsidies will be a primary incentive for companies to develop new products and technologies in SEI sectors. Access to special funding in certain localities seems to favor domestic enterprises by requiring locally owned and registered intellectual property (IP).
- US-China Business Council (USCBC) members indicate that current SEI-related incentives and programs do not drive their strategy and investment decisions and are not vital to their business development. At the same time, USCBC members would like to see current and future SEI incentives and programs offered on a non-discriminatory basis, to ensure that foreign companies are not unfairly disadvantaged and can participate if they choose to do so.
- USCBC recommends that SEIs policies and projects be open to both domestic and foreign-invested enterprises – both in policy and in practice – at both the central and local level. We also encourage SEI policymakers to ensure that these policies do not violate international trade rules on national treatment or use discriminatory tools such as local IP requirements.

Introduction

Cloud computing. Electric vehicles. Gene-based drug therapies. The list of industries that China's central government planners aim to develop over the next decade is as impressive as the technologies are modern. In the mid-2000s, the central government began to repeatedly and publicly declare its intent to upgrade the economy away from traditional industries reliant on low-skilled labor. Since then, central government policy, funding, tax, and innovation efforts have consistently emphasized one goal: to develop a more advanced and technology-driven economy.

To accomplish this goal, Chinese policymakers created the concept of the strategic emerging industries (SEIs): seven innovative industries just beginning to develop in China, whose expansion could drive China's broader growth as an internationally competitive economy.¹

The State Council – a government body equivalent to the United States' Cabinet – codified the importance of these industries in an October 2010 policy document. This document, the Decision on Accelerating the Development of Strategic Emerging Industries ("decision"), not only identified the specific industries the central government would target, but also established a quantitative target for SEIs to account for eight percent of GDP by 2015 and 15 percent by 2020.

The decision's most immediate impact was to signal to Chinese government agencies at all levels that future government policies on issues as broad ranging as taxation, human resources, and research and development (R&D) must support SEI development. Subsequent industrial policies at the central and local government levels have frequently referenced or target development of these designated industries.

¹ "Wen Jiabao convenes and presides over third symposium on development of strategic and emerging industries," September 22, 2009 (http://www.gov.cn/dhd/2009-09/22/content_1423493.htm); State Council Decision on Accelerating the Development of Strategic Emerging Industries, October 2010 (http://www.gov.cn/zwjk/2010-10/18/content_1724848.htm)

China's 7 Strategic Emerging Industries

1. Energy efficient and environmental technologies
2. Next generation information technology (IT)
3. Biotechnology
4. High-end equipment manufacturing
5. New energy
6. New materials
7. New-energy vehicles (NEVs)

**See Appendix I for additional specifics*

Foreign companies have increasingly sought to understand how their business might align with market opportunities presented within the sectors slated for special government attention. However, companies have faced significant challenges in finding reliable information on SEI policies and implementation. This is often due to the opaque manner in which policies are being developed and the lack of explanations for how policies relate to each other.

SEI policy development has also been marked by a lack of coordination between government agencies, differing interpretations of central government directives, and varied implementation methods among localities. These factors, coupled with foreign companies' past experience with central government policies to promote innovative technologies, have raised some concern regarding the extent to which they will actually be allowed to take advantage of SEI-related market opportunities.

This paper provides a snapshot of SEI policies and practices in China, covering:

- Select central and local government policies that support the SEIs
- Specific examples of SEI implementation in different localities
- Central and local government policy tools to support the SEIs
- Challenges to foreign participation in the SEIs
- Recommendations to ensure full participation for foreign-invested companies in China's industrial modernization

Central Government Policies to Promote SEIs

SEI policy creation and implementation has followed a similar pattern to other broad policy plans in China, where the central government drafts general guidelines and principles and local governments handle direct implementation.

Combining knowledge of the top-down guidelines with an understanding of local conditions can help companies understand local government SEI implementation, and help to frame policy discussions with central and local officials.

Key Agencies

While a number of government agencies participate in the development of SEI policies, a handful of agencies play a lead role in overseeing and regulating the SEIs. The 12th Five Year Plan (FYP) on the Development of the Strategic Emerging Industries calls for the establishment of an inter-ministerial coordination group headed by the National Development and Reform Commission (NDRC). Additional members of the group include the ministries of Commerce (MOFCOM), Science and Technology (MOST), and Industry and Information Technology (MIIT). The purpose of this group is to coordinate, analyze, and track SEI policy implementation across relevant agencies. Some of the agencies that make up the group also have authority to approve projects at the municipal, provincial, and national level.

Overview of Selected Agencies involved in SEI Policy Creation		
Central-Level Agency	Provincial-Level Equivalent	General Responsibilities
National Development and Reform Commission (NDRC)	Local-level NDRC offices are called “development and reform commissions” (DRCs)	<ul style="list-style-type: none"> Leads central government coordination of SEI interagency work Guides overall SEI policy development Formulates core and follow-up SEI documents such as key SEI products and services catalogue
Ministry of Industry and Information Technology (MIIT)	Local-level MIIT offices are often referred to as “economic and information technology commissions” (EITCs)	<ul style="list-style-type: none"> Plays significant role in developing specific plans for four of the seven SEIs: advanced equipment manufacturing; new materials; next generation information technology; and energy efficient technologies Participates in SEI policy formulation within the interagency process and also develops its own SEI catalogues
Ministry of Commerce (MOFCOM)	Local-level MOFCOM offices are often referred to as “commerce commissions” (CCs) or “departments of commerce”	<ul style="list-style-type: none"> Coordinates with other agencies to support SEI policy development and implementation
Ministry of Science and Technology (MOST)	Local-level MOST offices are called “science and technology commissions” (STCs)	<ul style="list-style-type: none"> Coordinates with other agencies in SEI policy development with a particular focus on fostering domestic innovation and technology development Supports SEI basic R&D Administers national science & technology (S&T) grant funding programs

Overview of Selected Agencies Involved in Strategic Emerging Industries

Central-Level Agency	Provincial Level Equivalent	General Responsibilities
Ministry of Finance (MOF)	Local MOF offices are referred to as “departments of finance”	<ul style="list-style-type: none"> Serves as the primary agency managing available funds for SEI development
State Intellectual Property Office (SIPO)	Local SIPO can be referred to as “intellectual property bureau” (IPB) or “intellectual property administration” (IPA)	<ul style="list-style-type: none"> Focuses on emphasizing protecting intellectual property rights (IPR) within the SEIs Coordinates with other agencies to protect IPR in SEI policy implementation

Within the government agencies that are broadly involved with SEI planning and implementation, various bureaus and departments have defined responsibilities, both for specific industries that fall under the SEI framework and for different elements of SEI implementation. Different agencies assign SEI-related responsibilities in different ways. For example, NDRC assigns much of its SEI-related oversight to the Department of High-Tech Industry, which maintains general oversight for promotion of all SEI industries based on its oversight of the IT, biotechnology, aerospace, new materials, new energy, marine, and high-tech services industries. Two other NDRC departments – the Department of Resource Conservation and Environmental Protection and the Department of Basic Industries – handle specialized pieces of the SEI landscape: energy efficiency and environmental protection, and high-end manufacturing related to transportation. In contrast, MIIT is more compartmentalized, with several separate departments responsible for planning, policy, and standards within their respective SEI sectors, such as the Department of Equipment Industry and the Department of Software Services.

Key Government Policies

Since 2010, various agencies have published SEI-related policy guidance:

- State Council Decision on Accelerating the Development of Strategic Emerging Industries (http://www.gov.cn/zwggk/2010-10/18/content_1724848.htm), October 2010
 - Identifies the seven specific strategic emerging industries (see Appendix 1 for more details on industry breakdown)
 - Establishes a quantitative target for SEIs to account for 8 percent of GDP by 2015 and 15 percent by 2020
 - Stresses that R&D and indigenous innovation are core features of SEI development
- NDRC Implementing Opinions on Encouraging and Guiding Private Enterprises to Develop the Strategic Emerging Industries (http://www.ndrc.gov.cn/zcfb/zcfbtz/2011tz/t20110815_428464.htm), July 2011
 - Policy framework governing private company participation in China's seven SEIs
 - Requires that future policies remove any existing market-entry thresholds – such as those governing registered capital, total investment, and land supply – that apply specifically to private companies
 - Requires that private companies have equal access to public financing and other government funds earmarked for SEI projects
 - Requires local officials and other relevant regulators to solicit comments from private enterprises on future policies and must take comments and recommendations “seriously”
 - Chinese term for “private” industry does not include foreign investment

- State Council 12th Five Year Plan (FYP) on Development of Strategic Emerging Industries (http://www.gov.cn/zwggk/2012-07/20/content_2187770.htm), July 2012
 - Taps NDRC as the leader of an interagency central government taskforce to develop national SEI plans and policies
 - Lays out detailed goals, sub-industry priorities, key projects, and supportive policies
 - Lists large projects the government wants to promote during the 12th FYP period (2011-15)
- MIIT Notice on the First Batch of Key SEI Technologies and Products for Targeted Promotion (also known as Notice 318, <http://www.miit.gov.cn/n11293472/n11293832/n12843926/n13917012/14713132.html>), July 2012
 - Contains two appended catalogues, one of SEI technologies and one of SEI products that potentially could be used as reference in SEI policy implementation (see Appendix 2 for more details)
- MIIT Classification Catalogue of Strategic Emerging Industries (<http://www.miit.gov.cn/n11293472/n11293832/n12845605/n13916913/14990105.html>), November 2012
 - Provides systematic identification of specific industries to be considered for SEI-related policy implementation
- MOF and NDRC Interim Measures for the Administration of Special Funds for Strategic Emerging Industries (http://jjs.mof.gov.cn/zhengwuxinxi/zhengcefagui/201301/t20130124_729883.html), December 2012
 - Manages and standardizes SEI funding allocation across central government agencies
 - Lays out principles to guide funding, stating that funding should be market-driven
 - Specifies that funding should facilitate significant technology breakthroughs, the industrialization of critical sectors, the establishment of industry value chains, and innovation-oriented development
- NDRC Guiding Catalogue for Strategic Emerging Industries' Key Products and Services (http://www.ndrc.gov.cn/zcfb/zcfbgg/2013gg/t20130307_531611.htm), February 2013
 - Provides detailed list of technologies and products under each SEI and its sub-sectors
 - Does not include specific policies, funding, additional investment incentives for companies or technologies, or any criteria or other information about how either foreign-invested or Chinese companies might be able to participate in the development of these products and services
 - Provides cover note to encourage investment in these sectors, and as a baseline for provinces and ministries to develop their own specific lists of SEI products and services

Provincial and municipal governments also have their own policies and regulations designed to promote the SEIs, including local catalogues, funding plans, project announcements, and regulations. To better understand local policies and implementation USCBC interviewed local government agencies and analyzed local SEI-related policies and regulations across 12 cities and provinces. Appendix 3 provides examples of SEI policies, funding, and implementation plans in these select provinces and cities.

Central and Local-Level Funding Tools to Promote the SEIs

The State Council's 2010 decision outlines broad measures to encourage SEI development and establishes the principle that financial subsidies will be a primary incentive to help companies conduct R&D and commercialize new technologies and products. Fiscal policy – particularly tax policy – will be a primary tool to support industry innovation and technology commercialization. Taken together, tax rebates and financial subsidies could be a significant boon to companies seeking to invest in SEI product development.

At the same time, central government officials have repeatedly made clear that most SEI support funding will not come from central government coffers. Ren Zhiwu, deputy director general of NDRC's High Technology Division, the department responsible for drafting NDRC's SEI catalogue, stressed in a speech to USCBC member companies in October 2012 that only about 25 percent of funding would come through the central government. The Interim Measures for the Administration of Special Funds for Strategic Emerging Industries, for example, emphasizes a combination of funding from various funding sources – including central government, local government, and private enterprises – to promote SEI technology and product development.

As a consequence, local governments will shoulder most of the financial responsibility to develop the SEIs in their region. In fact, the SEI 12th FYP requires each province to create its own special funding pool to promote SEI development. Local governments determine where subsidies will go according to local SEI supportive policies. Some provinces have already established their funds while others are still being formed.

Many provinces that may lack a specific SEI funding pool already offer local grants and subsidies through other programs that can be also used for SEI products or technologies. For example, the Hubei Special Fund for Major Science and Technology Projects; the Shanghai Special Fund for the Development of Major Projects of Indigenous Innovation and High & New Technology Industries; and the Jiangsu Special Fund for Software and Integrated Circuit Industries are examples of pre-existing local funding mechanisms that could also support SEI-related technology development.

Localities will decide their own methods for allocating funding, but past experience suggests many will likely use a combination of product catalogues and specific project proposals, as well as a competitive funding application process and other incentive programs such as High & New Technology Enterprises (HNTEs), to provide incentives.

USCBC interviews and research uncovered the following examples of local funding plans:

- Shanxi aims to set aside RMB 500 million (\$80 million) annually as an SEI development fund.
- Tianjin aims to set up RMB 970 million (\$156 million) fund to support commercialization of indigenous innovation and high-tech projects.
- Fujian plans to create a RMB 1 billion (\$161 million) SEI venture capital fund.

Please refer to Appendix 3 for additional examples from USCBC interviews and research of local SEI policies, funding, and implementation plans across select provinces and cities.

Foreign Company Interest in Accessing SEI Funding

In USCBC's 2012 member survey, companies reported mixed ability to participate in China's SEI programs. Most respondents, 57 percent, reported that they have only been moderately successful in doing so. Just over a quarter indicated that they had good success and the remaining respondents, 17 percent, reported they had poor access.

Over several months in 2012, USCBC followed up with a number of companies to determine their views about and general experiences with local funding opportunities. Of the 23 companies interviewed, only about one-third of companies – eight of 23 – indicated that they had applied for or had interest in applying for an SEI funding program. However, even among interested companies, half (four of eight) indicated that the local funds do not drive their strategy or investment decisions and are not vital to their business. Instead, companies viewed these funds as supplemental or as a means of countering competitors' use of local funds.

In comparison, nearly half of companies – 11 of 23 – indicated clearly that they have not applied for and have little interest in the financial incentives at all. Respondents indicated that this is based purely on business considerations and not out of concern that they lack information or may face discrimination. This includes companies that have mature investments and so are less influenced by new preferential policies or are uninterested in making new investments.

The remaining four companies indicated they were not interested in SEI financial incentives because the amounts involved were too small to justify the effort required (two cases) or the likelihood of successful qualification versus local competition was too low (two cases).

Foreign Participation in SEIs: Challenges and Recommendations

Senior central government leaders have made a number of high-profile public statements declaring that the SEIs are open to foreign participation. For example, [Premier Wen Jiabao replied to a question during the Summer Davos Forum in September 2012](#) that foreign-invested enterprises (FIEs) operating in the SEIs will be treated the same as Chinese companies. [NDRC Vice Chair Zhang Xiaoqiang echoed these comments](#) in July 2012 interview when explaining that the 12th FYP on SEIs allows for a level playing field for both Chinese and foreign companies. [NDRC's Ren Zhiwu told USCBC member companies in October 2012](#) that SEI policies would not discriminate against foreign-invested companies or the products they produce.

Despite these statements, past experience with Chinese tax, innovation, and government procurement-related policies has led companies to be concerned about the possibility that these new SEI policies may in practice create an uneven playing field by potentially giving preferences to Chinese companies.

Many USCBC companies argue that any benefits that are in practice available only to Chinese companies have long-term negative consequences for fair competition and the development of market-based economics – both in China and increasingly in third markets around the world – by giving Chinese companies a competitive edge over their foreign-invested counterparts.

USCBC member company concerns center on a number of topics, including the continued role of SEI product and technology catalogues, use of discriminatory intellectual property-based qualification criteria, links to government procurement incentives, lack of transparency in policy drafting and implementation, and localization requirements that would exclude branch entities. One step local governments can take to mitigate general concerns about preferences is to mandate – in writing – that incentives be granted in a non-discriminatory manner and to establish an independent appeals process to review claims of bias. Local governments can also expand upon central government commitments to increase transparency and publicize more information about what incentives are available and the qualification criteria used to determine accessibility.

The Role of Catalogues

Catalogues are a central feature of China's industrial planning system, outlining business and investment opportunities across all parts of the economy. Chinese government agencies at all levels have used catalogues for decades as a means to indicate what products and technologies are permitted, encouraged, or restricted for investment or purchase. For example, central and local governments update annual catalogues of products meeting energy efficiency requirements. These products may receive preference in government procurement or qualify the purchaser for a tax rebate.

The SEIs are no different, and both central and local agencies are developing product and technology catalogues. NDRC, for example, has the lead role in developing an SEI product catalogue, but MIIT has also been aggressive in publishing its own SEI-related catalogues. Local governments are also currently creating their own catalogues for industries in their region, which adds to the confusion for companies. While these catalogues are beginning to trickle out, it remains unclear what specific policies might be used to promote the technologies and products in these and other catalogues. For example, the catalogues do not indicate what benefits listed products receive. It is also unclear how the catalogues relate to each other and to other SEI-related policies, both at the national and at the local level. See Appendix 2 for a discussion of MIIT Notice 318 as an example of a catalogue.

Concerns and challenges that companies have raised about catalogues include:

- Lack of information about how the catalogues will be used.
- Lack of publicly available, clear, non-discriminatory criteria for how companies can get their products and technologies into a catalogue and how frequently catalogues will be updated.
- Whether a listing in a catalogue denotes preferential treatment for companies and their products. These concerns are bolstered by the fact that almost all companies listed are Chinese enterprises or Chinese-invested joint ventures.
- What special funding, if any, is provided to listed products. Conversations with local government officials indicate that locally developed SEI catalogues may be used as a reference for allocating special funding. Only companies that produce products and technologies that are described in the local SEI catalogue will be accredited and have access to these subsidies.

USCBC Recommendations

- USCBC recommends a long-term solution of eliminating the use of catalogues. Catalogues are no longer consistent with China's development toward a market-based economy, nor in line with international best practices. Catalogues are difficult to maintain and are quickly outdated, thus reducing their effectiveness of promoting innovative products and technologies.
- If catalogues are to continue to be used, USCBC recommends that central and local government agencies:
 - Provide a cover letter for each catalogue, similar to those often provided for new legislation, explaining how the catalogue was drafted and how companies may be able to suggest new technologies and products for future catalogues;
 - Specify the types of policies and incentives that would be available for products and technologies included in the catalogue and how companies may apply for those benefits;
 - Include information regarding the specific government agencies or representatives that may be contacted to address company questions or concerns; and
 - Specify the applicability of central government catalogues to local catalogues (and vice versa) along with instructions on how local governments should use central government catalogues in their own SEI efforts, especially as it relates to the selection of products or technologies for preferential treatment.

Local Government Use of Discriminatory IP Qualification Criteria

Though local government officials have affirmed in conversations with USCBC that they adhere to policies of equal treatment and a level playing field for foreign-invested enterprises, they also indicated that the central government has given clear instructions that the cultivation of locally developed and locally owned intellectual property rights (IPR) is a core component of SEI development. Put another way, promoting the SEIs is linked with promoting indigenous IP creation. As one municipal government official said, because it is the central government's clear intention to develop China's IP capabilities, IP requirements are not negotiable.

This has raised the prospect that access to SEI-related incentives, financial subsidies or otherwise, may be conditioned on the possession of intellectual property developed and/or owned in China, and would not permit companies to qualify based on possession and use of intellectual property developed and/or owned in other locations. As noted in USCBC's 2010 innovation incentive best practices report, neither the US nor any of the other nine top global innovative countries and regions are known to base participation in innovation incentive programs on domestic ownership of intellectual property rights or trademarks. Yet such requirements already exist as a part of China's HNTE tax program. Companies may qualify for a reduced corporate tax rate of 15 percent if they engage in certain advanced production, high-tech activities and own the IP in China. While some foreign companies have chosen to structure their operations so they can own IP in China and qualify for the reduced tax rate, government requirements to own IP in a certain jurisdiction go against international best practices for IP creation and management.

Because local governments must establish their own plans and funding pools to develop the SEIs in their region, evidence suggests that many local SEI promotion policies may ultimately include IP requirements. For example:

- Shanghai's SEI fund is a carve-out of a larger indigenous innovation and high-tech special fund, which requires local IP ownership and local legal presence to qualify for funding. In addition, wholly foreign-owned R&D centers may not be approved for SEI research projects unless they independently own the IP.
- Sichuan local agencies expressed differing opinions on the question of IP criteria. According to the Sichuan economic and information technology commission, there are IP requirements in Sichuan for SEI project applications. However, the Sichuan development and reform commission indicated that any company applying for SEI special funding only needs to be legally registered and pay taxes in Sichuan. Development and reform commission officials emphasized, however, that for SEI special funds, the goal is to develop independent IP to replace imported equipment and create capacity for Chinese companies in those areas.

USCBC Recommendations

- Central government agencies should mandate the removal of IP ownership qualification criteria from all central and local government incentive programs, including the HNTE tax program and SEI promotion policies. Short of this, the requirement should be amended to allow for non-exclusive licenses to Chinese affiliates.
- Companies should evaluate carefully the value in developing IP in China and/or transferring to China the license for their IP.

Transparency

The lack of publicly available, consistent information about SEI plans, catalogues, and projects has made it difficult for interested parties to gain a deeper understanding of what the government is doing and how to take advantage of available commercial opportunities. Slightly more than half of respondents to

USCBC's annual survey, conducted in the summer of 2012, indicated that they had some difficulty getting information about the industries being promoted and the types of incentives offered and had mixed experiences in turning information leads into business development opportunities. This situation means that companies must expend significant time and personnel resources to understand disparate local implementation methods.

There are three transparency challenges of particular concern:

- **Lack of online documentation** When USCBC spoke with local officials to assess SEI implementation strategies, the majority said relevant SEI documents had been put online. Generally speaking, a more robust and transparent web presence often indicated a greater willingness among local officials to discuss policies. However, after navigating provincial government websites, USCBC found that locating these documents was extremely challenging, and in many cases policies could not be found at all. Some websites had no documentation, or documents that were months out of date. Some websites lacked basic search functions, further inhibiting information access. It was not unusual to find relevant provincial SEI documents from lower level government websites that were not posted on the websites of the upper-level issuing agencies, thus creating confusion about the validity of various policies.
- **Lack of clear authority structure for implementation agencies** At the national level, NDRC leads SEI policy development, with other agencies such as MIIT and MOST playing supporting, albeit important, roles. However, local implementation largely depends on each agency's initiative and authority. This decentralization of SEI implementation responsibilities has made it very confusing for companies to know with whom they must talk in order to learn about SEI plans for that area. In some localities, such as Shanghai, the economic and information technology commission has taken the leadership role in SEI policy development and implementation, while other regions, such as Shandong, the science and technology commission is driving local policy development and implementation.

When formulating plans to implement national policy, local governments often set up interagency "leading groups" that gather senior officials from agencies that might have significant involvement in that topic. These leading groups do not deal with substantive implementation questions; rather, they serve as a platform for involved agencies to coordinate their work, leaving specific implementation work details up to the individual agencies in question. Because each province operates largely independently, interagency communication and coordination varies significantly among provinces. Moreover, local departments are often in competition with each other over final authority to implement SEI plans. Additionally, in some localities, only one person in a particular department handles questions related to SEI implementation, while other departments may be unaware of the process. In other cases, different departments oversee SEI development for industries that otherwise come under their jurisdiction, such as new energy, which usually falls to the local development and reform commission. Funding management also varies by locality: in Anhui, for example, the local development and reform commission works with the finance department to coordinate the management of funds while in Jiangsu, each relevant department takes charge of its own funds.

- **Officials' willingness to discuss policies** Local officials' willingness to discuss SEI policies for their jurisdictions varied greatly, reflecting everything from a lack of awareness of the plans in their region to concern about disclosing potentially sensitive information, even if it was posted publicly on a government website. Officials across multiple agencies in some locations, such as Beijing and Zhejiang, were unwilling to share information and refused to discuss SEI plans. Conversely, Hubei showed a strong willingness to answer questions about local SEI plans, as was also the case in Shanghai, which is frequently cited for a high level of transparency and cooperation with foreign enterprises.

USCBC Recommendations

- Provincial governments should develop a clear reporting system to track and ensure all information related to SEI policy is posted on official provincial as well as municipal government websites, including the process for companies to apply for inclusion in a local catalogue, qualification criteria, funding information, pilot projects, government contact information, etc.
- Companies interested in learning more about a particular province's SEI plans should map out the possible local government agencies involved in SEI policy formulation and execution and develop regular contact with them to ensure access to the latest information.
- Because different localities have varying approaches to SEI implementation and often divide implementation authority, companies should carefully research which agencies have responsibility for their industry and product. Sometimes responsibility will align with the agency's normal jurisdiction, such as the local branch of the Ministry of Health (MOH) managing bio-pharmaceuticals. But depending on the province, another agency such as local development and reform commissions or economic and information technology commissions may instead manage this portfolio. Companies should be aware of agency authority and more clearly target specific departments. With a better understanding of agency responsibilities, companies will be better equipped to handle "buck-passing" among different agencies.

Links with Government Procurement

Central government policy planners have used access to China's lucrative government procurement market as a means to promote certain technologies or brands. Some of these programs are well-established and are generally considered non-discriminatory. For example, central and local governments maintain lists of products that have met certain energy-efficient and environmentally friendly criteria. Some foreign companies have been able to get their products on these lists via foreign-invested subsidiaries. On the other hand, certain government procurement requirements disadvantage foreign companies, such as the announcement in 2012 that government agencies must only purchase domestic Chinese auto brands for their office fleet. That notice also prompted several municipal and provincial governments to issue their own notices mandating the purchase of Chinese brands, rather than brands produced by foreign joint ventures – thus compounding the situation.²

While the central government has made general public statements about the important role of market forces within government procurement to promote new technologies, there is still concern that government procurement will benefit Chinese companies operating in SEI industries, particularly at the local level. For example, when responding to USCBC questions about local SEI development, Jiangsu provincial officials emphasized that they view government procurement as playing an important role in promoting SEI products and technologies. They argued that SEI products and services are new innovations that do not yet have an established market in China. Consequently, such procurement is a necessary tool to promote SEI growth. Nevertheless, without more details on how the procurement will be managed and what criteria will be required to qualify, it remains unclear whether local procurement will give more preferences to Chinese companies over foreign-invested companies.

² http://news.china.com/zh_cn/domestic/945/20130204/17668135.html;
<http://autos.cn.yahoo.com/yphen/20130204/1591918.html>

For more information about China's government procurement system, please see USCBC's government procurement report: <https://www.uschina.org/members/documents/2012/11/government-procurement.pdf>.

USCBC Recommendations

- Local governments should provide more information about their procurement practices and actively promote the long-term benefits of an open, transparent, market-based procurement system by mandating the removal of unwritten quotas that require local government agencies to purchase brands that are majority or wholly Chinese-owned.
- Local governments should continue work to improve the independence and effectiveness of the local appeals process for government procurement.
- Companies should actively seek out and engage stakeholders, both to educate them on product specifications and to gain leads on possible upcoming bids.

Local Registration Requirements

Many local regulations require applicants for funding to be registered as legal entities in the province, thus excluding branch offices. While it is not surprising from a tax perspective that local governments would give preference to full legal entities rather than branches, most companies, regardless of nationality, prefer to minimize the creation of duplicative legal and financial entities by using branch offices of one legally-registered entity. Local requirements to be a legal entity may have an especially negative influence on the development of R&D capabilities in a municipality – even though fostering more R&D is a key priority of the SEI plans – because R&D centers are often established as branches of an existing entity.

USCBC Recommendation

- Local governments should amend provisions to allow branches of existing legal entities to qualify for any local incentives.

Conclusion

SEIs will remain a centerpiece of China's industrial development plans for many years to come. Given the relative newness of the overall SEI policies central and local governments are still exploring ways to implement SEI development policies, which may likely result in some confusion and potential implementation bottlenecks as localities put plans into action and clarify policies. At the same time, China's dynamic market is such that companies interested in capitalizing on selling into the market risk losing opportunities if they wait until the path is clearly defined.

China's local governments have long utilized different strategies to implement central policy goals and therefore a reasonable degree of difference among local plans is to be expected. Nevertheless, USCBC recommends that SEI policies should be open to both Chinese and foreign-invested enterprises at both the central and local level, should not violate trade rules vis-à-vis offshore foreign companies, and should not use discriminatory tools such as local IP requirements. Non-discriminatory policies would benefit China by making the most advanced and efficient technologies available in SEI sectors at the most reasonable prices. Pursuing these recommendations will address the broader need to create an open, non-discriminatory business environment in China that does not favor one group of companies over another. USCBC will continue to monitor SEI implementation plans and report information to its member companies.

APPENDIX 1: Outline of the Seven Strategic Emerging Industries and Selected Subsectors

Energy efficiency and environmental conservation

- Research, develop, and promote energy-efficient technology products in order to make technology breakthroughs and raise overall energy efficiency;
- Accelerate the R&D and production of broadly applicable technology that can be used for resource recycling and remanufacturing industrialization;
- Test and promote advanced environmental technologies and products;
- Promote a market-oriented service system for environmental protection and energy efficiency;
- Employ advanced technology to create a recycling system for waste commodities; and
- Promote clean coal and seawater use.

Next generation information technology

- Accelerate the construction of vast, integrated, and safe information network facilities, promote the R&D and production of new-generation mobile communication, as well as core equipment and intelligent terminals for next-generation Internet;
- Accelerate the convergence of telecom, broadcasting, and Internet networks; promote R&D in the "Internet of things" and cloud computing;
- Focus on developing core and basic sectors such as integrated circuits, new-mode displays, high-end software, and high-end servers;
- Upgrade software and value-added Internet services; promote smart renovation of infrastructure; and
- Develop digital and virtual technologies to promote creative industries.

Biotechnology

- Develop biotech-derived pharmaceuticals, new vaccines, diagnostic reagents, chemical drugs, modern Chinese medicine, and innovative drugs that prevent major critical diseases;
- Accelerate the R&D, production, and large-scale development of biological and medical engineering products such as medical equipment and medical materials;
- Promote bio-agriculture development, including the biological breeding industry, green agriculture, and biological production;
- Advance the exploration, demonstration, and application of core technologies in biological manufacturing; and
- Accelerate the R&D and production of marine biology technologies and products.

High-end equipment manufacturing

- Strengthen and expand the aviation industry, focusing on the development of key aviation equipment for trunk line and regional flights as well as utility aircraft;
- Promote aerospace infrastructure construction to develop satellites and related industries;
- Develop rail equipment used during the construction of passenger lines and urban metro systems;
- Develop marine engineering equipment to develop marine resources; and
- Develop intelligent manufacturing equipment with digitally-integrated systems as core components.

New energy

- Research and develop new-generation nuclear power technology and advanced reactors;
- Accelerate the application of solar-power technologies and explore diversified power-generation markets of solar photovoltaic and photo-thermal energy;
- Improve wind-power technology equipment to promote large-scale development of wind power and to develop an intelligent grid as well as new-energy systems; and
- Explore and use biomass energy according to local conditions.

New materials

- Develop new materials such as rare earths, high-performance membrane materials, special glass, functional ceramics, and semiconductor lighting materials;
- Develop advanced structural materials, such as high-quality special steel, new-mode alloy material, and engineering plastics;
- Develop high-performance fiber and composite materials, such as carbon fiber, aramid fiber, and ultra-high molecular weight polyethylene; and
- Research general and basic materials such as nano-, super-conductor, and intelligent materials.

New-energy vehicles

- Make core technology breakthroughs in motor batteries, drive motors, and electronic controls to promote the application and commercialization of plug-in hybrid and pure electric vehicles; and
- Research leading and core technologies for fuel-cell vehicles; and vigorously promote low-emissions, energy-efficient vehicles.

Source: PRC State Council Decisions on Accelerating the Development of Strategic Emerging Industries; Adapted from USCBC China Market Intelligence (<https://www.uschina.org/members/publications/cmi/2010/october/27/02.html>)

APPENDIX 2: Catalogue Example, MIIT Notice 318

MIIT Notice 318 attracted attention in 2012 because of its focus on SEIs, but in actuality provided limited information about what its purpose and function. The notice appears to provide guidance to provinces and local governments on how to promote SEIs, and its catalogues list existing policies and programs that appear to support the development of certain SEI technologies and products. However, the notice provided little context for these policies or how they would be used. Additionally, the catalogues listed specific companies, universities, and R&D centers that presumably would be involved with SEI development, but included no information about how these companies were selected and what their listing meant in terms of incentives.

To better assess how the notice will be used, USCBC reviewed several of the policies listed in the notice's catalogues. These policies were issued by a variety of agencies, including local-level branches of NDRC, MIIT, MOF, and the Ministry of Science and Technology (MOST), suggesting that local agencies each have their own industry promotion mechanisms. Most of these programs appear to be grant or funding programs. Many of the documents contained qualification requirements that could discriminate against foreign-invested enterprises seeking funding: requirements that companies have locally owned or registered IP and/or requirements that eligible companies must be a locally-incorporated company, not a branch. This latter criterion would not only discriminate against some foreign-invested companies, but also Chinese companies from other provinces.

Concerns about discrimination were also raised by the inclusion of companies in the catalogues themselves, and in the lack of transparency about how foreign companies might be considered for the catalogue. USCBC research indicates that only a small portion of the approximately 900 companies listed in the notice's two catalogues are foreign-invested enterprises, and the vast majority of these are joint ventures. Further, it appears that there was no public notice about the drafting of this catalogue, nor were opportunities provided to companies to apply for inclusion in the product and technology catalogues appended to the notice. While some conversations with local officials indicated that MIIT may have created this list of companies based on companies already participating in existing programs such as High and New-Technology Enterprise (HNTE) certification, R&D grant and funding programs, and earlier local technology catalogues, there is no clear information about how decisions were made to include companies (or universities and research institutions) in that list.

Because the notice contains only these lists of policies and companies, companies must still review the specific policies for their locality and their products to determine whether these policies contain programs, such as grants, tax incentives, government procurement preferences, or subsidies that are open to foreign-invested enterprises.

APPENDIX 3: SEI Implementation in Selected Provinces and Cities

Chinese local governments seldom move at the same pace as the national government, and the opinions of local senior provincial-level leaders often are the most important determining factor in shaping local SEI promotion. Consequently, SEI implementation varies significantly across China. To better understand local policies and implementation, USCBC interviewed local government agencies and analyzed local SEI-related policies and regulations in 12 cities and provinces throughout late 2012. Findings about which industries are promoted, agencies involved, funding amounts, and use of catalogues, are described here and listed in the attached chart.

In general, the types of documents guiding local implementation might include local 12th FYPs, industry-specific SEI promotion plans, and catalogues. For example:

- Localities like Shanghai have released an overarching 12th FYP on Strategic Emerging Industries, while localities like Jiangxi, only released individual plans for each of their selected SEIs.
- Hunan published the General Outline on Accelerating SEI Development rather than an FYP. The outline provides general macro-guidance on implementation. The Hunan provincial government has also made individual plans for each targeted industry.

Local governments are setting their own categories of SEIs depending on local industry characteristics and existing industry plans. The variations reveal local preferences about future economic development and perceived competitive advantages for the market. For example, Hunan, known for its entertainment industry, replaced NEVs with “cultural innovation” (such as cartoon digitalization) in its selection of SEIs.

In addition, some localities have made priority distinctions even among the seven SEIs, with those on the preferred list receiving more funding. Among Sichuan’s six SEIs, next-generation information technology holds the top priority and is expected to receive upwards of 25 percent of Sichuan’s specially designated SEI funding.

Many localities have noted that there are a variety of incentives available to potential investors. These include priority land use (especially in eastern regions where land is in short supply); expedited licensing approvals; reduced costs for and preferential access to public utilities; and “talent support” policies, such as housing subsidies. All local officials stressed that local preferential policies are decided case-by-case, and expressed a strong willingness to work with companies individually to explore incentive and funding opportunities; therefore, companies should pay close attention to local policy documents, catalogues, and funding notices, and they should actively meet with local officials to determine what opportunities might be available. Local officials also stressed, however, that industries in which foreign investment is restricted or prohibited will not be more open due to SEI development. Foreign investment will still be regulated primarily by policies like the Catalogue Guiding Foreign Investment, to which SEI policies are subordinate.

The following chart details SEI implementation in selected provinces and municipalities.

SEI Policies and Actions in Select Provinces/Cities						
Provinces/Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
Beijing	8	Stronger focus on aviation industry	DRC takes the leading role in SEI development, but specific responsibilities for each agency are not clearly defined	<ul style="list-style-type: none"> RMB 40 billion (\$6.4 billion) financial support Will establish a "Guiding Fund for SEI Venture Capital investment" 	N/A	N/A
Fujian	7	<ul style="list-style-type: none"> Does not include new-energy vehicles Combines biology with new medicine Adds the high and new technology marine industry 	<p>Fujian EITC, DRC, STC, commerce, finance, transportation, and environment departments share responsibilities as assigned by Fujian provincial government:</p> <ul style="list-style-type: none"> Next generation IT - EITC New materials - DRC, STC, EITC Advanced equipment manufacturing - CC Energy efficiency and environment protection - CC, EITC New energy - EITC, DRC, STC, CC, transportation bureau Biology with new medicine - STC, DRC, CC High and new-technology marine industry - CC, STC, department of marine and fishery 	<ul style="list-style-type: none"> RMB 500 million (\$80.4 million) for SEI guiding funds RMB 1 billion (\$160.7 million) SEI venture capital fund Fujian will invest more than RMB 128 billion (\$20.6 billion) on over 100 major SEI programs 	Fujian DRC and EITC developed an SEI key products and services guiding catalogue.	Developed an SEI Key Project List, selecting 100 key SEI projects.
Hubei	7	Same as the central government's list	Established an SEI development leading group to guide and coordinate implementation	N/A	The Hubei Statistics Department and DRC are drafting a local SEI products and services catalogue, according to one local official. The catalogue is still under review as of March 2013, and it is unclear to what extent it will mimic the national SEI catalogue.	Hubei DRC is building an SEI project pool, a database of qualified SEI projects that will be used for SEI policy reference and as a fund allocation mechanism. Companies are encouraged to apply directly to the relevant district or city level agencies

SEI Policies and Actions in Select Provinces/Cities						
Provinces/Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
						where they operate to join the pool. Hubei also introduced the IPR Protection Work Responsibility Break-down Plan for SEIs in July 2012 to emphasize that provincial agencies have specific responsibilities to protect IP. In addition, SEI IP protection has been listed as an annual work priority for involved agencies, including the provincial DRC and EITC. This is an unusual example among all researched provinces and municipalities, as IPR protection is now linked to local department performance indicators and given priority.
Hunan	7	Replaces new-energy vehicles with cultural innovation	<ul style="list-style-type: none"> Hunan's SEIs are coordinated by local EITC, DRC, STC, and the local commission governing state-owned enterprises EITC and the provincial finance bureau have responsibility for compiling projects, planning, arranging, and coordinating funds management All special funds, regardless of industry, are managed by Hunan EITC DRC has the lead on certain SEIs, such as new materials and new energy 	Aims to allocate RMB 500 million (USD \$80.4 million) annually.	Hunan has released several catalogues, including the SEI Key Technologies Catalogue, Key Products Catalogue (not available online), and the Top 100 SEI Companies List. According to one local official, companies will not be allowed to apply to be listed in the catalogue; instead lower-level governments (city or district) will collect all information based on companies' output value and technology level and submit the information to the provincial level, which will select companies for inclusion in the catalogue. It is still unclear how these catalogues are linked with SEI supporting policies, since much information is not publicly available and local departments couldn't clarify.	N/A

SEI Policies and Actions in Select Provinces/Cities						
Provinces/Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
Jiangsu	10	<ul style="list-style-type: none"> • Adds new medicine to biotechnology • Under next-generation IT, adds software, and places specific emphasis on the Internet of things, cloud computing, smart grid, and marine engineering equipment 	<ul style="list-style-type: none"> • Jiangsu DRC coordinates new energy, smart grid, and new-energy vehicles • Jiangsu STC coordinates new materials, new medicine, and biotechnology, • Jiangsu EITC manages energy efficiency and environmental protection, Internet of things and cloud computing, next-generation IT and software, advanced equipment manufacturing, and marine engineering equipment 	Current fund was established in 2012 with RMB 380 million (\$61.1 million).	According to provincial development and reform officials, Jiangsu has already issued 10 individual SEI promotion action plans and is in the process of developing Jiangsu SEI guidelines. These guidelines will not be mandatory and will be used only for guidance for relevant industries. Jiangsu's SEI action plans identify several key enterprises that may be eligible for SEI preferential policies, as these companies' names appear in the action plans. Local officials explained that the key enterprise list will be used as a guide when companies apply for production expansion, in order to reduce the risk of overcapacity in a particular industry. However, according to government officials, there are no financial subsidies available for industries included in this list. To be included in the enterprise list, an enterprise must be an international brand and own indigenous independent IP.	As Jiangsu is a province with varying levels of economic development, implementation plans are segregated by region. These distinctions may cause policies to be implemented differently across the province, according to local development needs. For example, northern Jiangsu is less developed, so there may be more opportunity to negotiate with local governments on requirements in that region. Moreover, local government support could also differ according to municipal capability.
Jiangxi	10	<ul style="list-style-type: none"> • Re-divides SEIs into: <ul style="list-style-type: none"> ○ Photovoltaic cells ○ New-energy vehicles and batteries ○ Energy efficiency lights and photoelectricity ○ New materials: metals ○ New materials: non-metals ○ Biomedicine and new medicine ○ Wind power and energy saving technology ○ Aviation manufacturing • Adds "green" food and agriculture, as well as the cultural and creative industries 	<ul style="list-style-type: none"> • Jiangxi EITC, DRC, and STC have various roles in SEI promotion • New energy is supervised by Jiangxi DRC • Jiangxi EITC administers the remaining SEIs and established a new internal division - "emerging industry division" - to manage SEI work • The Jiangxi Culture Department oversees the cultural and creative industries 	Established a RMB 400 million (\$64.3 million) venture capital fund to be used for major projects, overseen by a management commission created to guide fund disbursement.	Conversations with Jiangxi local government officials indicated that except for the local 12 th FYPs, all other policies are still under draft and are open for comments. No catalogue, direct subsidies, or pilot programs have yet been developed.	Discussions with Jiangxi DRC officials indicated that foreign-invested companies may participate in some SEI projects but will be ineligible for subsidies, which are set aside for Chinese companies. Subsidy provisions will not be written formally into any policy.

SEI Policies and Actions in Select Provinces/Cities						
Provinces/Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
Shandong	6	<ul style="list-style-type: none"> Does not include new-energy vehicles Combines new energy with energy efficiency and environmental conservation Adds new medicine to biotechnology Adds marine development 	Established an SEI special working commission in order to push forward SEI development.	Aims to invest no less than RMB 1 billion (\$160.7 million).	Shandong DRC released the first “SEI Major Programs Catalogue” in 2010 detailing 10 methods to encourage private sectors to develop SEI.	Shandong’s 12 th FYP on SEIs identifies priorities for each SEI.
Shanghai	7	Same as the central government	<ul style="list-style-type: none"> Shanghai EITC is the primary agency driving local SEI implementation Shanghai DRC manages and creates local SEI policies, approves large scale SEI projects, and coordinates with other government agencies for six of the seven SEIs The only exception is the pharmaceuticals and biotechnologies sector, which is handled by Shanghai STC 	Set up a “special fund for technological transformation” to encourage companies to update equipment and facilities. Companies that are approved for funding can obtain a maximum of RMB 50 million (\$7.9 million) in subsidies for this “technological transformation.”	Shanghai EITC officials indicate that they are drafting plans for 15 specific policies, including a specific guiding catalogue on each SEI as well as other implementing policies. The catalogue will be revised every 2-3 years and may only be used as a minimum technology reference standard for SEIs. Companies will have an opportunity to recommend additional advanced technologies or products to be listed in the subsequent revisions of the catalogue. Even if some products are not included in the initial catalogue, companies may still have the opportunity to have access to preferential policies if they can persuade local government officials that their products exceed minimum technical standards laid out in the catalogue.	Shanghai EITC created a “green channel” to expedite SEI project approvals. The municipal government is also experimenting with new ways to attract foreign investment. For example, if an SEI project is established but does not qualify as “encouraged” in the Catalogue Guiding Foreign Investment, it may be permitted to benefit from preferential policies that technically may only be available those investments listed as encouraged. Preferential access to land is another benefit.
Shanxi	9	Adds coalbed methane and modern coal-to-chemicals	Shanxi DRC leads the SEI interagency coordination working group	<ul style="list-style-type: none"> Aims to set aside RMB 500 million (\$80.4 million) annually as an industry development fund Will use the existing Shanxi “Energy Industry Investment” fund to support energy-related new technology development and investment. That fund has around RMB 10 billion (\$1.6 billion) 	N/A	SEI development is closely related to the Shanxi government’s strategy of developing the energy sector, especially coal.

SEI Policies and Actions in Select Provinces/Cities						
Provinces/Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
				<ul style="list-style-type: none"> Established venture capital fund in 2012 		
Sichuan	6	Does not include new-energy vehicles	<ul style="list-style-type: none"> Sichuan EITC manages next-generation information technology, high-end equipment manufacturing, and new materials Sichuan DRC supervises the new energy industry as well as energy efficiency and environmental conservation Sichuan STC is in charge of biotechnology 	<ul style="list-style-type: none"> Plans to invest RMB 2 billion (\$321.5 million) <ul style="list-style-type: none"> IT will receive 25 percent of funding High-end equipment manufacturing and new materials industries should each receive 20 percent of funding New energy should receive 15 percent of funding Energy conservation and environmental protection, and pharmaceuticals and biotechnologies should receive about 10 percent each 	Sichuan EITC released a local SEI Key Products and Services Catalogue, which covers approximately 100 products. (In contrast, the NDRC Catalogue contains about 4,000 products.) The catalogue is supposed to be reviewed every year, but according to media reports, it was not discussed in 2012. Sichuan also released the Work Plan on SEI Promotion and Administrative Measures on Use of SEI Special Funds in 2012.	Sichuan gives SEI projects priority in land use, energy, transportation, and financing. Sichuan EITC established the SEI Promotion Association to inform companies of SEI preferential policies available in Sichuan. The group also trains companies on how to apply for such policies. However, companies are only eligible for membership if their products are listed in Sichuan's SEI Catalogue.
Tianjin	7	Official list is same as the central government, though local government will promote the aerospace and aviation industry rather than NEVs.	<ul style="list-style-type: none"> Departments maintain responsibility for the industries under their current purview An interagency leading group is under formation 	<ul style="list-style-type: none"> Tianjin's Binhai New Area pledged RMB 50 million (\$8 million) to support SEI projects Aims to set up RMB 970 million (\$156 million) fund to support commercialization of indigenous innovation and high-tech projects 	The Tianjin municipal government completed a draft of the 12th FYP on Strategic Emerging Industries, but it has not yet been publicly released. According to local officials, there are only minor differences between the municipality's SEI priorities and national ones.	In May 2012, Tianjin signed a cooperative framework agreement with MIIT to support Tianjin's SEIs. According to this agreement, Tianjin and MIIT will work together to cultivate a competitive SEI cluster. This ministry-municipal cooperation is expected to provide special support in local development, which suggests more support could come from the ministry to Tianjin's SEIs. Currently it appears Tianjin is the only municipality with such an agreement with MIIT.
Zhejiang	9	Adds Internet of Things and the marine industry as full SEIs	<ul style="list-style-type: none"> The Zhejiang SEI Promotion Leading Group was set up in 2012 	Set up a RMB 500 million (\$80.4 million) SEI special fund	Zhejiang EITC issued local SEI catalogue in November 2011. This catalogue identified 40 key areas in nine SEIs for government support.	N/A

SEI Policies and Actions in Select Provinces/Cities						
Provinces/ Cities	Number of SEIs	Variations on Centrally Targeted SEIs	Key Agencies	Funding	Use of Catalogues	Other Features
			<ul style="list-style-type: none"> • Zhejiang DRC leads interagency coordination • Provincial finance bureau and EITC are in charge of subsidy funds for technology innovation pilot projects 			

ACRONYMS

CC: commerce commission

DRC: development and reform commission

EITC: economic and information technology commission

STC: science and technology commission

Local policy documents:

1. Beijing Implementation Opinions for Accelerating Development of Strategic Emerging Industries
http://www.gov.cn/gzdt/2011-09/06/content_1941134.htm
2. Beijing Interim Measures on the Administration of Strategic Emerging Industries Venture Capital Guidance Funds
<http://www.bjpc.gov.cn/zcfg10/201206/t3071551.htm>
3. Fujian Implementation Plan for Accelerating Strategic Emerging Industry Development
http://www.fujian.gov.cn/zwgk/zxwj/szfwj/201112/t20111220_436776.htm
4. Hubei Special Funds for Major Science and Technology Projects
<http://www.hbstd.gov.cn/info.jsp?id=7638>
5. Hubei Opinions on Accelerating Strategic Emerging Industries Development
<http://www.ezjw.gov.cn/ArticleShow.asp?inford=2840>
6. Hubei 12th FYP on Strategic Emerging Industries Development
http://gkml.hubei.gov.cn/auto5472/auto5473/201205/t20120525_376268.html
7. Hubei Development and Reform Commission Announcement of Applying for 2013 Strategic Emerging Industries Projects and Important Early Stage Projects
<http://www.tmfwg.gov.cn/gongzuodongtai/gongyejingji/710/>
8. Hunan Strategic Emerging Industries Special Plan for New Materials Industry
<http://www.hnfgw.gov.cn/hgzh/zdxxgh/12496.html>
9. Hunan Decision on Accelerating Strategic Emerging Industries Development

- <http://finance.sina.com.cn/roll/20100913/09038648370.shtml>
10. Hunan General Outline for Accelerating Strategic Emerging Industries Development
<http://www.hnfgw.gov.cn/hgzh/zdxxgh/12493.html>
 11. Jiangsu Province 12th FYP to Develop Strategic Emerging Industries
<http://www.ydfgw.gov.cn/Article/ShowArticle.asp?ArticleID=392>
 12. Jiangsu Special Funds on Software and Integrate Circuit Industries
http://www.taiwan.cn/flfg/dffgdfgz/js/201112/t20111215_2214969.htm?randid=0.5482974260321047
 13. Jiangsu Interim Measures on the Administration of Strategic Emerging Industries Development Special Funds
<http://zc.k8008.com/html/zhejiang/shengrenminzhengfu/2012/1108/596293.html>
 14. Jiangsu 12th FYP on Strategic Emerging Industries
http://guoqing.china.com.cn/gbbg/2012-07/06/content_25837900.htm
 15. Jiangsu 12th FYP for Electronic Information Industry
http://www.jseic.gov.cn/xwzx/gwgg/gwfb/201205/t20120509_111918.html
 16. Jiangsu 12th FYP for Internet of Things Industry
http://www.jseic.gov.cn/xwzx/gwgg/gwfb/201205/t20120509_111915.html
 17. Jiangxi Provincial Notice on Ten Strategic Emerging Industries Development Plans
<http://www.doc88.com/p-895572504877.html>
 18. Jiangxi Interim Measures on the Administration of Strategic Emerging Industries Venture Capital Guidance Funds
http://www.jiangxi.gov.cn/zfgz/wjfg/szfbgtwj/201206/t20120617_741004.htm
 19. Shandong 12th FYP for Strategic Emerging Industries Development
http://www2.shandong.gov.cn/art/2012/11/15/art_3883_3118.html
 20. Shandong Implementation Opinions on Accelerating Development of Strategic Emerging Industries and First Batch of Strategic Emerging Industries Projects
<http://gov.sdnews.com.cn/2011/5/4/1063434.html>
 21. Shandong Third Batch of Strategic Emerging Industries Projects List
http://www.sdjw.gov.cn/art/2013/1/14/art_148_152061.html
 22. Shanghai Special Funds on the Development of Major Projects of Indigenous Innovation and High & New Technology Industries
<http://www.sheitc.gov.cn/0105021602/656936.htm>
 23. Shanghai Strategic Emerging Industries Development Special Funds Administrative Measures
<http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/u26ai33090.html>
 24. Shanghai 12th FYP on Strategic Emerging Industries
<http://www.shanghai.gov.cn/shanghai/node2314/node2319/node2404/node29352/node29353/u26ai30764.html>
 25. Shanxi 12th FYP on Strategic Emerging Industries
http://gjss.ndrc.gov.cn/zcgh/dfghzc/gdxggh/t20120328_471645.htm
 26. Shanxi 2011 High-tech Industries Development Special Funds Application Guidelines
<http://www.sndrc.gov.cn/showfileOld.jsp?ID=12838>
 27. Sichuan 12th FYP for Strategic Emerging Industries Development

- <http://www.sc.gov.cn/10462/10883/11066/2011/11/17/10189851.shtml>
28. Sichuan Administrative Measures for the Use of Strategic Emerging Industries Special Funds
<http://www.sc.gov.cn/10462/10883/11066/2012/4/13/10206412.shtml>
29. Sichuan Strategic Emerging Industries (Product) Development Guiding Catalogue (2012)
<http://jw.scsn.gov.cn/jw/ShowArticle.asp?ArticleID=3624>
30. Zhejiang Interim Measures for the Administration of Strategic Emerging Industries Special Funds
http://www.zjczf.gov.cn/pub/zjczf/zjczf/zjczf/zjczf/201205/t20120523_279500.htm