THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

US-China Business Council Board of Directors' Statement of Priorities in the US-China Commercial Relationship

January 29, 2013

The US-China Business Council (USCBC) supports a strong, mutually beneficial commercial relationship with China. The relationship has made many positive strides over the past three decades, thanks to the collaborative work of the governments, business communities, and other stakeholders in both countries.

USCBC's board of directors first issued a priorities statement in February 2012. Progress has been made on a number of the statement's recommendations. More work needs to be done on several other issues highlighted in that statement, and new issues have arisen that require the attention of both governments in order to fully develop commercial ties, tackle unresolved issues, and bring greater benefit to each country's economy, companies, employees, farmers, and consumers.

At a time of transition for both governments, there may be an opportunity to develop a broader, long-term strategic vision of the bilateral economic and commercial relationship. Both governments should explore an economic liberalization framework that would comprehensively address opportunities and challenges in the relationship, rather than approach them incrementally. Areas to address include investment, tariff and non-tariff barriers, services, agriculture, innovation and technology, and intellectual property protections.

USCBC calls upon the US and Chinese governments to work together on the following priority recommendations and issues in the commercial relationship, and lends its full support to achieving the goals listed below.

Further Solidify the Foundation for Mutually Beneficial Commercial Relations

- **Maintain a robust and effective bilateral dialogue** The United States and China have established a robust annual schedule of bilateral meetings at all levels of government that supports expanded economic and commercial relations and resolves issues of concern. This 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, should be maintained and enhanced so that it continues to reflect the level of engagement appropriate for the world's two largest economies.

- **Implement the recommendations in the China 2030 report** USCBC believes the recommendations in the China 2030 report, jointly authored by China's State Council Development Research Center and the World Bank, would benefit China's economy as well as US-China commercial relations. In particular, a key component to meeting China's economic rebalancing goals is to ensure that all enterprises in China, including foreign-invested enterprises, are treated equally and able to compete on a level playing field. USCBC encourages the implementation of the report's recommendations in a timely manner.
- **Address cybersecurity threats to commerce** Cybersecurity concerns threaten to undermine the positive and constructive commercial relationship between the United States and China. Commercial espionage should not be condoned, regardless of the source. The US and Chinese governments should pledge to stop commercial-focused cyber intrusions and take active steps to cooperate in curbing this activity.
- **Further reduce business visa barriers** Modern international business requires company executives and employees to travel around the world to establish relationships, build customer bases, and manage business operations. The United States and China should facilitate trade and investment between our countries by offering reciprocal five-year, multiple-entry visas for business travelers.

Ensure Fair and Open Investment Environments that Create Jobs

- **Pledge to openness** The United States and Chinese governments should jointly reaffirm the principle that foreign direct investment is good for economic development, employment, innovation, competition, consumers, and public welfare. Government reviews of prospective investments in either country should be free from political interference and limited to legitimate national security concerns.
- **Encourage Chinese investment in the United States** The job-creation benefits of foreign direct investment underscore the importance of bringing more Chinese investment into the United States. The US government and private sector organizations like USCBC should continue to demystify for Chinese investors the rules for investing in the United States and work with state and local governments to spread best practices for attracting Chinese investment. The US and China should continue the sub-national dialogue on investment involving governors, mayors, and respective business communities.
- **Reduce foreign ownership restrictions in China** China's Catalogue Guiding Foreign Investment maintains foreign ownership restrictions in nearly 100 manufacturing and services sector categories in China. Additional restrictions on foreign investment appear in other policies and regulations. These restrictions inhibit foreign investment in key sectors and prevent the full economic benefits of foreign investment from being realized. Given China's desire to invest more in the United States, reducing or eliminating these ownership restrictions faced by American investors in China would be a positive way to build broader support for Chinese investment in the United States. Key sectors for reduced foreign ownership restrictions include financial services, agriculture, cloud computing, data centers, health insurance and hospitals, refining and petrochemicals, audiovisual and other media industries, and energy-intensive industries.

  Foreign investment in China's agricultural sector in particular lags behind other industries. The latest version of the Catalogue Guiding Foreign Investment introduced new restrictions in seed production, grain purchasing and storage, oilseeds processing, and corn processing. China should systematically review foreign investment restrictions for the agricultural sector and work to remove these barriers.

- **Negotiate and finalize a meaningful Bilateral Investment Treaty (BIT)** A BIT provides one of the best opportunities to reduce investment barriers in both countries and improve protections for US and Chinese investors in each others' markets. The most important elements of a strong BIT are national treatment provisions that apply to both new and existing investments ("pre-establishment"), and a "negative list" approach that covers all investments except those specifically excluded in the agreement. Both governments should seek to conclude a BIT incorporating these elements as quickly as possible.

Reduce Trade Barriers and Enforce Globally Accepted Trade Rules

- **Continue to use World Trade Organization (WTO) cases to settle trade disputes** In addition to reducing trade barriers, China's WTO entry in 2001 introduced a neutral, third-party dispute settlement mechanism for dealing with commercial issues that cannot be resolved by good-faith bilateral negotiations. Both countries have effectively used this channel to resolve trade disputes in a non-politicized manner and should continue to do so.
- **Ensure that government decisions are not politicized** Government reviews and decision making in areas such as investment security reviews, government procurement decisions, and trade remedies such as anti-dumping and countervailing duties cases must be fact-based, shielded from political pressures, and non-retaliatory. Mergers and acquisitions reviews must be efficient and avoid delays that negatively impact the proposed transaction.
- **Increase the use of internationally harmonized standards for goods and services sold in China's market** The use of internationally harmonized standards in China is one of the best ways to ensure that Chinese consumers have access to a wide range of choices in the latest products and services and that Chinese products and services are accepted and competitive internationally. To more effectively align with international standards, China should use global standards as the basis for Chinese standards wherever practical and adopt a more fair, equal and transparent, market-led approach to standards setting and development that is open to all companies regardless of nationality, including domestic, foreign-invested and foreign-based manufacturers.
- **Increase financing support for US exports to China** Despite substantial growth in US exports to China over the past decade, the US share of Chinese imports has fallen to 7 percent from 10 percent in 2000. A worthy goal of the Obama administration's National Export Initiative should be to reclaim a 10 percent share of China's imports by 2014. To help accomplish this goal, the Export-Import Bank of the United States should prioritize financing in support of exports to China.
- **Accelerate sensible US export control reforms** Export controls are an important part of ensuring the security of the United States. The Obama administration should continue its reform efforts that will ensure US security is not undermined while eliminating unnecessary licensing controls on products no longer a threat to US security. Such reforms will boost US exports and help support and create jobs. The United States should move forward more quickly with modifications of non-controversial items even as more

difficult reform vetting continues. Those modifications should include items that can be delisted for countries such as China because they are available on the open market from non-US sources.

- **Remove non-tariff barriers to trade** China's market has a variety of trade-limiting regulations that should be removed, including discriminatory import licensing restrictions on chemicals and agricultural products (such as cotton and fertilizer), limitations on express delivery services (including China's failure to fully grant US firms' longstanding permit applications and geographic restrictions inconsistent with China's international commitments), duplicative local domestic testing requirements that require many imported goods to be tested and certified by domestic laboratories regardless of whether they have already undergone similar tests internationally, and discriminatory regulatory and reimbursement policies affecting medical products.

Ensure Competitive Neutrality and Improve Transparency

- **Ensure equal treatment in licensing** For each of the past seven years, USCBC's annual survey of its membership has highlighted licensing barriers as one of the top market access barriers in China. These include business licenses, branch licenses, product approval licenses, import licenses, and other licenses and permits in sectors such as banking, insurance, express delivery, and value-added telecommunications services (such as data centers). In many cases, Chinese companies are able to receive these licenses without the same restrictions or delays faced by foreign companies and foreign-invested companies. China should ensure equal treatment in licensing for all companies regardless of ownership, just as the United States should.
- **Strengthen implementation of the Administrative Licensing Law** China should make a renewed effort to fully implement the 2003 Administrative Licensing Law, which provides strong protections for applicants and aims to streamline many of China's burdensome and duplicative licensing and approval processes. In particular, China should actively enforce provisions that require agencies to accept and act upon applications within specific timelines.
- **Ensure equal treatment in government procurement for all legal entities in China, regardless of ownership** 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.
- **Join the Government Procurement Agreement (GPA) in 2013** 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. If China can address these and other points and join the GPA in 2013, many of each side's concerns with "Buy American" and "Buy Chinese" procurement practices will be positively addressed.
- **Further improve rule-making transparency** China's central government has significantly improved rule-making transparency over the past several years, but further improvements are needed. China should fully implement its commitment to publish all draft trade and economic-related laws, administrative regulations and departmental rules

for a full 30-day period, but it should also consider going further by posting draft regulations on a designated website for a 60- or 90-day public comment period.

- **Ensure a level playing field in third-country markets** It is normal to expect that American and Chinese companies will increasingly compete in third-country markets. Maintaining a level playing field is the best way to ensure that this competition does not contribute to bilateral trade tensions. The United States and China should expedite their discussions on international guidelines for export financing and conclude an agreement prior to the 2014 target. The US Export-Import Bank should offer financing that is competitive with terms that Chinese companies may enjoy from China's Ex-Im Bank.
- **Eliminate duplicative and inconsistent payroll taxes** The United States and China should quickly move to ensure their respective companies and employees are not required to pay payroll taxes (social insurance taxes in China) in both countries. In addition, foreign employees should be allowed to opt out of basic medical insurance upon demonstrating proof of existing coverage. Finally, foreign employees should not be required to contribute to China's unemployment insurance system, since China's visa requirements make it unlikely that a foreign worker would be able to remain in the country after becoming unemployed.
- **Strengthen mutual commitment to promote ethical codes of business conduct** Several industry sectors, including healthcare, construction, and others, are working through Asia Pacific Economic Cooperation (APEC) to adopt ethical codes of business conduct. The US and Chinese governments should fully support this initiative and work to ensure compliance, which will benefit companies and consumers in both countries.

<u>Provide Consistent, Strong Intellectual Property Rights (IPR) Protection</u>

- **Continue to strengthen enforcement of IPR in China** Stronger IPR protection is increasingly in China's own interest as it seeks to develop an innovative economy. It is also critically important to US companies that do business with China. China's State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods should continue its important work and actively collaborate with the US government and the private sector on programs to improve enforcement of IPR, including the protection of trade secrets and restricting the use of compulsory licensing. In addition, China should remove market access barriers for legitimate products such as imported movies so that they can replace pirated product in the marketplace.
- **Adopt a stronger deterrent against counterfeiting** China should follow up on its 2012 S&ED commitment and adopt the WTO-consistent deterrent of criminal penalties in cases of commercial-scale infringement, and broaden the use of higher penalties and stronger deterrents against all types of IPR infringement, including patent, copyright, trademark, and trade secrets violations.
- **Improve enforcement against online counterfeiting and piracy** Internet platforms are a growing means for counterfeiters to market and sell counterfeit goods and distribute pirated content, but present special challenges for rights-holders and enforcement officials alike. China should strengthen the legal framework for and enforcement of intellectual property online, and release new rules to ensure Internet service providers and website owners have the legal incentives to cooperate with IP rights-holders to deal with counterfeit products and pirated works.

- **Protect IPR and technology during government review processes** Innovation will be better encouraged and supported if companies have confidence that trade secrets, formulas, test data, and other IPR and technology provided in product licensing, standards setting, and other processes will be kept confidential.

Adhere to Mutually Beneficial Innovation Policies

- **Continue to implement China's pledge to delink its innovation and government procurement policies** This issue impacts China's ability to become a global innovative economy and the level playing field for American companies in the China market. Progress has been made, following the November 17, 2011 State Council directive to local governments to halt implementation of any measures that link innovation and government procurement. Not all provinces have publicly complied with the directive, however, and further efforts to ensure full compliance are encouraged. Another important specific step that China should take is the finalization and issuance of Implementing Regulations to China's Government Procurement Law with the removal of references to indigenous innovation in Article 9 of the draft regulations.
- **Follow internationally proven, effective innovation incentives** China should use non-discriminatory tax policy incentives that do not have domestic intellectual property ownership requirements and allow all domestic enterprises, including wholly foreign-owned enterprises and joint ventures, to equally access government-funded innovation programs, including its programs to develop Strategic Emerging Industries. Non-discriminatory access to government-supported innovation programs is one of the hallmarks of innovative economies around the world. China should create an open innovation system that encourages Chinese companies to innovate not only through their own research and development, but also by participating in global research and development networks. Requiring IP ownership in China creates barriers to innovation. In addition, the United States and China should fully adhere to internationally accepted policies on promoting effective, non-discriminatory, and market-driven innovation such as those agreed to at the 2012 APEC meetings.