



2016 US-CHINA BUSINESS COUNCIL RECOMMENDATIONS FOR THE US-CHINA JOINT COMMISSION ON COMMERCE AND TRADE (JCCT)

Each year, the US-China Business Council (USCBC) compiles and submits to the US government specific lists of recommended items that the United States and China should address within the context of the annual US-China Joint Commission on Commerce and Trade (JCCT). Through an ongoing dialogue with USCBC member company representatives, USCBC has created the following list of issues and concerns that member companies have recommended as their top priorities to address in 2016 through the JCCT process—including JCCT working group meetings, vice minister-level meetings, and the JCCT plenary session. This list provides a priority list of specific action items for China, and is not intended to provide a detailed overview of every possible issue. USCBC and its members can provide additional detail and background on any of these recommendations as necessary.

USCBC's membership covers all major sectors of the US economy; as such, this submission does not prioritize action items for any one industry over another. USCBC, however, encourages the US Department of Commerce and the Office of the US Trade Representative to focus on cross-cutting issues that are at the heart of many of the recommendations that follow.

In addition to the important negotiations to resolve specific disputes, USCBC believes these broad topics offer the opportunity for enhanced policy dialogue between the United States and China under the JCCT. Many of these issues appear in the USCBC Board of Directors Statement of Priorities in the US-China Commercial Relationship. The Priorities Statement provides useful context to the top issues that USCBC would like to see pursued in 2016, and is thus attached to this submission for reference. We also strongly encourage the US government to actively pursue full implementation of commitments made at the 2015 JCCT and in previous rounds of negotiation.

We look forward to working with you to make progress on these issues in the coming year.

SPECIFIC JCCT CONCERNS

Administrative Licensing

Foreign companies must often jump over a wide variety of bureaucratic hurdles to establish and operate their businesses in China. Companies report that managing the licensing process requires an inordinate amount of their time and resources. These challenges include approvals to offer new or modified products, office license renewals to operate, approvals for different aspects of projects or investments, and licenses for various business and technical functions.

Inconsistencies in implementation across different agencies, levels of government, and regions create uncertainties and inefficiencies that undermine business development. Licensing requirements for foreign entities often differ from those for Chinese companies, raising questions about China’s commitment to its national treatment obligations. (Specific administrative licensing restrictions also appear in other sectors, such as agriculture, healthcare, and insurance.)

Recommendation	Relevant Agencies
Ensure that foreign and domestic companies are treated equally when seeking administrative licenses in China, including business licenses, branch licenses, product approval licenses, import licenses, and other licenses and permits across industries and sectors, including banking, insurance, reinsurance, express delivery, and value-added telecommunications services industries.	MOFCOM, SAIC, NDRC, SPB, CNCA, CIRC, CBRC, CNCA, MIIT, CFDA, AQSIQ, MEP, MOA, CSRC, SAFE
Remove all designations or questions on forms, applications, permits, etc., that result in classifying enterprises as “foreign” to create true national treatment.	All relevant approval and administrative agencies
Strengthen implementation of 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.	MOFCOM, SAIC, NDRC, SPB, CNCA, CIRC, CBRC, CNCA, MIIT, CFDA, AQSIQ, MEP, MOA, CSRC, SAFE
Reduce the number of administrative licensing and approval requirements for companies, both domestic and foreign, in keeping with the State Council’s March 2013 commitment to cancel or decentralize administrative approvals.	State Council and all relevant agencies

Remove discriminatory import licensing restrictions on chemicals and agricultural products, such as cotton and fertilizers.	AQSIQ, MOFCOM
Allow foreign construction firms to count their relevant international experience toward meeting qualification criteria when applying for Class A licenses in China.	MOHURD, MOFCOM
Remove duplicative 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 by qualified international bodies. (See also “Standards and Conformity Assessment.”)	AQSIQ, CNCA, SAC, MEP, SAWS
Ensure labeling changes enforced by CFDA, CNCA, MIIT, and other Chinese agencies provide adequate time for company compliance based on conversations with all stakeholders.	CFDA, CNCA, MIIT
Reduce and optimize the requirements for new chemical substance notifications, which currently requires more time and expense in China than in other countries. These costs hamper efforts by chemical producers to develop innovative, environmentally-friendly products. (See also “Energy and Environment.”)	MEP
Streamline and reduce challenges surrounding new food contact material notifications for novel materials.	NHFPC
Streamline the approval process of new food material, food additives, and food contact materials to reduce bureaucracy, review pending approvals, and meet industry need.	NHFPC
Allow companies applying for licenses and approvals to identify trade secrets and sensitive intellectual property in disclosures to government agencies, and require those agencies to use common procedures to destroy this information within a defined time period after completion of the licensing review. Alternatively, should this information need to be retained, the government should prohibit the dissemination of proprietary details in public disclosures and interagency government inquiries. Clarify procedures used to ensure companies’ proprietary information is not misappropriated. (See also “Intellectual Property.”)	MEP, SAWS, SAIC, MOFCOM, NDRC, and their provincial branches
Engage in follow up discussions across a variety of Chinese agencies to clarify and articulate what constitutes “necessary” information to be disclosed in the various permitting processes, focusing on what is essential for evaluation of the permit and/or administrative license.	MEP, SAWS, SAIC, MOFCOM, NDRC, and their provincial branches
Establish restrictions or standards to hold officials responsible for protecting the information provided in company documents submitted in the licensing process. Put in place clear penalties for authorities when these standards are not met. (See also “Intellectual Property.”)	State Council, SAIC, NDRC, MEP, MOFCOM, and local branches
Given that many approvals have been delegated to the local level, require governments at that level to designate an office and/or point-of-contact from	State Council, MOFCOM,

whom the company can seek clarification or appeal on questions related to what information is “necessary” to be disclosed for a permit and/or license. Such a contact should be located either in the municipal government’s general office or at the working office of the local IP leading group. When applications are rejected, provide detailed reasons for the rejection and ensure redress mechanisms are able to be fully utilized by all applicants.	local commerce commissions and provincial/municipal general offices
Improve the use of “expert panels” in the permitting process by clearly defining and limiting the specific scope of authority and technical area under panel review in written guidance; allowing companies to reject experts with competitive conflicts of interest from sitting on the panel; and requiring regular training of panel members on their responsibilities, including expectations regarding the scope of “necessary” information and the protection of confidential business information and trade secrets.	MEP, SAWS, SAIC, MOFCOM, NDRC, and their provincial branches
Ensure that lists of all materials required in various licensing processes are made public on government websites (central, local, and municipal) and standardize those requirements across the various agencies that have jurisdiction over those specific approvals.	SAIC, NDRC, MEP, MOFCOM, and local branches
In line with the government’s goal to simplify and streamline administrative licensing processes, continue to discourage government agencies from creating new licensing and permitting requirements that duplicate existing ones. In areas where duplication exists, such as between the SAWS’ Safety Assessment and the First Introduced Process, eliminate duplicative processes.	State Council, SAWS
Eliminate licensing regulations from SAIC and other agencies that in effect require companies to establish separate legal entities/branches across China at different levels for their individual business operations in these geographies.	SAIC, MOFCOM, and other relevant ministries
Simplify and streamline processes that relate to construction permits required to open retail stores. In particular, SAIC should consider adjusting the business licensing process to allow companies to start employee hiring and training while construction is still underway.	SAIC, MOHURD, MOHRSS
Harmonize Good Laboratory Practice (GLP) requirements across a variety of Chinese agencies to align with internationally-recognized practices, such as the OECD GLP. Pursue Mutual Acceptance of Data with OECD and non-OECD countries to avoid repeated testing.	CFDA, MOA, AQSIQ, MEP, CNCA
Clarify Chinese-language labelling requirements for dangerous goods products instituted in No. 30 AQSIQ Announcement (2012) and ensure the requirement is evenly applied to all shippers.	AQSIQ
Suspend the application of the new Dangerous Business Operation License enforced under Decree No. 591.	State Council
Harmonize the Regulations for Management of Direct Selling and the Anti-Chuan Xiao (chain selling) regulation with the Supreme Court of China’s Proclamation on November 14, 2014 stating that payments to distributors for	MOFCOM, SAIC

sales made by “downline distributors” whom they support is not a criminal offense, provided that the payment is based on product sales and not on the number of persons recruited. Although the Court determined these payments are “not criminal,” questions remain about civil penalties stemming from such payments. Ensure that the revised Regulations are consistent with international best practice.	
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Agriculture

China has affirmed its interest in developing a modern and competitive agriculture sector. US companies are at the forefront of this sector and can help China achieve these goals if allowed greater market access. In addition, increased compliance with international standards and practices can help expose Chinese agriculture to internationally accepted best practices and technologies, thus making the industry more competitive in domestic and international markets.

Recommendation	Relevant Agencies
Remove oilseeds, corn, rice, and wheat processing, seed production, genetically modified seeds, and non-grain biofuels from the restricted or prohibited lists in the 2015 Catalogue Guiding Foreign Investment, and allow majority ownership by foreign investors (via wholly foreign owned enterprises (WFOEs) or joint-ventures (JVs)) in these industries.	NDRC, MOFCOM, MOA
Remove the Tariff Rate Quota (TRQ) system that in practice places foreign companies operating in China at a disadvantage versus their domestic counterparts, or expand TRQ volume to ensure that volumes are commercially viable for corn and other commodities. Consider releasing lists of TRQ holders to increase administrative efficiency and transparency.	NDRC, MOFCOM, MOA, NDRC
Eliminate domestic support price policies that distort the market and artificially increase input prices and prices for consumers.	NDRC, MOFCOM, MOA, NDRC
Establish a science-based threshold for the low-level presence of genetically modified organisms (GMOs) to facilitate trade and meet food safety requirements, and develop a more systematic, simplified, and science-based process for approving GMOs or “events,” and ensure that these standards are consistently enforced.	MOA, AQSIQ
Lift current prohibitions on biotech seed companies to promote innovation and investment to modernize agriculture.	State Council, MOA
Establish a timelier and more transparent process for biotech product approvals that ensures China can deliver new safe technologies to the market in concert with other international approvals, and that these approvals do not interrupt mutually-beneficial trade.	NDRC, AQSIQ, NDRC, MOH, MOA
Promote full use of existing legal and judicial channels to prevent food speculation and hoarding in China, which disrupt market order and create food and commodity inflation that encourages the violation of existing international and PRC contractual obligations.	MOFCOM, NDRC, SAIC, MPS
Postpone or eliminate the institution of third-party verification requirements for ractopamine levels in imports of pork, instituted by AQSIQ in February 2013. Eliminate the “test and hold” policy applied	AQSIQ

to US pork for ractopamine and approved veterinary drugs commonly used in US pork production and in other pork producing countries: tetracycline, hydrochloride, oxytetracycline, and sulfathiazole. These veterinary drugs are critical to maintaining the high safety standards for US pork products and the health of the US swine herd.	
Adhere to World Organization for Animal Health (OIE) guidelines when applying bans on poultry products from certain US states because of low-pathogenic avian influenza, and lift such bans if they do not adhere.	NDRC, MOA, AQSIQ
Eliminate regulatory restrictions on imports of beef from US cattle over 30 months of age that establish a <i>de facto</i> market barrier for US companies, and expand full market access to beef from cattle of all ages. Such changes would be in line with actions by the OIE, which lowered its risk classification of US beef to “negligible risk” for bovine spongiform encephalopathy (BSE) to bring it in line with other countries that enjoy access to China’s market without similar restrictions.	MOA, AQSIQ
Unify the authority of food contact product management under a single government agency, such as CFDA or AQSIQ, including standards drafting, production permit (QS) licensing, and supervision during production and distribution, so as to avoid the uncoordinated requirements from different agencies.	CFDA, NHFPC, AQSIQ
Expand MOFCOM’s simplified review procedures for mergers and acquisitions to allow sensitive industries such as agriculture to qualify.	MOFCOM
For regulations that can have a significant impact on trade, submit WTO SPS and TBT notifications of draft final text, allowing for further comments by trading partners. Allow sufficient time for providing comments by trading partners –a 60 day period, in accordance with WTO procedures. Take these comments into account before the text is finalized.	MOFCOM, CFDA
Allow a reasonable interval between the publication of a sanitary and phytosanitary regulation and its entry-into-force, in order to allow time for other trading partners to adapt to the Chinese requirements and to follow the transparency regulations in the WTO SPS Agreement in Annex B.	MOFCOM, CFDA
Provide a clear timeframe for implementation and notify the US government and WTO member countries of any meetings or forums where this legislation and the practical implications of these proposals will be discussed with trading partners and traders.	MOFCOM, CFDA
Establish a standing coordination task force to interpret potential conflicting policies, circulars, and other rules between CFDA and AQSIQ. Develop a rule that agencies must seek alignment on food safety compliance regulations before they are issued.	CFDA, AQSIQ
On the AQSIQ blacklist, distinguish material breaches with ingredients, additives, containments, etc. from minor nonconformities (e.g. labeling defects, typos in submissions or Chinese translations). When minor	AQSIQ

nonconformities arise, refrain from disclosing the brand name on the blacklist.	
Amend the Product Quality Law to further define and distinguish the legal liabilities of operators and producers, and to excuse retailers from penalty when it can be shown that they have fulfilled their obligations.	NPC, State Council

Competition

China’s increased level of competition enforcement activity under the Antimonopoly Law (AML) and the high-profile reporting of its competition investigations have prompted growing attention and concern from US companies. Companies have broader strategic questions about how China’s competition regime is being implemented for both foreign and domestic companies and the interaction between the AML and other policy goals. Additionally, however, foreign companies have well-founded concerns about how AML proceedings are launched, conducted and decided. For detailed recommendations, see USCBC’s September 2014 report, Competition Policy and Enforcement in China.

Recommendation	Relevant Agency
Fully implement China’s commitments at the 2014 S&ED and JCCT to ensure that competition enforcement is “fair, objective, transparent, and non-discriminatory” and “would treat all business operators equally.” This commitment would include not only ensuring that sectors and companies under investigation are chosen based on these principles, but also ensuring fair treatment for all parties during those reviews, and that competition is not used inappropriately as a means to promote other industry and policy goals.	MOFCOM, NDRC, SAIC, SPC
Fully implement China’s 2014 S&ED commitments that allow parties to be notified of their rights and the opportunity to defend themselves; require administrative decisions to be provided in full and in writing; and confirms that China-practicing lawyers are permitted to participate in competition proceedings.	MOFCOM, NDRC, SAIC, SPC
Limit the use of MOFCOM merger security reviews only to those transactions that have genuine national security concerns, and ensure that such reviews are not used by either industry regulators or competitors to delay or distort M&A review decisions based on foreign ownership. Revise MOFCOM’s 2011 Provisions on the Implementation of a Security Review System for the Acquisitions of Domestic Enterprises by Foreign Investors to give consideration to the scope, criteria, and procedures for conducting such reviews to ensure that they are not protectionist in nature.	MOFCOM
Improve the economic analysis used in pricing investigations to better account for underlying factors that result in different prices in different markets.	NDRC
Adjust the investigation process to allow a brief window of time for the company’s legal counsel or an appropriate legal representative to be present for “dawn raids” and all further investigative proceedings, in line with best practices used by other international competition	NDRC, SAIC

regulators.	
Provide more information about MOFCOM concerns and third-party complaints to companies undergoing merger reviews, and provide it as early as possible to avoid delays and better allow companies to provide evidence to address the issues.	MOFCOM
Increase the threshold, which is China revenues of US \$63 million (RMB 400 million) for at least two of the parties to the transaction, for AML's mandatory pre-merger approval process to levels that would ensure that MOFCOM is able to better focus its regulatory resources on high-value transactions.	MOFCOM
Significantly increase the number of professional personnel conducting merger review activities, commensurate with MOFCOM's increased caseload.	MOFCOM
Commit that regulators will use the pre-consultation process solely as a means to work with applicants to ensure they are submitting complete applications, and not as a <i>de facto</i> means of extending review periods.	MOFCOM
Limit the use of withdrawal/re-filing procedures to extreme circumstances, and work to improve China's track record of prolonged M&A reviews. Consider adjustments to the interagency consultation process to limit the possibility that new issues are raised with merger transactions without sufficient time to address them within statutory timelines. Work with merger filers to provide more information earlier about potential concerns raised by other agencies.	MOFCOM
Provide clearer timetables and information about the interagency review process for M&A transactions, including how MOFCOM consults with agencies, what information is provided, and what scope of feedback is sought and considered.	MOFCOM
Revise regulations, such as SAIC's Draft Regulations on the Prohibition of Conduct that Eliminates or Restricts Competition through Abuse of Intellectual Property Rights, to ensure that efforts to manage anticompetitive behavior balance competing goals, such as promoting innovation and the free exercise of intellectual property rights in China (additional recommendations are provided in USCBC's July 2014 comments on these draft regulations).	SAIC
Avoid the excessive application of behavioral remedies and limit their use to circumstances in which such remedies are necessary to address monopoly concerns. Ensure that the application of such remedies does not unduly negate the pro-competitive impact of the proposed transaction.	MOFCOM
Revise the AML's Article 47 to add specific language communicating that fines are based on a company's net sales in the relevant market in China, or at a minimum, on the company's China sales; eliminate the minimum fine as a percentage of turnover, as it may discriminate against large companies and limit local officials' ability to assess fines based on the level of the infraction; and replace the current 10 percent maximum fine with a fixed maximum fine that would be appropriate for	State Council, NDRC, SAIC

companies of all sizes while still serving as an appropriate deterrent.	
Provide guidance to regulators and court officials as they consider agreements between companies and manufacturers to sell contracted components only through company-authorized dealers.	State Council, SPC, NDRC, SAIC

Customs, Trade, and Logistics

The high profile—and high volume—of US-China trade ensures that there will be numerous challenges with customs inspections and clearance, testing and certification, transshipments and fraudulent imports, and quality and safety issues for imports and exports. In addition, the logistics industry is an essential component of China’s developing modern national infrastructure and makes important contributions to overall economic growth. The international logistics industry—including freight, shipping, and express delivery services—has made significant investments in China’s infrastructure and helps Chinese businesses connect with global markets.

Recommendation	Relevant Agency
Collaborate with the US government and the express delivery service (EDS) industry to develop customs measures that enable EDS providers to effectively connect multiple points within China and major international markets, with full freedom to sort and process China’s inbound and outbound shipments and international transshipments at those locations, consistent with US cargo carriers’ aviation rights under the US-China Air Transport Agreement.	GAC, CAAC
Establish “low value” and <i>de minimis</i> customs clearance levels consistent with US levels and with China’s position as one of the world’s largest participants in global trade.	GAC
Establish a user-fee system similar to that used in the United States to enable the 24-7 customs handling China’s trade activity requires.	GAC
Remove GAC’s four-hour “prior to loading” advanced commercial information requirement for export goods and standardize China’s export requirements with international norms and industry practices.	GAC
Ensure any change in tariff codes follow the World Customs Organization rules and standards. Release draft annual Harmonized System changes at least three months before the legal effective date to allow sufficient time for companies to implement.	GAC
Secure a commitment from China Customs and other border crossing agencies, such as AQSIQ, to building and maintaining IT systems that are available to the trade 24/7 with a high degree of reliability. When systems go down, agencies should be encouraged to communicate clearly with traders the reason for the outage and make allowances for delays due to system failures.	GAC, AQSIQ
Eliminate ancillary charges levied by local customs or port/airport operators or concessionaires for services such as connection to the customs network, customs forms, or access to customs facilities. Where sole-source charges are necessary, they should be levied strictly on a cost-recovery basis. For other services, such as the filing of declarations through the customs system, firms should be able to choose to provide such services for themselves or from a number of qualified vendors.	GAC, AQSIQ

Increase transparency and consistency of customs enforcement across all ports.	GAC, AQSIQ
Clearly define parameters for export and import controls criteria for consistent application of compliance requirements.	MOFCOM

Ecommerce

Ecommerce is an important channel for economic growth in China. US companies are eager to participate in and contribute to this valuable and growing industry, and have the experience to help bring high-quality goods to Chinese consumers through digital channels.

Recommendation	Relevant Agency
Revise the October 2015 proposed Circular on the <i>Detailed Rules of Supervision and Administration on the Safety of the Foods Imported via Cross-border Ecommerce under the Bonded Internet Shopping Model</i> to remove the requirement for products sold over ecommerce channels to carry Chinese labels.	AQSIQ
Develop unified regulatory system online and offline commercial activities by updating the existing regulatory systems on market supervision (e.g., the Pricing Law, Law against Unfair Competition) and to review the necessity of on-going activities regarding the development of specialized ecommerce legislation (e.g. the Ecommerce Law).	NPC, State Council
Treat foreign and domestic retailers equally regarding minimum registered capital requirements in China’s ecommerce infrastructure and logistics sector. (See also “Investment”).	NDRC, MOFCOM
Eliminate the current warehousing model of cross-border ecommerce in the pilot ecommerce cities.	MOFCOM, GAC, AQSIQ, SAT

Energy and the Environment

Central, provincial, and local governments have numerous plans designed to improve energy efficiency, natural resource use, environmental protection, and the deployment of new energy resources. Taking the steps outlined below will enable governments to meet their assigned targets more rapidly by creating market-based demand and high-quality supply for energy and environmental technology goods and services.

Recommendation	Relevant Agencies
Convene a global conference on climate change in Beijing, with US support, with the primary objective of creating a multilateral agreement to revise and streamline trade law to ensure that it does not impede the development of clean energy technologies that receive government subsidies, and would allow for further development and deployment of green technologies, including advanced clean coal, natural gas technologies, and other advanced power generation technologies. In addition, seek to make progress on this issue and promote advanced power generation technology during China’s G20 leadership in 2016.	NDRC, NEA, MEP, MOFCOM

Accelerate market-oriented pricing reforms for domestic natural gas and petroleum products.	NDRC, NEA
Allow foreign companies to establish WFOEs to manufacture equipment for electric transmission and transformers, new energy power generation, railway transportation, and in large-scale coal, chemical, and ethane product manufacturing.	NDRC, MOFCOM
Ratify the Convention on Supplemental Compensation for Nuclear Damage.	NPC
Sign a nuclear indemnification agreement with the United States to provide security to US companies in the nuclear business in China, thus giving them greater opportunity to pursue nuclear projects.	MOFCOM, NDRC
Reduce and optimize the requirements for new chemical substance notification, which now requires more time and expense in China than in other countries. The costs associated with the registration process hampers efforts by chemical producers to produce innovative, environmentally-friendly products. (See also “Administrative Licensing.”)	MEP
Accelerate electricity pricing reforms to encourage consumers to use less energy during peak hours, or to move the time of energy use to off-peak times, which would help mitigate China’s power supply shortage.	NDRC, NEA, MIIT
Fully implement the bilateral agreement with the US to phase down the consumption and production of hydrofluorocarbons (HFCs) and strengthen government and industry talks on the issue.	NDRC, MEP
Ensure that local content and indigenous intellectual property requirements are not included in energy development policies for distributed energy technologies, gas turbines, or wind turbines. (See also “Intellectual Property.”)	MOF, MOHURD, NDRC, NEA
Allow foreign companies to fully participate in and have access to subsidy programs for shale gas exploration and development in China.	NDRC, NEA
Seek to reduce emissions of NOx in the refinery and petrochemical industries and use fiscal or tax incentives to support the installation of low NOx burning devices that are already in massive production in China.	MEP, MOF
Increase the annual production capacity limits laid out in standards for certain industries, such as the lead battery production industry, to ensure that these standards do not unnecessarily restrict production but do maintain environmental quality.	MIIT, MEP
Expand capability at national, provincial, and local levels to enforce environmental and emissions standards consistently. Use fiscal and tax incentives to encourage deployment of modern emissions control technology and high-efficiency boilers in coal-fueled power generation fleets. (See also “Motor Vehicles.”)	MEP
Use fiscal and tax incentives to encourage oil refineries to increase the production of high-quality, ultra-low sulfur diesel fuel and the production and consumption of diesel autos. (See also “Motor Vehicles.”)	NDRC, SAT
Accelerate the establishment and consistent enforcement of advanced standards for sulfur content in diesel fuel and for overall fuel quality. (See also “Motor Vehicles.”)	MEP, SAC, State Council

Promote policies that encourage investment in sustainable and environmentally technologies. Streamline processes and review applications efficiently; consider policy incentives that are line with the spirit and goals of the national agenda.	MIIT
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Government Procurement

China’s massive government procurement market is increasingly important to US companies operating in China. All companies, foreign and domestic, would greatly benefit from more open and fair procurement policies that would allow better access for all parties. Such a shift would also prepare China to fulfill its commitment of joining the WTO Agreement on Government Procurement (GPA).

Recommendation	Relevant Agencies
Modify 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. (See also “Innovation.”)	MOF, SCLAO
Adopt a substantial transformation test for determining domestic content. (See also “Innovation.”)	MOF, SCLAO
Join the WTO’s GPA in 2016 on meaningful terms, including expanding the sectors and levels of government that are subject to the agreement. Lower thresholds in line with other GPA parties, especially construction services.	MOFCOM, MOF
Ensure that the final version of the draft Government Procurement Law Implementing Regulations does not include the 20 percent preference for domestic products that is invoked under specific circumstances referenced in Article 10 of the 2010 draft.	State Council
Review and reduce local content requirements companies must meet to bid on government projects.	MOFCOM and all relevant agencies

Health Industries: Healthcare, Medical Devices, and Pharmaceuticals

China is undergoing a comprehensive set of reforms to its healthcare system to grant citizens greater access to healthcare services. US companies have substantial experience developing and operating healthcare infrastructure and solutions in global markets and are committed to making sizable investments in the China market. Allowing broader foreign participation in China’s healthcare market and more engagement in its reform process would allow Chinese consumers greater access to innovative technologies and products, international best practices, and high-quality services, thus accelerating the reform process.

Recommendation	Relevant Agencies
Eliminate discriminatory regulatory and reimbursement policies affecting healthcare products, including pharmaceuticals and medical devices.	CFDA

Pursue CFDA's accession to the CB Scheme for EMC testing, and allow the acceptance of International Electrotechnical Commission (IEC) 60601-based Electromagnetic Compatibility (EMC) test results from laboratories outside of China that participate in the CB Scheme.	CFDA
Implement the globally harmonized Unique Device Identifier (UDI) system for medical devices.	CFDA
Ensure the National Drug Reimbursement List (NDRL) is updated at least every two years. Improve timelines so that NDRL revisions run in parallel to drug registration approval, to ensure that there are no unnecessary delays in registering new drug products.	MOHRSS
Harmonize China's regulatory framework with international regulatory standards and practices by recognizing and accepting clinical trial data from patients in other countries, and allow submission of the Certificate of Pharmaceutical Product either in parallel to the New Drug Application process or just prior to approval.	CFDA
Implement China's 2012 JCCT commitment to define new chemical ingredients (referred to as "new chemical entities" in that commitment) in a manner that is consistent with international research and development practice.	CFDA
Implement China's 2014 S&ED commitments, notably to develop and seriously consider amendments to the Drug Administration Law requiring regulatory control of the manufacturers of bulk chemicals that can be used as APIs, including "export only" producers and distributors.	CFDA
Accept foreign clinical trials conducted by qualified organizations during the product approval process as being equally valid as local clinical trials.	NFHPC, CFDA
Remove the necessity of periodic product re-registration and require re-registration only for products that have undergone substantial transformation that significantly impacts their safety and effectiveness.	CFDA
Remove the prior country-of-origin approval requirement for the drug component of combination drug and medical device products.	CFDA
Achieve greater alignment and reciprocal recognition between CFDA and other regulatory bodies, including the US Food and Drug Administration. Advance cooperative efforts to monitor medicines and intravenous drugs, in order to promote consistency in registration processes.	CFDA
Enable foreign entities to register medical, healthcare, and pharmaceutical products at the provincial level—rather than the national level—for sale throughout China. Ensure that provincial-level registrations are recognized and applied throughout all provinces.	CFDA
Offer competitive and fair reimbursement rates for cultural and molecular methods in allergy testing to help spur foreign investment.	CFDA
Reduce onerous import requirements for human and animal origin materials intended solely for laboratory research use—including antibodies, cells, culture media, and sera—that are critical requirements for fundamental biological research. Such requirements include import permits frequently required on a shipment-by-shipment basis, restrictions on the types of companies that can apply for and obtain such permits, and restrictions on the types of materials that can be imported into China.	GAC, AQSIQ, NFHPC, CFDA

Clarify the rationale for the proposed different fee structures for imported versus domestic drug and medical device registration fee standards. Ensure that increased registration fees go toward building CFDA's pharmaceutical and medical device regulatory capacity and not to other agencies.	NDRC, MOF, CFDA
Clarify the status and timeline for finalization of the Technical Guidelines for Medical Device Clinical Evaluation (Draft for Comment). Clarify if there will be further opportunities for public comment.	CFDA
Clarify the status and timeline for updating the Drug Administration Law and the drug registration regulations.	CFDA
Provide an update on the status of implementation of the State Council's Regulations for the Supervision and Administration of Medical Devices, Decree 650.	CFDA
Evaluate the issues and feedback received during the implementation of new regulations promulgated since Order 650 for medical devices. Consider an extension of the current certificates that are undergoing extension registration but facing delay due to regulation changes, similar to the "grandfathering" that CFDA implemented from 2007-2010.	CFDA
Enhance training for reviewers and management for more accurate and efficient implementation of new regulations on medical devices, and ensure alignment at all levels.	CFDA
Continue with current efforts to remove the non-administrative approval process for the national configuration planning of capital medical equipment.	NHFPC
Harmonize the 2015 edition of the Chinese Pharmacopeia on excipient monographs to bring those standards in line with international standards.	CFDA

Human Resources and Labor

Human resources remains one of the most important cross-cutting issues US companies face in China, encompassing both regulatory and operating issues. In addition to longstanding concerns about how to deal with a dynamic labor market in China, companies are concerned about new PRC regulations and policy trends as they seek to navigate the new labor environment.

Recommendation	Relevant Agency
Eliminate requirements that foreign employees must contribute to social insurance funds (an effective payroll tax), as they are unlikely to receive social insurance payments in China.	MOHRSS
Permit foreign employees to opt out of basic medical insurance upon demonstrating proof of existing coverage.	MOHRSS
Eliminate requirements that foreign employees must contribute to unemployment funds in China, as China's visa requirements make it unlikely that an unemployed foreign worker would be permitted to stay in China and take advantage of these benefits.	MOHRSS
Ensure even and equal enforcement of hourly employee overtime work limits for foreign and domestic workers to create a more level playing field for all companies in China.	MOHRSS
Raise the compulsory retirement age for both men and women from the current	MOHRSS

60 and 55, respectively, to 65 years old.	
Allow specific exemptions to the short-term work authorization to apply nationally when the activities are part of ongoing vendor management, including to ensure that the terms of a contract or project are being delivered by the vendor.	MOHRSS, MPS
Allow related corporate entities of the overseas employer in China to act as the sponsor of overseas employees for any work performed at a cooperating entity site. These entities can include branch companies, subsidiary companies, or representative offices.	MOHRSS, MPS
Allow for company letters to be provided in support of short-term work applications in lieu of full cooperating agreements.	MOHRSS
Streamline the short-term work application process and reduce processing timeframes in all locations within China to allow for rapid deployment.	MOHRSS, MOFA, MPS
Adopt a globally recognized, industry standard such as the Electronic Industry Citizenship Coalition (EICC) construct on working hours, which is a work week not to exceed 60 hours per week, including overtime, except in emergency or unusual situations.	MOHRSS

Information Technology and Telecommunications

China’s market for information and communications technology is one of the world’s largest, but it is also one of the most restrictive for foreign businesses, despite the considerable expertise and technology that foreign companies have to offer Chinese consumers. Such restrictions prevent valuable involvement by US firms that would foster market innovation, provide better overall service to Chinese consumers, and create a sophisticated and modern telecom infrastructure to support China’s rapidly developing economy.

Recommendation	Relevant Agencies
Ensure that regulations calling for “secure and controllable,” “secure and reliable,” and similarly worded standards included in existing policy documents do not discriminate against foreign companies or procurement of foreign IT equipment and do not create unnecessary requirements that will not enhance the security of networks. This includes policies such as the 2014 <i>Guiding Opinions on Strengthening Cybersecurity in the Telecom and Internet Industry</i> , the 2015 <i>MIIT Pilot Program on Telecom Cybersecurity</i> , the <i>Made in China 2025 Roadmap</i> , the <i>Big Data Promotion Plan</i> , the <i>Three Year Action Plan on Internet Plus</i> . Related measures also include the application of similar standards included in draft regulations issued by CBRC, CIRC, CAC, and any other agencies. Consult further with international and domestic industry groups on implementation of the Counterterrorism Law and each of these measures, and on the Cybersecurity Law. Discuss with all affected industries ways to more accurately assess and manage cybersecurity needs and global commerce.	MIIT, CBRC, CIRC, CAC, CIRC, SAC, State Council
Suspend or eliminate requirements of data localization and crossborder data transactions included in various legislation which would require data	PBOC, NHFPC, State

localization and limit bulk transfers of information by US companies invested in China.	Council
Remove licensing requirements that subject cloud computing which use telecom networks but do not provide telecom services, to the MIIT Telecom Services Catalogue, a designation that is out of line with best practices from other international markets. These requirements include such as SaaS, PaaS, and IaaS.	MIIT
If cloud computing services continue to be treated as a value-added telecommunications service under the 2015 MIIT Telecom Services Catalogue, allow WFOEs and Sino-Foreign JVs seeking to offer cloud computing services in China to apply for and receive Internet Content Provider (ICP) licenses and Internet Data Center (IDC) licenses.	MIIT
Implement China's commitment made during the 2012 JCCT to conduct a review of the 2007 MLPS Administrative Measures and to fully consult with all relevant stakeholders, including foreign-invested firms.	MIIT
Eliminate foreign investment equity caps to allow foreign firms to acquire majority interest in telecom JVs.	MIIT
Revise existing foreign investment rules to allow foreign financial information providers to acquire majority equity investment ratios (more than 50 percent).	MIIT
Ensure foreign and domestic companies are treated equally when seeking equipment and radio operation certifications in China, including iridium satellite phone telecommunications.	MIIT, CAAC

Innovation

Indigenous innovation is central component of PRC technology and economic policies, viewed as a way to promote economic development and upgrading in China and bring increased economic benefits to the Chinese public. While US companies support China's goal of becoming an innovative country, implementation of various innovation-related programs – such as catalogues of indigenous innovation products, grants to support development of strategic and emerging industries (SEIs) and tax incentives that require domestic intellectual property ownership to encourage innovation – are problematic for foreign companies and remain inconsistent with international best practices.

Recommendation	Relevant Agencies
Ensure that all programs to promote innovation -- such as those that promote SEIs, offer subsidies for patent registrations, provide research and development funding support, semiconductor investment funding, and award high- and new-technology enterprise (HNTE) tax status -- are non-discriminatory both in principle and in practice, and include explicit language in these policies stating that all enterprises operating in China, including foreign-invested enterprises such as WFOEs and foreign majority-owned JVs, have equal access to government-funded innovation programs.	State Council, MOF, NDRC, MOST
Complete implementation of the State Council's November 11, 2011 directive to local governments to assess policies and regulations, halt implementation of any	MOF

measures that link innovation and government procurement, and publish the results publically. To date many, but not all, provinces and local government have done so.	
Modify 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. (See also “Government Procurement.”)	MOF, SCLAO
Adopt a substantial transformation test for determining domestic content underneath the draft Domestic Content Rules. (See also “Government Procurement.”)	MOF, SCLAO
Fully adhere to internationally accepted policies on promoting effective, non-discriminatory, and market-driven innovation such as those agreed to at the 2012 Asia Pacific Economic Cooperation meetings.	State Council

Insurance

US companies remain discouraged by the PRC government’s market barriers to the insurance industry, including regulations that make it difficult for companies already in China to expand domestically. As China seeks to expand its social safety net, increase domestic consumption, and develop the insurance sector, its citizens would benefit from the diversity of products and services that would come from an open and competitive insurance market.

Recommendation	Relevant Agencies
Relax equity restrictions on foreign investment to allow foreign insurers to own up to 100 percent of life and health insurers in China, and allow foreign insurers their choice of juridical form: branch, wholly-owned subsidiary or joint venture. Allow Chinese JV partners to sell their stakes to foreign partners.	State Council, NDRC, MOFCOM, CIRC
Continue domestic reforms in the insurance and other sectors concurrently with other bilateral initiatives, like the Bilateral Investment Treaty.	CIRC, State Council
Permit insurers to sell insurance through online channels without limitations on product scope. Include critical illness insurance products on the list of products that can be sold nationally online, and expand the list of permitted products over time.	CIRC
Modify the qualification threshold requirements for investors in equities of insurance companies to ensure all investors, foreign or domestic, are treated equally.	CIRC
Allow insurers to sell long-term foreign currency-denominated life insurance products, which will enable consumers to diversify their assets and better protect themselves and their families	CIRC, SAFE
Issue written regulatory clarification, in line with verbal statements made at the 2011 Strategic & Economic Dialogue (S&ED), that foreign-invested insurers are able to submit multiple applications for branch approvals at the same time, and that CIRC will concurrently review and approve qualified foreign-invested insurers’ provincial branches within a reasonable timeframe.	CIRC

Allow foreign insurance brokers the same scope of business activities as domestic firms, including claims handling, risk management services and consulting, handling of application processes and placement services, and reinsurance brokerage. Allow foreign insurance brokers to provide client services for small commercial businesses, group life and health businesses, and affinity programs.	CIRC
Allow foreign-invested insurers to use the July 2012 Rules and Guidelines for the Management of Remuneration of Insurance Companies as voluntary reference guidelines, since the remuneration structure of foreign insurers is different from that of the domestic players.	CIRC
Allow foreign-invested insurers to use their parents as “overseas trustees” without being subject to asset thresholds that can’t be satisfied on the basis of international experience and global assets.	CIRC, State Council, MOFCOM, NDRC

Intellectual Property Rights

IPR protection remains a top challenge that foreign companies face as they seek to expand their business and investment in China. IPR is also increasingly important to Chinese companies as they seek to develop their own innovate and creative capabilities. While USCBC recognizes the tangible positive steps China has taken in recent years to improve IPR protection and enforcement, we still see some important gaps that need to be addressed. More must be done to improve interagency coordination, enforcement, laws, and judicial channels. (For additional recommendations related to IPR concerns, see USCBC’s 2015 Special 301 submission.)

Recommendation	Relevant Agency
<i>General Recommendations</i>	
Eliminate value-based thresholds laid out in the Supreme People’s Court 2004 judicial interpretation that counterfeit and pirated goods must meet to qualify for criminal prosecution and replace them with the WTO-consistent deterrent of criminal penalties in cases of commercial-scale infringement – in line with China’s 2012 S&ED commitment.	SPC, SCLAO, SAIC, SIPO
Increase the effective level of penalties for IPR infringement – both judicial damages and administrative penalties – by (1) encouraging enforcement authorities to levy larger fines under existing law that will serve as more effective deterrents, (2) instituting statutory minimums, and (3) raising or eliminating the statutory maximums on fines and damages for IPR infringement.	SPC and local courts, SAIC, NCAC, MOFCOM (Office of the National Leading Group on the Fight Against IPR Infringement and Counterfeiting)
Increase the effectiveness of civil remedies by providing for more effective injunctive relief during the pendency of a case, including the enforceability in	SPC

China of preliminary and permanent injunctions from domestic courts via continuing contempt jurisdiction.	
Increase effectiveness of civil remedies by ensuring injunctive relief is available in China based on private settlement agreements and MOUs, as well as injunctive orders obtained in international arbitration forums preventing disclosure or use of IP.	SPC
Revise existing standards for calculating the value of infringing goods so that standards 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 counterfeit products.	SCLAO, SPC, SIPO, SAIC, NCAC
Push for the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods and its permanent office in MOFCOM to upgrade and expand their work to coordinate IP-related efforts of various government agencies through enforcement campaigns, work plans, and other means, and for that group to actively and regularly collaborate with the US government and the private sector on programs to improve enforcement of IPR, including the protection of trade secrets, copyrights, and restrictions on the use of compulsory licensing.	State Council Leading Group, MOFCOM
Require provincial and municipal governments to report to the Leading Group on their enforcement initiatives and efforts.	MOFCOM
Establish benchmarks for IP protection in regular performance evaluation of government officials.	State Council, SAIC, SIPO, MOFCOM, CCP Organization Department
Increase resources for IPR enforcement personnel at all levels, including enforcement officials and IPR regulators and judges. In particular, increase resources and authority for local public security bureaus, industry and commerce administrations, and local copyright bureaus to proactively manage counterfeiting, piracy, and other IPR infringement, including online sites and services and mobile apps that intentionally facilitate infringement.	SAIC, NCAC, MPS, SPC
<i>Enforcement and Online Infringement</i>	
Increase monitoring and enforcement investigations of Internet counterfeiting and piracy, and provide regular reporting of enforcement activity. Ensure that efforts to boost enforcement balance the needs of legitimate IPR holders and responsible Internet intermediaries.	MIIT, SAIC, NCAC
Develop a roadmap for engagement with industry and a schedule for release of clarification documents following the 2015 JCCT commitment to clarify rules on preliminary injunctions, evidence preservation orders, and damages.	MIIT, NCAC, SAIC, SPC
As follow ups to 2014 JCCT commitments on the protection of trade secrets in administrative and regulatory proceedings, publish findings on how to optimize administrative and regulatory procedures; detail new and strengthened confidentiality protection measures; describe procedures for granting or restricting government personnel access to trade secrets; and confirm that all persons acting in permitting or approval capacities are legally bound by the	State Council, MOFCOM, MEP, SAIC

same confidentiality obligations as government officials.	
Convene stakeholders for discussion of best practices to develop enforceable guidelines to ensure protection of IPR over Internet platforms, including the mobile environment, and incentivize voluntary initiatives to cooperate in proactively addressing online piracy and counterfeiting.	MIIT, SAIC, NCAC
Convene stakeholders for discussion of the role of advertising in online piracy and potential best practices to avoid inadvertent funding of infringing platforms by legitimate brands.	MIIT, NCAC
<i>Patents</i>	
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.	SIPO
Provide clarification on what constitutes “unreasonable conditions on enjoying or exercising the rights which the inventors is entitled with” in an agreement commenced between an entity and the inventor under Article 18 of the Draft of Inventors Remuneration Regulations.	SIPO
Provide clarification on the type of know-how that needs to be compensated and the amount of payment required under Draft Service Invention Regulations in addition to the salary received by the employee. Consider that SIR could create heavy legal risks of inventor remuneration disputes for all companies engaged in R&D in China, thereby discouraging R&D investment in China.	SIPO
Continue reforms to China’s patent system designed to reduce the number of approved patents of questionable validity, including allocating greater resources to the State Intellectual Property Office to improve patent examinations, increasing the level of examination for utility model-patents, and instituting penalties for bad-faith patent applications. Bad-faith patent applications should include filing on inventions or technical solutions owned by others and of which the applicant had such knowledge.	SIPO
Revise measures that deal with compulsory licensing, including provisions in the Patent Law, Patent Law Implementing Regulations and SIPO’s Measures for the Compulsory Licensing of Patents to limit use of compulsory licenses to specific, non-commercial circumstances, and to add language clarifying how royalty rates are determined when compulsory licenses are granted.	SCLAO, SIPO
Engage in discussions on proposed amendments to the Patent Law to discuss issues of concern to foreign businesses, including provisions in the most recent amendment that shifted key areas of patent enforcement from the courts to local branches of SIPO, as opposed to the courts.	SIPO
Coordinate all relevant actors – including SIPO officials, judges, and others – to ensure the successful resolution of cases involving patent invalidation under Articles 22.3 and 26.3 of the Patent Law in line with international patent practice and with Chinese commitments made during US Vice President Joseph Biden’s November 2013 visit to China and the 2014 JCCT.	SIPO, SPC

<i>Trademarks</i>	
Ensure effective implementation of the new Trademark Law, particularly measures relating to bad-faith filings and trademark copying, destruction of goods and equipment used in counterfeiting, tougher penalties and enforcement measures, contributory liability, and streamlining the registration process. Ensure that these laws and regulations balance the needs of legitimate IPR holders and responsible Internet intermediaries.	SAIC
Accelerate work to draft other regulatory documents, such as the Supreme People’s Court’s Provisions on Certain Issues Related to Trials of Administrative Cases Involving the Grant and Confirmation of Trademark Rights, which could provide new tools to address infringement.	SAIC, CTMO, SPC
Require enforcement agencies that discover and seize counterfeit and pirated products in China to destroy infringing goods – and the equipment used to produce those goods – within a given time period after seizure, not permitting them to re-enter the marketplace under any circumstances. Agencies should also be required to notify brand name owners when counterfeit products are destroyed and provide details as to the quantity, method, and time and date of destruction.	SIPO, SAIC, NCAC, MPS, AQSIQ, GAC
<i>Copyrights</i>	
Promote the use of legal software, as agreed by China and the United States in multiple high-level dialogues, through full implementation of existing policies and regulations, increasing funding to government agencies and for auditing of legal software use, and actively promoting the use of legal software in both state-owned enterprises and private companies.	NAO, MOF, SASAC
Enact PRC Copyright Law reforms reflecting comments made by USCBC and other stakeholders, including a broader scope of copyright-eligible products to include live television broadcasts (such as sporting events), improved protection for copyrights in the online space, penalties for camcording of films, a broadened list of activities that constitute copyright infringement, and increased penalties for copyright infringement. For more details, see USCBC’s March 2012 comments on the measure.	NPC, SCLAO, NCAC
Ensure timely conclusion of long-delayed administrative case involving KJMed, unauthorized provider of online journals. Ensure that the outcome provides effective deterrence against similar services that have emerged while this case has stalled.	Beijing Municipal PSB
Investigate and pursue swift enforcement against unauthorized online journal access providers and document sharing sites.	NCAC
Reconvene interagency meeting with NCAC, MOE, MOFCOM, and libraries, as a follow up on the 2009 library directive and resulted in a voluntary inspection campaign targeting online journal piracy. Create an enforcement hotline, where libraries/publishers can report infringing sites directly.	NCAC, MOE, MOC, MOFCOM
Re-visit the 2009 Library Directive (关于加强图书馆著作权保护工作的通知) which resulted in a voluntary inspection campaign targeting online journal piracy. Work with Chinese libraries to establish pilots to implement a voluntary	NCAC, MOE, MOC

inspection program to enforce the Chinese Copyright Law.	
Lift the restrictive rules on foreign publications in China. Under the investment regime mandated by the Foreign Investment Catalogue and related restrictions on publishing, the ability of U.S. publishers to help potential Chinese research partners expand their international presence is restricted. This limits dissemination of a broad range of Chinese research to the world. Recent restrictions include the Internet Publication Management Rule (网络出版服务管理规定) which came into effect on March 10, 2016 and effectively bans all foreign companies and JVs from publishing online in China.	NDRC, MOFCOM, SAPPRFT, MIIT
<i>Trade Secrets</i>	
Draft a unified Trade Secret Law that would incorporate and expand upon trade secret-related provisions in the Anti-Unfair Competition Law, Labor Contract Law, Company Law, Criminal Law, and other related laws and regulations.	State Council, MOFCOM, SAIC, MPS, MHRSS
Issue judicial guidance for district courts dealing with possible trade secrets cases, especially on the types of evidence admissible and sufficient to document protection of trade secrets, and also on restrictions relating to the access of trade secrets during the proceedings to prevent dissemination.	SPC
Suggest State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods take the lead on working with US government and industry in both countries on developing and sharing best practices on protecting trade secrets and confidential business information.	State Council Leading Group
Establish a trade secrets review committee, including representatives of US and Chinese governments, as well as US and Chinese experts, and private sector representatives, to study the regulatory and enforcement environment for trade secret protection in China, promote training for local law enforcement officers relevant stakeholders, improve trade secrets legislation, and provide policy recommendations to better improve trade secret protection in China.	SCLAO, MOFCOM, SAIC
Engage with the US government and industry stakeholders to ensure full protection of trade secrets and confidential information submitted by companies as part of government approval processes, and ensure that Chinese government practices for collecting, accepting, reviewing, and protecting sensitive company information, including both patent-related information and trade secrets, are consistent with international regulatory practices.	State Council, MOFCOM, MEP, SAIC
Continue progress in drafting and enforcing laws, regulations, and regulatory practices governing expert panels to require confidentiality for all data collected during and before these reviews, and to prevent those with a conflict of interest (such as competitors) from serving on these panels.	State Council, MOFCOM, MEP, SAIC
Focus at least one of the training sessions outlined in the US Trade and Development Agency-MOFCOM Memorandum of Understanding regarding the US-China IP Cooperation and Technical Assistance on trade secrets issues to raise the profile of this issue and open the channels of communication on best practices for a robust framework for protection.	MOFCOM
Allow companies applying for licenses and approvals to identify trade secrets and sensitive intellectual property in disclosures to government agencies, and require those agencies to share procedures to destroy this information within a	MEP, SAWS, SAIC, MOFCOM,

defined time period after completion of the licensing review. Alternatively, should this information need to be retained, the government should prohibit the dissemination of proprietary details in public disclosures and interagency government inquiries. Clarify procedures used to ensure companies' proprietary information is not misappropriated. (See also "Administrative Licensing.")	NDRC, and their provincial branches
Continue to establish restrictions or standards to hold officials responsible for protecting the information provided in company documents submitted in the licensing process. Clarify what internal procedures and rules have been developed to forward these goals to date. Clarify what penalties have been put in place for authorities when these standards are not met. (See also "Administrative Licensing.")	State Council, SAIC, NDRC, MEP, MOFCOM, and local branches
<i>Judicial Issues</i>	
Reduce unreasonably high evidentiary standards, and allow and admit other forms of evidence (such as affidavits, brochures of infringers, and live testimonies) besides documentary evidence to prove infringement and ownership of intellectual property in judicial proceedings, including those dealing with copyright and with trade secrets.	SPC
Fully implement the State Council's February 2014 Trial Opinions on Publishing Information relating to Administrative Penalty Cases Involving Producing and Selling Counterfeits and Infringement of Intellectual Property Rights to publish administrative cases related to counterfeiting and piracy. Build on these efforts to publish all IPR-related decisions – administrative, civil, and judicial – through a unified channel on a regular basis.	State Council
Encourage PRC courts to accept petitions to enforce foreign court judgments, as well as arbitration rulings/awards related to IPR protection, and to issue court orders to enforce those judgments in greater numbers.	SPC
Increase the effectiveness of civil remedies by providing for more effective injunctive relief during the pendency of a case, including the enforceability in China of preliminary and permanent injunctions from domestic courts, and injunctive orders obtained in international arbitration forums preventing disclosure or use of IP.	SPC
<i>Other Issues</i>	
Provide clarification whether (1) Article 24 of the Regulation on Technology Import and Export Administration or (2) Article 353 of Contract Law of the PRC controls in technology license agreements where the parties have agreed that the licensor is not liable for claims of infringement by the licensee by a third party.	SPC
Ensure that local content and indigenous intellectual property requirements are not included in energy development policies for distributed energy technologies, gas turbines, or wind turbines. (See also "Energy and the Environment.")	MOF, MOHURD, NDRC, NEA
Hold a meeting on personal data protection under the auspices of the Commercial Law Working Group.	MIIT

Investment

China’s leadership has repeatedly affirmed its commitment to further open China to foreign investment and to the principle of nondiscrimination in investment regulation. Foreign investment is central to creating high-quality, well-paying jobs –a topic of primary concern to PRC leaders. Loosening restrictions on foreign investment in China would accelerate the development of a modern services economy, stimulate domestic consumption, improve the local tax base, and lower unemployment rates. (Note: specific investment issues also appear in sections dealing with agriculture, energy and the environment, information technology and telecommunications, insurance, media and publishing, and motor vehicles.)

Recommendation	Relevant Agencies
Reduce or eliminate investment restrictions in a variety of sectors listed in China’s revised Catalogue Guiding Foreign Investment (see USCBC December 2014 comments), which maintains foreign ownership restrictions on a broad range of manufacturing and services sectors. Key sectors for reduced foreign ownership restrictions include financial services, agriculture, cloud computing, data centers, energy, legal services, market surveillance, credit rating and internet information services, commercial security services, health insurance and hospitals, refining and petrochemicals, audiovisual and other media industries, online publications, and energy-intensive industries.	MOFCOM, NDRC
Negotiate and finalize a meaningful BIT that includes strong national treatment provisions that apply to both new and existing investments (“pre-establishment”) and a limited “negative list” that broadens investment opportunities for foreign companies, in line with China’s commitment at the 2013 S&ED. Both governments should seek to conclude a BIT incorporating these elements as quickly as possible.	MOFCOM, NDRC
In line with the spirit and goals of the BIT, eliminate separate distinctions between foreign and domestic companies. Govern all legally-established companies in China under the same laws and regulations that apply to domestic enterprises, such as the Company Law.	MOFCOM
Treat foreign and domestic retailers equally regarding minimum registered capital requirements in China’s ecommerce infrastructure and logistics sector. (See also “Ecommerce”).	NDRC, MOFCOM
Ensure that rights for all legally established foreign investments are maintained, and are not subject to government requests to relocate investments that are designed to meet local industrial policy goals and that are not in line with current regulations.	MOFCOM
Ensure equal treatment for foreign and domestic companies in government investigations and review processes, such as anti-corruption and anti-monopoly investigations.	NDRC, MOFCOM, SAIC
Continue an ambitious reduction of the “negative list” adopted in the Shanghai Free Trade Zone to allow foreign companies broader access to the Chinese market in a wide range of industries.	NDRC, MOFCOM
Ensure a formal, public mechanism exists to review all local regulations to verify compliance with China’s World Trade Organization commitments.	MOFCOM

Eliminate burdensome investment requirements that some local governments require of foreign investors based in other parts of China; such requirements are on top of national investment rules, and can often impact both new investment and re-investment projects	MOFCOM, local governments
Ensure governments at all levels adhere to formal contracts with private entities, such as those for rent-to-purchase land contracts.	MLR

Legal Services

Many foreign law firms have significant expertise and experience that can facilitate transactions among businesses operating in China. Despite the opportunity presented by their services, however, foreign law firms face significant market access restrictions that inhibit the economic contributions they can make in China.

Recommendation	Relevant Agency
Issue a circular permitting foreign law firms to attend and represent clients in all meetings with PRC government officials on topics under their jurisdiction, including antitrust and trade, relevant to their work with those clients.	MOFCOM, MOJ
Allow Chinese lawyers licensed to practice PRC law to retain their license after being hired by foreign law firms.	MOJ
Treat foreign law firms as pass-through entities for income tax purposes at rates equal to those of domestic law firms.	SAT
Hasten the approval process for foreign law firms entering China's market, and lower the thresholds foreign firms must meet in order to establish representative offices in China.	MOJ
Permit qualified foreign lawyers to become official foreign legal consultants in China and expand opportunities for qualified foreign arbitrators to participate in China's arbitration systems.	MOJ

Media and Publishing

Inadequate intellectual property enforcement, limited market access, and inconsistent application of censorship regulations for foreign media and entertainment-related goods and services contribute to a large and active black market for foreign content in China. These factors have increased costs for foreign and domestic media and entertainment companies, and have slowed the growth of the legitimate market in a variety of sectors that are part of a vibrant media ecosystem.

Recommendation	Relevant Agency
Remove market access barriers (e.g. import quotas) for legitimate products, such as imported movies, so that they can replace pirated products in the marketplace.	SAPPRFT
Formally pledge to stop imposing blackout periods and limiting theatrical runs on theatrical releases of foreign films.	SAPPRFT
Eliminate discriminatory policies that ban foreign-produced animation on domestic television stations during prime time and otherwise limit access for foreign-produced animation.	SAPPRFT

Remove the new regulation prohibiting foreign owned and invested companies from engaging in online publication.	SAPPRFT, MIIT
Lift the effective ban on foreign companies and JVs producing or distributing TV programs and films in China.	SAPPRFT

Motor Vehicles

China has made developing its motor vehicles sector a priority. US companies are significant investors in the sector and view China as a major component of their global sales and operations. The development and transparency of internationally recognized standards on emissions, fuel, noise, and other motor vehicle technologies is essential to achieving mutual goals.

Recommendation	Relevant Agencies
Remove “mastery” designation requirements that may necessitate foreign automakers to contribute their IP to Chinese JV operations in order to fully participate in the new-energy vehicle (NEV) industry or enter the NEV market from any current or draft laws, regulations, policies, or regulatory practices. In the draft development plan for new energy vehicles, all JV parties were required to demonstrate proficiency in electric vehicle batteries, control systems, or motors to receive the “mastery” designation.	MIIT, NDRC
Ensure that locally produced foreign nameplates (makes and models of autos developed and copyrighted by foreign auto firms) and the foreign original equipment manufacturers that supply parts to these vehicles are extended the same privileges and incentives as domestic nameplates, so that companies are inclined to launch their latest technologies in China.	NDRC
Consistently and uniformly implement auto-related laws and regulations across national, provincial, municipal, and local jurisdictions. Specific measures of concern include electric vehicle and alternative-power train development plans, emissions and safety regulations, fuel economy standards, incentive policies, and vehicle scrapping schemes.	MIIT
Allow foreign companies to own more than 50 percent in complete auto manufacturing enterprises and decouple ownership of distribution rights from the manufacturing JVs.	NDRC, MOFCOM, MIIT
Remove duplicate vehicle emission registration and approvals that are sometimes required at both the national and municipal levels (for example, Beijing).	MEP, MOT
Expand capability at national, provincial, and local levels to enforce environmental and emissions standards consistently. (See also “Energy and the Environment.”)	MEP
Use fiscal and tax incentives to encourage oil refineries to increase the production of high-quality, ultra-low sulfur diesel fuel and the production and consumption of diesel autos. (See also “Energy and the Environment.”)	NDRC, SAT
Accelerate the establishment and consistent enforcement of advanced standards for sulfur content in diesel fuel and for overall fuel quality. (See also “Energy and the Environment.”)	MEP, SAC, State Council

Broaden China's financial bond issuance rules to open the market to auto finance companies, increase access to asset backed security markets, and grant auto finance companies foreign debt quotas.	CBRC, PBOC, NDRC, MOFCOM
In line with the <i>12th FYP on Major Area Air Pollution Control and Prevention</i> and the recent <i>Catalogue for the Guidance of Foreign Investment</i> , remove the requirement of water-borne basecoat and primer for all new lines of auto OEMs in the Access Management Rules of Passenger Car Manufacturing Enterprises and Products released by MIIT in 2012. Promote all environmentally-friendly technologies for auto coatings including water-borne, high solid solvent-borne and other coatings.	MIIT, MEP, NDRC
Support the application of green diesel technologies in passenger vehicles and develop relevant standards and regulations to ensure compliance with the environment requirements.	NDRC, MIIT, MEP

Overcapacity

Overcapacity is a significant concern for many US companies in China. China's complex and non-transparent credit allocation system serves only to spur inefficient and non-competitive overproduction of key commodities. China should, in the near term, revise such policies that encourage overcapacity and take tangible steps to curtail energy-intensive and inefficient production facilities.

Continue robust and consistent dialogue regarding overcapacity in the aluminum sector in 2016, in accordance with the commitment agreed to at the November 2015 JCCT.	NDRC, MOFCOM
Expand current discussions on curbing overcapacity in the steel sector to include discussions regarding other sectors facing overcapacity, such as the chemical intermediates sector. Have both governments provide more information to the public about the points raised in and the outcomes of discussions on reducing overcapacity.	NDRC, MOFCOM
Expand current discussions on curbing overcapacity in the steel sector to include discussions on the systemic costs of overcapacity including impact on money supply, resource availability, increased stress on the environment from operating inefficient plants, etc. Have both governments provide more information to the public about the points raised in and the outcomes of discussions on reducing overcapacity.	NDRC, MOFCOM
Develop case studies on eliminating capacity, including how actions to eliminate overcapacity can be applied to other sectors in China.	NDRC, MOFCOM

Standards and Conformity Assessment

US companies are global leaders in innovation, R&D, and other technical fields, and have a strong desire to work with China to develop advanced standards and conformity assessment procedures that are harmonized with international standards and practices and meet China's needs. Promoting greater transparency and participation in setting standards and standards-related policies, closer alignment with international standards, and increased market access for foreign conformity assessment bodies would allow products manufactured in China to better

compete in global markets and increase the quality and efficiency of product testing and certification.

Recommendation	Relevant Agencies
Commit to the use of global standards as the basis for Chinese standards to increase use of internationally harmonized standards for goods and services sold in China.	SAC
Carry out planned reforms to China’s standard system to ensure a 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.	SAC
Remove duplicative 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 by qualified international bodies. (See also “Administrative Licensing.”)	AQSIQ, CNCA, SAC MEP, SAWS
Engage a broad cross-section of stakeholders, including foreign industry representatives, in drafting and implementing current and future laws, regulations, and documents related to testing and certification for China’s Restrictions on Hazardous Substances (RoHS) regime.	MIIT, CNCA
Ensure that new mandatory Safety Standards for children’s textile products (GB 31701-2015) are enforced equally for imported and domestically produced products.	SAC, AQSIQ
Ensure that voluntary standards regimes, such as China RoHS voluntary certification, are not made mandatory by provisions that require their use, or through programs like tax incentives or government procurement programs that limit market access only to certified products.	MIIT, CNCA
Adopt a multi-mode conformity assessment system for China RoHS with a risk-based approach. Minimize unnecessary burdens within the certification process for China RoHS, such as adopting a risk-based approach for test-subject selection, and take concrete steps to shorten the timeline and simplify the procedure in RoHS certification to ensure that Chinese consumers do not face undue delays or rising prices in having access to innovative products.	CNCA, MIIT
Permit products that had already obtained CCC approval to be “grandfathered” in when CCC rule changes occur, along the lines of certification rules in other international jurisdictions like the US and Canada.	CNCA
Allow free import of repair parts for existing CCC-certified products to allow the product to maintain the same level of standards compliance that the product originally met when it was first sold in China and to reduce waste.	CNCA, GAC
Allow products and parts that were CCC-certified and labeled at the time of manufacture to be imported to China, even if the company’s CCC certificate has been updated or expired, thus permitting Customs officials to verify that the date-of-manufacture (DOM) matches the CCC certificate’s period of validity.	CNCA, GAC
Accredit and designate qualified foreign test labs to test, and conformity assessment bodies to certify compliance with, all relevant existing standards related to China RoHS certification in order to alleviate time and delays in	CNCA

certification and broaden the options for foreign and domestic industry players.	
Ensure that foreign companies that have operations in China are treated equally with domestic firms in having the ability to become members of technical committees, and provide input on the drafting of national product standards applying to the industry in which they work.	MOFCOM, SAC, CNCA
Require technical committees to disclose meeting minutes unless there is a valid concern endorsed by the Standard Administration of China not to do so.	SAC

Tax

China is updating and refining its tax regime to better regulate economic activity and ensure a steady stream of government income, yet companies continue to experience issues with tax policies and implementation and investigation of tax cases. Addressing these issues to create a more consistent and transparent tax system would benefit companies and regulators.

Recommendation	Relevant Agencies
Eliminate capital gains taxes for equity transfers between subsidiaries in the same corporate family made at cost.	SAT
Increase consistency across jurisdictions in interpreting tax regulations, including for non-tax resident enterprises.	SAT, provincial tax bureaus
Standardize the process for companies making foreign currency non-trade payments to overseas service providers and provide greater clarity on tax treatment of outbound remittances by PRC subsidiaries of US companies, which are often held up by the tax administration pending tax clearance.	SAT
Eliminate value-added tax rebates for Chinese manufacturers that export glyphosate.	SAT
Streamline and expedite SAFE's foreign debt registration process in order to help foreign enterprises to more quickly receive funds necessary for their business operations.	SAFE
Eliminate tax regulations that in effect require companies to establish separate legal entities/branches across China at different levels for their individual business operations in these geographies.	SAT, MOF
Standardize the value-added tax refund process for companies' overseas service income.	SAT
Announce a fixed timetable for the completion of the VAT reform in China as it applies to the three remaining industries: financial services, real estate, and lifestyle services. Provide transitional relief to businesses that are adversely affected by the transition from the Business Tax to the VAT regime by allowing input VAT credits for pre-transition expenditure.	State Council, SAT, provincial tax bureaus
Expedite the implementation of PRC's new transfer pricing documentation requirements to provide greater certainty for cross-border transactions between US companies and their PRC affiliates. Consideration should also be given to safe harbor rules for certain types of cross-border administrative, routine services to promote greater efficiency.	SAT
Reform the tax clearance requirement for cross-border remittances and provide	SAT

exemptions for cross-border remittances below a defined threshold to facilitate trade and non-trade remittances.	
Devote additional resources to clear the backlog of Advance Pricing Arrangements applications to give greater tax certainty to US companies which have transactions with their PRC subsidiaries, such as licensing transactions or services or exports of manufactured goods.	SAT
Commit to provide greater tax incentives to encourage qualified foreign professionals to work in China, including expanding the scope of exempt benefits-in-kind, more favorable treatment of equity compensation, and eliminating the tax gross-up calculations where tax is borne by employers.	SAT
Exempt from Circular 698 reporting requirements for genuine corporate restructuring taking place within a majority owned group, to encourage more efficient consolidation of PRC subsidiaries by US entities.	SAT
Provide greater certainty regarding the commencement of business timing for tax loss carry forward rules by establishing a SAT advance ruling mechanism on the commencement of business date which will be binding on all levels of the tax administration.	SAT
Simplify and make more efficient the approval process for granting legal preferential tax treatments, such as the VAT exemption for overseas income.	SAT
Allow related party foreign shared service centers to allocate costs to their China affiliate(s).	SAT, provincial tax bureaus
Implement new rules to allow China income tax returns to be filed on a consolidated basis by 80 percent or more of affiliated China entities.	State Council, SAT
Ensure that transfer pricing rules for sales within China between related China entities are consistently applied by the entities' tax authorities in different jurisdictions. Inconsistent application of the transfer pricing rules leads to double taxation from both an income tax and indirect tax perspective.	Provincial tax bureaus, local tax bureaus.
Permit settlement of salary cost reimbursements for foreign employees on secondment to China from overseas without the imposition of any taxes such as Business Tax or Value Added Tax.	SAT
Introduce a tax consolidated filing regime for corporate income tax purposes.	SAT
Consolidate national and provincial value added tax (VAT) and corporate income tax (CIT) regulations, and further optimize their internal statistical and fiscal reporting systems.	MOF, SAT, NBS, provincial governments

Transparency

A transparent legislative and regulatory process is an important factor in catalyzing economic growth and enabling a country to become an effective and respected partner in the global economic community. In contrast, limited transparency creates uncertainty and confusion for all stakeholders and limits stakeholders' ability to make and carry out business decisions. Transparency remains an issue area of concern for USCBC member companies in China.

Recommendation	Relevant Agencies
Improve PRC State Council and government agencies' record of compliance with commitments to issue all draft trade and economic-related laws, administrative regulations and departmental rules, including standards, for a 30-day public comment period on the SCLAO website, and consider posting draft regulations on a designated website for a 60- or 90-day public comment period.	SCLAO and all other trade-relevant ministries

Visa Policies

As bilateral ties between the United States and China increase, so too will bilateral travel. Facilitating US nationals' travel and work in China will boost economic activity in all sectors and promote better political and cultural understanding between the two countries.

Recommendation	Relevant Agency
Ease the qualifications specifically required for foreign workers over 60 in order to get work visas in China.	MOHRSS
Allow issuance of multiple-entry, short-term Z visas, and accept in-country conversion from short-term Z visas into long-term work authorizations.	MOHRSS, MOFA, MPS

Abbreviations of Relevant PRC Government Agencies

AQSIQ – General Administration of Quality Supervision, Inspection, and Quarantine

CBRC – China Banking Regulatory Commission

CFDA – China Food and Drug Administration

CIRC – China Insurance Regulatory Commission

CNCA – National Certification and Accreditation Administration of China

CTMO – China Trademark Office

GAC – General Administration of Customs

MEP – Ministry of Environmental Protection

MOHRSS – Ministry of Human Resources and Social Security

MIIT – Ministry of Industry and Information Technology

MLR – Ministry of Land and Resources

MOC – Ministry of Culture

MOE – Ministry of Education

MOF – Ministry of Finance

MOFA – Ministry of Foreign Affairs

MOFCOM – Ministry of Commerce

MOH – Ministry of Health

MOHURD – Ministry of Housing and Urban-Rural Construction

MOJ – Ministry of Justice

MOST – Ministry of Science and Technology

MOT – Ministry of Transportation

MPS – Ministry of Public Security

NAO – National Audit Office

NCAC – National Copyright Administration of China
NDRC – National Development and Reform Commission
NEA – National Energy Administration
NPC – National People’s Congress
SAC – Standardization Administration of China
SAFE – State Administration of Foreign Exchange
SAIC – State Administration of Industry and Commerce
SAPPRFT – State Administration of Press, Publication, Radio, Film and Television
SASAC – State-Owned Assets Supervision and Administration Commission
SAT – State Administration of Taxation
SCLAO – State Council Legislative Affairs Office
SAWS – Shanghai Work Safety Administration
SIPO – State Intellectual Property Office
SPB – State Postal Bureau
SPC – Supreme People’s Court