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

January 22, 2015

The US-China Business Council (USCBC) supports a strong, mutually beneficial commercial relationship between the United States and 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. Trade and investment are delivering important benefits to both economies and are the foundation of the overall US-China relationship.

This is the fourth priorities statement issued by USCBC’s board of directors. We are pleased that progress has been made on a number of the previous statements’ recommendations, such as increasing Chinese investment in the United States and reciprocal long-term visas for business travelers. Additional work needs to be done on other issues, and new concerns have arisen that require the attention of both governments in order to fully develop commercial ties and bring greater benefits to each country’s economy, companies, employees, and citizens.

Progress in the bilateral commercial relationship continues to be incremental. American companies welcome China’s ambitious reform direction, but have yet to see tangible impact on many areas of concern. We encourage both governments to develop a broader, long-term strategic vision of the bilateral economic and commercial relationship. Both governments should pursue an economic liberalization framework that would comprehensively address opportunities and challenges in the relationship, rather than approach them incrementally.

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

- **Finalize a high-standard Bilateral Investment Treaty (BIT) in 2015** 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 other’s markets. Finalizing a high-standard BIT with very limited exceptions in the negative list would provide a forward-looking framework for the commercial relationship and should be a top priority for both governments.

- **Prioritize reducing foreign investment ownership restrictions** China maintains foreign investment ownership restrictions across many sectors of its economy, including manufacturing, services, agriculture, and resources.
Reducing foreign ownership restrictions would allow American companies to contribute more to China’s economic reform and development goals. In addition, China could build strong support in the United States for a BIT by taking early steps to reduce investment barriers in areas meaningful to American companies, and demonstrate a commitment to treat domestic and foreign investors equally.

- **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. The United States and China should continue to strengthen this dialogue structure, which includes the US-China Strategic and Economic Dialogue (S&ED), the US-China Joint Commission on Commerce and Trade (JCCT), the US-China Innovation Dialogue, and the US-China Investment Forum. The successful meeting in November 2014 between Presidents Obama and Xi demonstrates the value of an annual presidential summit. USCBC recommends Presidents Obama and Xi hold a summit in the United States in 2015.

- **Promote a level playing field for foreign and domestic companies in China** USCBC supports the Chinese government’s desire to expand opportunities for “private capital” and non-state-owned entities in China, reform state enterprises, and increase competition to spur economic rebalancing. We encourage the inclusion of “foreign capital” in these expanded opportunities and openings.

  China’s policymakers should move toward eliminating terminology such as “foreign-invested enterprises.” Continued use of this term invites differential treatment for various types of domestic enterprises versus others, based solely on ownership. Companies legally established under China’s Company Law should all be treated equally by regulators.

- **Address cybersecurity threats to commerce** Little progress has been made over the past year to address the commercial aspects of the cybersecurity issue. The current impasse in government-to-government discussions on cybersecurity threatens to allow this issue to become a long-term irritant in the relationship. We encourage the two governments to resume more effective dialogue to stop commercial-focused cyber intrusions, regardless of the source.

  In addition, the two governments should identify areas of mutual concern and initiate programs to address them, such as cooperation to combat criminal activity or deter industrial facility cyber intrusions that could harm worker or public safety. Leadership by the United States and China on this issue would have a positive impact globally.

- **Take steps to build confidence in the bilateral relationship** The United States should take several steps to foster positive momentum and confidence-building in the US-China relationship. In particular, the United States Congress should approve reforms to the International Monetary Fund to appropriately acknowledge China’s contributions and responsibilities to the global economy; eliminate counterproductive China-targeted provisions in US appropriations bills, such as those restricting the Office of Science and Technology Policy from interactions with its counterparts in China and China-specific language included in IT procurement risk assessments by the Departments of Commerce and Justice, the National Academy of Sciences, and the National Aeronautics and Space Administration; and confirm that it will begin using market economy methodology in China trade remedy proceedings on or before December 11, 2016, as specified in China’s World Trade Organization (WTO) entry agreement.
Reduce Trade Barriers and Enforce Globally Accepted Trade Rules

- **Ensure that government decisions are not politicized**  Government reviews and decision making in areas such as investment security and antitrust reviews, government procurement decisions, administrative licensing, and trade remedies such as anti-dumping and countervailing duties cases must be fact-based, shielded from political pressures, and non-retaliatory.

- **Improve transparency and processes in Antimonopoly Law (AML) investigations**  It should be expected that China, with its large economy, will develop into the third leg of the global antitrust regime, along with the United States and the European Union. Nevertheless, foreign and domestic companies have well-founded concerns about how AML investigations are currently conducted and decided in China, including fair treatment and nondiscrimination, lack of due process and regulatory transparency, lengthy time periods for merger reviews, and the determination of remedies and fines. Antitrust investigations must be transparent, non-discriminatory, follow internationally-accepted due process procedures, and allow legal counsel participation.

- **Increase the use of transparent, 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 science-based, fair, equal, transparent, and 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.

- **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 reform efforts that will ensure US security is not undermined, while boosting US exports to help support and create jobs. At the same time, the United States should allow greater exports of items that do not present a security risk and are already available on open markets from non-US sources.

- **Conclude the Information Technology Agreement negotiations to expand trade liberalization**  USCBC applauds the achievement of a bilateral agreement on the expansion of the WTO Information Technology Agreement (ITA). We encourage the United States and China to take further steps to finalize the ITA with the other negotiating parties early in 2015. A comprehensive, high-standard, commercially-meaningful ITA expansion would provide positive momentum to other investment and trade negotiations by demonstrating a commitment to openness and providing benefits to all parties.

Ensure Competitive Neutrality and Improve Transparency

- **Ensure equal treatment in licensing**  For each of the past nine years, USCBC’s annual membership survey has highlighted licensing barriers as one of the top areas of discriminatory treatment in China. These licenses include business licenses, branch licenses, product approval licenses, import licenses, and other licenses and permits in sectors such as banking, healthcare, insurance, express delivery, construction, legal, and value-added telecom 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. We appreciate the State Council’s recent efforts to reduce licensing requirements, but to date the licensing barriers impacting foreign companies remain
largely unaddressed. We encourage further efforts to reduce licensing barriers and ensure equal treatment in licensing reviews and approvals. Licensing and other government approval decisions should be made without prejudice against type of ownership and without influence from competing entities.

- **Ensure equal treatment in government procurement for all legal entities in China, regardless of ownership** China should publicly release the Implementation Regulations of the Government Procurement Law and finalize the draft Administrative Measures for Government Procurement of Domestic Products with modifications, to ensure that goods and services provided by all legal entities in China are treated equally during procurement processes, regardless of ownership. Earlier drafts of these two regulations required additional modifications to address information technology products and other areas before they were to be finalized and implemented. If appropriately revised, the rules would roughly parallel similar rules applied to Chinese companies in the United States.

  China should also take the necessary steps to join the WTO’s Government Procurement Agreement in 2015. Doing so under meaningful terms will positively address many concerns with “Buy American” and “Buy Chinese” procurement practices in each country, as well as create additional positive momentum for concluding the BIT.

- **Ensure equal treatment for American technology products in China** China has in the past two years implemented several policies that effectively exclude US technology companies from commercial opportunities in China for reasons unrelated to the quality and security of their products and services. Technology purchasing decisions, whether public or private, should be based on sound commercial and technical factors, and not politicized.

- **Further improve rule-making transparency** China’s central government has 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 comment 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.

### Strengthen Intellectual Property Rights (IPR) Protection and Adhere to Mutually Beneficial Innovation Policies

- **Continue to strengthen China’s IPR regime and enforcement of IPR in China** Stronger IPR protection brings mutual benefits. China should continue to improve its IP legal regime by updating laws and regulations to reflect the latest developments in IP protection and enforcement. It should also continue to expand resources devoted to IPR enforcement and adopt stronger deterrents against IP infringement. Adopting the WTO-consistent deterrent of criminal penalties in cases of commercial-scale infringement and broadening the use of higher penalties and stronger deterrents in both civil and criminal cases against all types of IPR infringement—including patent, copyright, trademark, and trade secrets violations—will benefit all companies and IP rights holders in China.

- **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 they present special challenges for rights-holders and enforcement officials alike. China should increase enforcement of Internet-related IP rights to ensure its laws and regulations cover areas such as use of trademarks on websites, trademark-related aspects of domain name registrations, and the use of websites as platforms for counterfeit and pirated products. Such rules and their enforcement should
establish a framework that promotes accountability while balancing the needs of legitimate IPR holders and Internet intermediaries.

- **Strengthen trade secrets protection** The protection of trade secrets is a core component of innovative economies. China can take positive steps to encourage innovation by expanding its efforts to address trade secrets concerns, including the development of a Trade Secrets Law, broader use of judicial procedures on preliminary injunctions and evidence preservation orders, and reducing the high evidentiary burden that plaintiffs face during trade secrets cases.

- **Protect IPR and technology during government review processes** China should ensure that government reviews of patents are consistent with international patent practice, do not require unnecessary examination data, and do not unreasonably reject applications or revoke existing patents under discriminatory criteria.

- **Follow internationally proven, effective innovation incentives** In place of discriminatory government procurement preferences, China should pursue several other policy approaches that would more effectively promote innovation:
  - Revise criteria in the existing High- and New-Technology Enterprise (HNTE) program that currently requires IP ownership in China or a five-year global exclusive license to allow legally acquired, non-exclusive licensee or usage rights, or exclusive license rights in China only. These revisions would positively impact company decisions about where to locate innovation activity.
  - Ensure equal access to government-funded innovation programs, including programs to allow all domestic enterprises, including foreign-invested enterprises, to participate in programs to develop China’s Strategic Emerging Industries (SEIs). Such access would ensure that these programs succeed by encouraging all interested companies to develop these technologies. An open environment would also ensure that Chinese companies benefit by being connected to a global innovation network, which could further spur SEI innovation.